

ENTERED

4-8-15 \*

15-0409

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA  
STATE OF WEST VIRGINIA,

v.

CASE NO. 14-F-72 & 14-B-149

DAVID D. GRIFFY SENIOR,  
Defendant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**FOLLOWING HEARING ON, ERVIN PAGE, JR'S**  
**MOTION TO SET ASIDE BOND FORFEITURE**

The State by counsel, Jennifer L. Anderson, Assistant Prosecuting Attorney and Timothy J. LaFon, counsel for Ervin Page, Jr. appeared this day, February 10, 2015 for a hearing on Ervin Page, Jr.'s Motion to Set Aside Bond Forfeiture. Ervin Page was not present as he is currently incarcerated serving a Division of Corrections sentence.

Counsel LaFon presented Ervin Page, Jr.'s motion to the Court and the State responded. After hearing arguments from both parties, reviewing the relevant facts and law, and giving this matter due consideration, the Court hereby:

1. FINDS that the defendant, David Griffy, Senior, while under bail, willfully and without just cause failed to appear when required;
2. FINDS that the defendant, David Griffy, Senior's bond was lawfully and justly declared forfeit by this Court;
3. FINDS that West Virginia Code §61-1C-9 is the appropriate statute governing the enforcement of bail forfeitures and states:

When a forfeiture has not been set aside, the court or justice, upon motion of the State, shall enter a judgment of default and execution may issue thereon: Provided, That if the forfeiture is declared in a court of record the order taking judgment shall be entered at the same term of court in which the forfeiture was declared: And provided further,

That if the deposit for bail be by a person other than the defendant, or if the bail be in the form of recognizance, such person making the deposit or the surety on the recognizance shall be given ten days' notice by certified mail at his last-known address to appear and show cause why a judgment of default should not be entered.

4. FINDS that the Clerk of this Court sent notice via certified mail to Earvin W. Page, Jr. 188 B Rutledge Road, Charleston, WV 25311, at 324 Call Road, Charleston, WV 25312 and at 388 Call Road, Charleston, WV 25312, informing him of the Court's Order and notifying him of the date and time of this hearing at which he could show cause to the Court why its Judgment of Default against his property should not be executed;
5. FINDS that all three notices sent to Earvin W. Page, Jr. were returned one because of an insufficient address, one because the address does not exist and one because it was unclaimed;
6. FINDS that these are the addresses for Ervin Page, Jr. that were known by the clerk of this Court;
7. FINDS that these notices were sent out, giving Ervin Page, Jr. at least ten (10) days prior to the hearing;
8. FINDS that on, October 16, 2014 Earvin W. Page Jr. did not appear in Court to contest the Court's Order of Judgement of Default;
9. FINDS that the defendant, David Griffy, Sr. was apprehended in the State of North Carolina well after the date of the hearing on October 16, 2014;
10. FINDS that Ervin Page, Jr., did nothing to ensure the defendant's appearance in Court or at Home Confinement, despite being contacted by the defendant's

counsel on the date the defendant was supposed to appear at the Home Confinement Office;

11. FINDS that Ervin Page, Jr. gave no information or played any role in the capture and arrest of the defendant;
12. FINDS that Ervin Page, Jr. had the opportunity to file a bail piece, withdrawing his bail posting, prior to the State's filing its motion to revoke, but he failed to do so;
13. FINDS that all the requirements of West Virginia Code §62-1C-9 have been satisfied and that the Order of Execution on the Judgement of Default against the bail posted in the above-styled case by Ervin Page, Jr. was properly, lawfully, and justly made.

THEREFORE, the Court finds no reason to over-turn its previous Order of Execution of Judgement of Default, pursuant to W.Va. Code §62-1C-9, against the bond posted by Page Ervin, Jr. in Boone County Circuit Court Cases State of West Virginia v. David Douglas Griffy, Sr., 14-F-72 and 14-B-149, and said order shall stand. The Court DENIES Ervin Page, Jr.'s Motion to Set Aside Bond Forfeiture.

The Court ORDERS the Clerk of this Court to provide certified copies of this Order to the Prosecuting Attorney, Counsel of Record for the Defendant, and Counsel for Ervin Page, Jr., Tim LaFon, Ciccarello, Del Giudice & LaFon, 1219 Virginia Street E, Suite 100, Charleston, WV 25301.

All of which is ADJUDGED and ORDERED.  
Done this 7<sup>th</sup> day of March 2015.

ENTER:

*Apr 1*  
*Walter S.*  
JUDGE WILLIAM S. THOMPSON

A COPY ATTEST

*Ann Zickel*

CIRCUIT COURT

**State v. David Griffy, 14-F-72 & 14-B-149, Findings of Fact and Conclusions of Law Following Hearing on Ervin Page, Jr.'s Motion to Set Aside Bond Forfeiture, p. 2**

**PREPARED BY:**

A handwritten signature in black ink, appearing to be 'JA', written over a horizontal line.

**Jennifer Anderson, WV # 8504  
Assistant Prosecuting Attorney of Boone County  
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(304) 369-7380**