14-0245

Pros.

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, EX REL.
PATRICK J. MECKLING,
Petitioner,

vs.

STATE OF WEST VIRGINIA,
Respondent.

RECEIVED
FEB 05 2014
PROSECUTING ATTORNEY
OF OHIO COUNTY

CIVIL ACTION NO. 09-C-163
Judge David J. Sims

2014 FEB 4 PM 12 18
CIRCUIT COURT
OF OHIO COUNTY
BRENDA J. MILLER

ORDER GRANTING PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS UNDER W.VA. CODE § 53-4A-1

This matter comes before the Court on a Petition for Habeas Corpus Relief filed by the Petitioner on May 21, 2009. On February 26, 2010, Petitioner, by and through his counsel, Brent A. Clyburn, Esq., filed a "Separate Memorandum of Law in Support of Petition for Writ of Habeas Corpus under WV Code §53-4A-1."

I. PROCEDURAL BACKGROUND

The Petitioner was indicted by the September 2007 term of the Ohio County grand jury on four counts: one (1) count of kidnaping under WV Code §61-2-14a; one (1) count of abduction with intent to defile under WV Code §61-2-14; one (1) count of malicious assault under WV Code §61-2-9; and one (1) count of driving while revoked for driving under the influence of alcohol, second offense under WV Code §17B-4-3.

On September 12, 2007, the Circuit Court issued a warrant against Petitioner resulting from the indictment. On September 18, 2007, the warrant was executed against Petitioner. On September 19, 2007, Petitioner was arraigned, entered a plea of "not guilty" to all counts in the indictment, and was released that same day after posting bond by surety in the amount of $50,000.00.

After a severance Motion was granted, Petitioner was scheduled to proceed to trial on the abduction and malicious assault charges on October 29, 2007. On October 25, 2007, the State of

West Virginia filed a motion with the Circuit Court to revoke Petitioner's bond. While the Court issued an order on or about October 26, 2007, effectively revoking Petitioner's bond and remanding him to the custody of the regional jail, Petitioner was not immediately detained by law enforcement and he appeared for his trial on the morning of October 29, 2007.

After opening statements were made, the State called, in its case-in-chief, the alleged victim referenced in the indictment, Ann Marie Vaughan. At lunch recess, during a break in Ms. Vaughan's testimony, the Court ordered Petitioner be taken into custody based upon the revocation of his bond conditions. The Petitioner was then taken into custody in the presence of at least some members of the jury. As a result, Petitioner's trial counsel immediately moved for a mistrial. The Court denied his motion.

Following a lunch recess, the Court reconvened and the State called two (2) more witnesses, officers with the Wheeling Police Department, Bryan Hailes and Jeff Griffith. At the conclusion of the State's case-in-chief, Petitioner moved for a judgment of acquittal as to the two (2) counts of the indictment relevant to the trial proceedings. The motion was denied. Petitioner then testified on his own behalf. No other witnesses were called to the stand.

The Court charged the jury relative to the abduction with intent to defile charge and the malicious assault with a lesser included offense, misdemeanor battery. Thereafter, counsel for the parties gave closing argument. At the conclusion of its deliberations on the matter, the jury returned a verdict of guilty as to the abduction with intent to defile charge and guilty with regard to the battery charge. Following dismissal of the jury, the State filed a Recidivist Information charging Petitioner with being the same person previously twice convicted of felony offenses punishable by confinement in a penitentiary.

On December 3, 2007, Petitioner admitted that he was the same person who had previously been twice convicted of a felony offense as charged in the Recidivist Information. On December 10, 2007, the matter came on for sentencing, and Petitioner was sentenced to the West Virginia Penitentiary for life, and the misdemeanor battery conviction was ordered to run concurrent to the same.

On December 27, 2007, Petitioner filed his Notice of Appeal with regard to the conviction and sentence handed down by the Ohio County Circuit Court in the above-referenced matter. On or about April 7, 2008, Petitioner's appellate counsel filed his Petition for Appeal. On May 22, 2008, the West Virginia Supreme Court of Appeals refused Petitioner's Petition for Appeal.

Petitioner then filed a *pro se* Petition for Writ of Habeas Corpus Relief in the Circuit Court of Marshall County, West Virginia, the jurisdiction in which he was being detained. By Order entered October 27, 2008, the Circuit Court in Marshall County transferred the matter to the Circuit Court of Ohio County, West Virginia. On or about December 9, 2008, the Circuit Court dismissed Petitioner's pleading without hearing and struck the matter from the active docket.

On March 15, 2009, Petitioner again filed a petition praying for a writ of habeas corpus ad subjiciendum to the West Virginia Supreme Court of Appeals. Upon consideration thereof, the Supreme Court, on May 13, 2009, ordered the Circuit Court of Ohio County to appoint an attorney for Petitioner to aid him in filing an amended petition for a writ of habeas corpus, and to conduct an omnibus habeas corpus hearing. On May 21, 2009, the Court appointed counsel to assist Petitioner in his writ now being presented.

The Court has reviewed the record, pertinent legal authorities, and the arguments advanced by the parties and makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

II. FINDINGS OF FACT

1) On October 29, 2007, the morning of the trial, during voir dire and following the jury being impaneled in the matter, the Circuit Court called two (2) separate recesses. Trial Tr. at pp. 69, 76.

2) Before calling a third recess, the lunch break, and directly after the complaining witness's testimony, Petitioner was ordered handcuffed and taken into custody in the presence of at least some of the jurors. *Id.* at pp. 124-126.

3) It appears that the Court determined during the complaining witness's testimony, that the Petitioner should be taken into custody for violating the terms and conditions of his bond. *Id.* at pp. 115-119.

4) The Court ordered Petitioner to be taken into custody "during the noon - well, from now on" however, no mention was made that such would occur in the presence of the jury. *Id.* at p. 119.

5) Petitioner's trial counsel moved for a mistrial, arguing that "when the Court ordered Mr. Meckling taken into custody and had him handcuffed in front of the jury, of course, they don't know why that happened, and that makes him look like a bad guy to them." Trial Tr. at p. 125.

6) The Court disagreed, reasoning that "it could have happened no matter what, even if he was in custody before." *Id.* at pp. 125-126.

7) The Court went on to further say, "he's in custody because he violated the terms of his bond," declaring "that could happen." *Id.* at p. 126.

8) The Court denied Petitioner's oral motion for a mistrial finding that "there's no, no other way of handling that matter." *Id.*

9) The jury returned guilty verdicts on count two (2) of the indictment, being abduction with intent to defile, and a lesser included offense to count three (3) of the indictment being battery.

10) Thereafter, the State filed a recidivist information, charging Petitioner as being the same person as being twice convicted of a felony offense, that of uttering a forged writing and unlawful assault. Trial Tr. pp. 217-222.

11) Thereafter, the Court sentenced Petitioner to life in prison.

III. CONCLUSIONS OF LAW

1) Inherent in the right to a fair trial, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, is the principle that the accused is entitled to have his guilt or innocence determined solely on the basis of evidence introduced at trial, rather than "on grounds of official suspicion, indictment, continued custody" or any other circumstances not proved at trial. *Taylor v. Kentucky*, 436 U.S. 478, 486, 98 S.Ct. 1930, 1935 (1978).

2) In the State of West Virginia, "a criminal defendant has the right under the Due Process Clause of our State and Federal Constitutions not to be forced to trial in identifiable prison attire," as this would adversely affect the presumption of innocence. Syl. Pt. 2, *State ex rel. McMannis v. Mohn*, 163 W.Va. 129, 254 S.E.2d 805 (1979); see also *Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691 (1976).

3) The United States Supreme Court has made it clear that due process permits an accused to be shackled before a jury only as a "last resort" for "disruptive, contumacious, stubbornly defiant defendants." *Illinois v. Allen*, 397 U.S. 337, 344, 90 S.Ct. 1057, 1061 (1970).

4) The West Virginia Supreme Court agreed that, "a criminal defendant has the right, absent some necessity relating to courtroom security or order, to be tried free of physical restraints." Syl. Pt. 3, *State v. Brewster*, 164 W.Va. 173, 261 S.E.2d 77 (1979).

5) The Supreme Court requires that prior to using physical restraints, "an evidentiary hearing on the question of whether such security measures are justifiable by the circumstances of the case." *State v. Preacher*, 167 W.Va. 540, 572, 280 S.E.2d 559, 572 (1981); *citing Brewster*, holding that:

> It cannot be doubted that physical restraints on a defendant at trial may create a substantial prejudice against him. Not only may physical restraints suggest to the jury that the defendant is a dangerous and violent person, but they may also suggest that he has engaged in past criminal acts and may lead the jury to infer that he is capable of having committed the crime for which he is being tried.

Brewster, 164 W.Va. at 180, 261 S.E.2d at 82-83.

6) "The trial of a defendant in physical restraints is usually considered to be prejudicial per se... ." *Preacher*, 167 W.Va. at 556, 280 S.E.2d at 571.

7) The United States Supreme Court, meanwhile, in *Holbrook v. Flynn*, 475 U.S. 560, 568, 106 S.Ct. 1340, 1345 (1986), found that exposing the jury to the accused in shackles is "inherently prejudicial."

8) The United States Supreme Court has gone further in its prohibition and cautioned limitation to allowing a defendant to appear shackled in the presence of the jury by way of its recent ruling in *Deck v. Missouri*, 544 U.S. 622, 125 S.Ct. 2007 (2005) holding:

> Where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove "beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained."

Id. at 635, 125 S.Ct. at 2015, *quoting Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824 (1967).

9) "[T]he failure to develop a record of the necessity for physical restraints [does not require] an automatic reversal of the defendant's conviction. The issue to be resolved is whether sufficient reasons for use of the handcuffs existed. If a manifest necessity existed for their use, this would outweigh, from a policy standpoint, their prejudicial effect." *State v. Brewster*, 164 W.Va. 173, 182, 261 S.E.2d 77, 82 (W.Va., 1979)

10) Without a justifiable reason, such as a security concern per the *Brewster* decision, and until such time as an evidentiary hearing is conducted on the precautionary measure, as required by *Preacher*, a defendant, such as one in the position of Petitioner, should not be forcibly restrained and shackled as occurred at the direction of the Court.

11) "If, under the standards discussed in *State v. Brewster* and *State v. Preacher*, *supra*, the circuit court finds that the defendant should have been so tried [in shackles], the conviction of the defendant shall be re-entered. If the circuit court finds that the evidence is insufficient to warrant the trial of the defendant in shackles, a new trial should be afforded to the defendant. *State v. Holliday*, 424 S.E.2d 248, 251, 188 W.Va. 321, 324 (1992).

12) There is nothing contained in the record in this matter that would indicate that Petitioner was a security concern, was behaving poorly to the extent that order and decorum demanded his being restrained, or that manifest necessity required that he being restrained in the presence of the jury, per the holdings of *Brewster* and *Illinois v. Allen*. *Id.*

13) Had Petitioner been in custody before the trial proceedings of October 29, 2007, it would be arguable that, perhaps, had a juror, or jurors, seen Petitioner shackled, such might be deemed a harmless error. *See generally* Syl. Pt. 2, *State v. Linkous*, 177 W.Va. 621, 355 S.E.2d 410 (1987).

14) Prior to being ordered detained and shackled by the Court, Petitioner had been free on bond and free to move about on his own accord.

15) Petitioner's detention immediately following the testimony of the complaining witness, could lend itself to a conclusion, even in the most reasonable of jurors' minds, that Petitioner is dangerous man, or cloak him with an indicia of guilt. *See generally, Brewster*,164 W.Va. at 180, 261 S.E.2d at 82-83.

16) "We caution trial courts in the strongest possible terms to avoid allowing jurors to see a defendant in shackles - whether in the flesh, in photographs, or by any other method." *State v. Carey*, 210 W.Va. 651, 657, 558 S.E.2d 650, 656 (2001)

17) The Court deprived Petitioner his due process rights, as such have been prescribed under both State and Federal Constitutions, when it ordered him shackled during the course of the trial in the presence of the jury, and security and order did not warrant such intrusive conduct.

18) The Petitioner's convictions on Counts two and three of the indictment are hereby reversed and vacated and the Petitioner is granted a new trial on those counts.

19) Given this Court's ruling granting Petitioner a new trial, Petitioner's arguments with regard to disproportionate sentence and newly discovered evidence are moot.

20) A recidivist penalty cannot survive the vacating of the principal felony offense. *State ex rel. Young v. Morgan*, 173 W. Va. 452, 317 S.E.2d 812 (1984).

21) Under the habitual criminal statutes that the recidivist penalty authorized for a second felony conviction must be added to and incorporated in the underlying sentence to form a single sentence and is not a separate sentence. *Young*, 173 W. Va. at 454, 317 S.E.2d at 814. *See* Syllabus pt. 3, *State ex rel. Keenan v. Hatcher*, 210 W. Va. 307, 557 S.E.2d 361 (2001) ("Where a recidivist proceeding has previously been initiated against a criminal defendant by an information filed pursuant to W. Va. Code §§ 61-11-18 & -19, and it is later determined that the prosecuting attorney who initiated the charge was disqualified from acting in the case at the time such instrument was filed, the recidivist information is invalid and may not serve as a basis for further proceedings.").

22) Petitioner's recidivist sentence under W. Va. Code § 61-11-19 (1943) (Repl. Vol. 2010) is automatically vacated as a result of the underlying felony conviction being vacated.

23) The execution of this Order shall be and is hereby stayed until March 14, 2014, to permit the Respondent an opportunity to appeal this Order if it so chooses.

IT IS SO ORDERED.

To which rulings the respective objections of the parties are hereby noted.

ENTER this 3rd day of February, 2014.

DAVID J. SIMS, JUDGE

A copy, Teste:

Circuit Clerk

CERTIFICATIONS

STATE OF WEST VIRGINIA

I hereby certify that I have performed a review of the case that is reasonable under the circumstances and I have a good faith belief that an appeal is warranted.

March 11, 2014
Date

Counsel of record or unrepresented party

I hereby certify that on or before the date below, copies of this notice of appeal and attachments were served on all parties to the case, and copies were provided to the clerk of the circuit court from which the appeal is taken and to each court reporter from whom a transcript is requested.

March 11 2014
Date

Counsel of record or unrepresented party