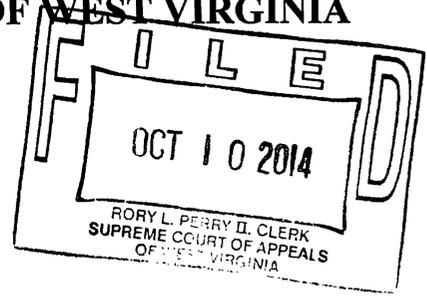


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**DOCKET NO. 14-0868**



**STATE OF WEST VIRGINIA,  
Plaintiff Below, Petitioner,**

**V.)**

**Appeal From Order of the Circuit Court of  
Wayne County (88-F-026)**

**STEPHEN WESLEY HATFIELD,  
Defendant Below, Respondent.**

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**PETITIONER'S BRIEF**

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## **ASSIGNMENT OF ERROR**

**THE CIRCUIT COURT ERRED IN DISMISSING THE INDICTMENT ON THE GROUNDS THAT, DUE TO THE PASSAGE OF TIME, DEFENDANT COULD NOT PROPERLY DEFEND HIS CASE**

## **STATEMENT OF THE CASE**

Defendant was sentenced on December 6, 1989, to life in prison without mercy and two (2) 2-20 year sentences as a result of his guilty pleas to First Degree Murder and Malicious Wounding on February 27, 1989. In his plea hearing, the Defendant gave an articulate and thorough account of his actions and admitted to shooting and killing Tracy Andrews, his ex-girlfriend, and shooting and wounding Dewey Meyers and Roger Cox.

Subsequent to his sentence he attempted to set aside his convictions over a period of years in two (2) rejected appeals (Hatfield I and Hatfield II) before the West Virginia Supreme Court of Appeals in 1991 and 1999. He also prosecuted a State Habeas Corpus case in which he was granted summary judgment by Special Judge Hoke, which said Summary Judgment Order was set aside by order of the West Virginia Supreme Court of Appeals in 2008. The Defendant then filed a Federal Habeas Corpus case (Hatfield v. Ballard, A.R. 60), which resulted in a favorable ruling setting aside his underlying convictions on July 10, 2012. The State filed a timely notice of intent to place this case on the trial docket.

Defendant filed a Motion to Dismiss Indictment (A.R. 3) and after a hearing held on January 8, 2014, Judge James O. Holliday entered the Order Dismissing the Indictment (A.R. 235) on April 17, 2014, from which Petitioner now appeals.

## **SUMMARY OF ARGUMENT**

That the Circuit Court erred in dismissing the Indictment against the Defendant on the grounds that the Defendant could not, due to the passage of time and the deaths of his original psychiatric experts, properly defend his case, in light of the fact that there are other qualified psychiatric experts who are able and available to testify at trial on behalf of the Defendant as to the Defendant's mental capacity at the time of the commission of the crimes.

## **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Petitioner believes that this is a matter of first impression under Rev. R.A.P. 20(a)(1) and hereby requests oral argument.

## **ARGUMENT**

**THE CIRCUIT COURT ERRED IN DISMISSING THE INDICTMENT HEREIN ON THE GROUNDS THAT THE DEFENDANT CANNOT PROPERLY DEFEND HIS CASE IN THAT HE HAS QUALIFIED PSYCHIATRIC WITNESSES AVAILABLE TO TESTIFY ON HIS BEHALF AT TRIAL.**

### **A. STANDARD OF REVIEW**

This Court's standard of review concerning a motion to dismiss an Indictment is, generally de novo. However, in addition to the de novo standard, where the Circuit Court conducts an evidentiary hearing upon the motion, this Court's "clearly erroneous" standard of review is invoked concerning the Circuit Court's findings of fact. Syl. Pt. 1, State v. Grimes, 226 W. Va. 411, 701 S.E. 2d 449 (2009).

## **B. DISCUSSION**

In 2004 and 2006, during the pendency of Defendant's State Habeas Corpus action, the Defendant was referred to Dr. D. H. Webb and Dr. Mark Casdorff for the purpose of a mental competency evaluation, as well as a retrospective determination of the Defendant's criminal responsibility at the time of the 1988 crimes.

Dr. Webb authored a report dated June 29, 2004, wherein he opined that the Defendant "was not mentally competent at the time of the crime" (A.R. 217). Dr. Webb relied on medical reports of a Forensic Psychiatrist, Dr. H. C. Haynes, and Psychologist, Ernest Watkins, M.A., both of Sharpe Hospital, as well as reports from Psychologist, George S. Larimer, Ph.D., and Dr. Johnnie Gallimore, a Forensic Psychiatrist. Mr. Watkins and Dr. Haynes had evaluated the Defendant in 1988 and found him not criminally responsible for the crimes he was accused of committing. Dr. Gallimore opined in a December 18, 1989 letter that he agreed with the diagnosis of Dr. Haynes and Mr. Watkins and stated that Mr. Hatfield "lacked the capacity to appreciate the nature of and control his acts" at the time of the crimes (A.R. 217).

Dr. Webb specifically disagreed with the February 17, 1989 report of Dr. Ralph Smith who opined that, despite indications that the Defendant was suffering from major depression at the time of the crimes, that this condition "did not significantly interfere with either his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law" (A.R. 218). Dr. Webb is a licensed psychiatrist and is available to testify on behalf of the Defendant at trial.

Dr. Mark N. Casdorff, Psychiatrist, authored a report on August 23, 2005, wherein he stated that Mr. Hatfield was, at that time, competent to assist his attorneys and participate in his defense. He did not render an opinion as to criminal responsibility at the time of the alleged

crime, “[b]ased on Mr. Hatfield’s request” (A.R. 229). Dr. Casdorff concludes his report as such: “I will remain further available for further discussion upon request and will be ready to complete the evaluation of criminal responsibility upon the Court’s direction” (A.R. 234). Dr. Casdorff is a licensed Psychiatrist and is available to testify on behalf of Defendant at trial.

In the Order Dismissing the Indictment herein, the Trial Judge found that Dr. Gallimore, Dr. Haynes and Mr. Larimer are now deceased, and Mr. Watkins is no longer licensed (A.R. 239). The Judge also notes the passing of other witnesses (A.R. 239) although none of those witnesses have been mentioned by the Defendant as relevant to his defense. The Trial Court found that, due to the passage of time, the Defendant has been prejudiced “to such an extent that he cannot properly defend his case” (A.R. 246). The Judge further held that a retrospective criminal responsibility evaluation at this time would be “nearly impossible and, therefore, unreasonable” (A.R. 244).

The State would point out that all criminal responsibility evaluations are retrospective in nature. The fundamental flaw in the Court’s decision to dismiss the Indictment lies in the fact that it ignores, completely, the availability of competent, licensed expert Psychiatrists that are willing to present the same defense that this Defendant would have presented at trial if one had been held in 1989. Neither Dr. Webb nor Dr. Casdorff have indicated any difficulty in determining the Defendant’s mental state at the time of the alleged crimes. As such, it cannot be said that it is “nearly impossible and, therefore, unreasonable” to conduct a retrospective criminal responsibility evaluation at this time. Defendant already has the benefit of these evaluations.

Defendant asserts that the delay of approximately 25 years between the crime and his scheduled trial is violative of his right to a speedy trial.

In State vs. Foddrell, 297 S.E. 2d, 829 (W. Va. 1982), this Court, citing the U.S. Supreme Court case of Barker v. Wingo, 407 U.S. 514 (1972) adopted a balancing approach for speedy trial claims wherein “the conduct of the government and the Defendant is weighed against one another on a case-by-case basis” with “none of the factors alone as either necessary or a sufficient condition to support a finding that there has been a deprivation of the right to a speedy trial. The four factors in the balancing process are: (1) length of delay; (2) the reason for the delay; (3) the Defendant’s assertion of his rights; and (4) prejudice to the Defendant.

In applying these factors in this case, it is clear that the Defendant has asserted his rights by his criminal appeals and civil actions filed to set aside his guilty pleas and convictions. It is equally clear that the length of the delay and reason for the delay are directly related to the protracted and numerous legal proceedings herein. Once the plea and convictions were set aside, the State promptly filed its notice to try the Defendant. Any delays since the case was placed back on the trial docket have been as a result of Defendant’s requests to continue the scheduled trial dates.

It is the fourth Foddrell factor, prejudice to the Defendant, that is pertinent to this Appeal. There is no dispute as to whether or not Stephen Hatfield shot and killed Tracy Andrews and shot and wounded Dewey Meyers and Roger Cox (as well as committing other crimes in his flight from authorities). He has admitted as much in his plea and his allocution is consistent with the eye witness testimonies. The issue in this case is, and has always been, whether, due to his mental state at the time of the commission of the crimes, he is criminally responsible for the murder and malicious woundings.

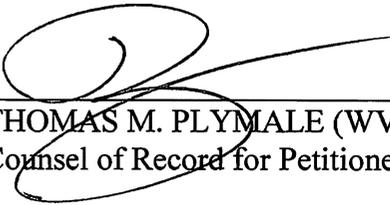
The Defendant has suffered no prejudice to his ability to properly defend his case and present his defense of lack of criminal responsibility at the time of the crimes. He has expert

witnesses available to present that defense and, contrary to the holding of the Trial Judge, neither witness has expressed any difficulty in rendering a criminal responsibility evaluation despite the passage of time.

The Trial Judge was clearly wrong in ignoring the reports and opinions of Dr. Webb and Dr. Casdorff. The Defendant has not been prejudiced herein.

**CONCLUSION**

The Circuit Court's Order dismissing the Indictment should be reversed, and this matter should be remanded for further proceedings.



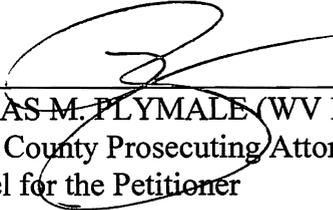
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Counsel of Record for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10 day of October, 2014, a true and accurate copy of the foregoing Petitioner's Brief was hand delivered to counsel for the Respondent as follows:

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