

14-0484

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No. 09-F-58

JERRY L. HEDRICK

Defendant.

ORDER

On the 11<sup>th</sup> day of March, 2014, came the Defendant in person and by his counsel, Nicholas T. James, the State of West Virginia by Grant County Prosecuting Attorney, appearing via telephone, Jeffery Roth and Sexual Offender Probation Officer, in person, Daniel Smith.

The matter came before the Court pursuant to Defendant's "Motion To Strike / Modify / Clarify Terms and Conditions Of Probation And Sexual Offender Supervised Release." Counsel asked the Court whether to proceed by presenting testimony or proffer. The Court informed Counsel that proffer was acceptable.

Upon considering the proffers made by Counsel and comments of Jerry Hedrick, Jeffery Roth and Daniel Smith, the Court makes the following findings of FACT:

1. The Defendant was sentenced on October 26, 2009 to two (2) consecutive terms of not less than one (1) nor more than five (5) years in prison after he was convicted by a jury of two (2) counts of Sexual Abuse in the First Degree. The Defendant was further ordered to serve twenty-five (25) years of extended sexual offender supervised release.

2. The Defendant served over two (2) years in prison without any disciplinary issues and was granted parole.

NOTE  
N. James  
Prob - B Smith

3. The Defendant successfully completed parole and was discharged early on the 14<sup>th</sup> day of January, 2014.

4. On the 23<sup>rd</sup> day of January, 2014, the Defendant signed a form containing fifty-six (56) terms and conditions of extended sexual offender supervised release and twenty (20) rules and regulations governing probationers.

5. Probation Officer Lawrence Wade included an additional term at the end of the form wherein he hand wrote “[n]o employment or visitation at Smoke Hole Caverns or Gift Shop Property as defined in the general terms.”

6. Said restriction was not contained in the original sex offender conditions signed by the Defendant on October 21, 2009.

7. While Defendant was on parole he initially was barred from entering his Smoke Hole property, but said restriction was later lifted pursuant to the advice from the Parole legal department.

8. Defendant is the majority owner of Smoke Hole Caverns and purchased said property in 1977.

9. The Defendant has a large maintenance complex with all of his equipment, machinery and tools located on the Smoke Hole Caverns property.

10. The Defendant has been able to access his equipment, tools, and property with the assistance of family members.<sup>1</sup>

11. While Defendant was on parole he initially was barred from being around minor children, but said restriction was later lifted pursuant to the advice from the Parole legal department.

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<sup>1</sup> The Defendant testified that his son retrieves the equipment, machinery, and tools, and meets him to retrieve the same off of Smoke Hole Caverns property.

12. Defendant's underlying criminal conviction did not involve a minor.
13. Pursuant to a motion for change of venue, Defendant's trial attorney represented to the Court that the Defendant is one of the most hated individuals in Grant County.<sup>2</sup>
14. Defendant's underlying sexual abuse conviction occurred on Smoke Hole Caverns property.
15. The community hatred towards the Defendant and his status as a sexual offender may have a negative economic impact on Smoke Hole Caverns.
16. The Defendant owns a farm in Bath County, Virginia.
17. The Defendant suffered a stroke and due to his medical conditions is not a good candidate to take a polygraph examination.

Upon consideration of all of which, the Court makes the following **CONCLUSIONS OF LAW**:

1. The Defendant was not denied procedural due process on January 23, 2014, when Probation Officer Lawrence Wade included a term and condition of probation barring the Defendant from his Smoke Hole Caverns property.
2. The discretionary term of probation and sexual offender supervision barring the Defendant from his Smoke Hole Caverns Property is reasonable due to the fact that the Defendant is one of the most hated people in Grant County, his presence may have a negative economic impact on the business, the crime resulting in the Defendant's conviction occurred on said property and does not unconstitutionally deprive the Defendant of his property.

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<sup>2</sup> The Court granted the Defendant's motion for a change of venue when a jury could not be convened in Grant County.

3. The remaining discretionary terms of probation and sexual offender supervision are reasonable.

Based upon the foregoing findings of fact and conclusions of law, it is therefore, **ADJUGED** and **ORDERED** as follows:

1. The Defendant's Motion To Strike the term and condition of probation and sexual offender supervision that bans him from his Smoke Hole Caverns Property is **DENIED**. The Defendant shall be prohibited from entering Smoke Hole Caverns Property, including his maintenance complex that contains all of his equipment, machinery and tools.

2. The Defendant's Motion To Strike the term and condition of probation and sexual offender supervision that prohibits him from being around minor children is **GRANTED** in part and **DENIED** in part. The Defendant shall be permitted to have contact with his minor grandchildren on the condition that parents are aware of said fact and consent. The Defendant shall not be permitted to have contact with other minor children.

3. The Defendant's Motion To Strike the term and condition of sexual offender supervision that requires the Defendant to submit to a polygraph examination is **GRANTED**.

4. The Defendant's Motion to leave the State of West Virginia without obtaining written permission to go to his farm in Bath County, Virginia is **GRANTED**. However, the Defendant is required to give prior notice to his Sex Offender Intensive Supervision Officer by telephone when he intends to go to his farm in Bath, Virginia, for fewer than twenty-four (24) hours.

5. The Defendant's Motion To Strike the term and condition of probation and sexual offender supervision that requires that that Defendant obtain a travel permit within one (1) week prior to leaving the State of West Virginia for more than twenty-four (24) hours is

GRANTED in part. The Defendant is not required to provide one (1) week notice, but is still ordered to notify his probation officer when he will be out-of-state longer than twenty-four (24) hours.

6. The Defendant's Motion To Strike the term and condition of sexual offender supervision that prohibits the Defendant from possessing a bow is DENIED.

7. The Defendant's Motion To Clarify the term and condition of sexual offender supervision that requires him to "notify any third parties of risks that may be occasioned by the Probationer's criminal record or personal characteristics as directed by the Probation Officer" requires the Defendant to not withhold any information regarding the Defendant's status as a registered sexual offender if questioned.

- The Clerk is directed to provide a copy of this Order to Nicholas T. James, Counsel for Defendant, Jeffery Roth, Prosecuting Attorney, and Daniel Smith, Probation Officer.

DONE and ENTERED this 5 day of MAY, 2014.

Phil Jordan  
JUDGE

**TESTE COPY**

Christina Nixon  
Clerk Circuit Court of Mineral County, W. Va.