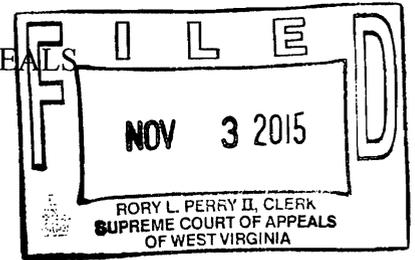


BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

NO. 15-0578



JESSICA MAY WILSON,

Petitioner,

v.

STATE OF WEST VIRGINIA,

Respondent.

Appeal from the Circuit Court of Kanawha County, West Virginia

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

I.

The State's arguments that Wilson's mitigating evidence at sentencing was factually inaccurate are incorrect

The Office of the Prosecuting Attorney had Wilson's confession when it offered Wilson the plea agreement that the State would stand silent at sentencing. The State knew Wilson was incompetent at the time of the confession. The State knew she had an IQ of 63, and could not read or write. The State knew she suffered from battered woman's syndrome. (JA Sentencing Transcript at 5-10) During the confession, Wilson repeatedly stated she attempted to stab Ms. Lynch, but was not sure if she stabbed Ms. Lynch. Wilson repeatedly stated she was in fear of, and coerced by her co-defendant, Timothy Paul Shaffer. (JA Continuation of State of Jessica

Wilson at 3)

The State knew that the investigating officer inaccurately reported that Wilson had stabbed the victim eight or nine times in the police report. (JA at 72, 79-81) The State knew this error, in reporting the confession, was repeated in the pre-sentence report and Dr. Smith's report. It appears the prosecutor used the inaccurate police report of the confession, rather than the actual transcript of the confession, to correct a non-existent factual inaccuracy. (JA at 80, JA Continuation of Statement of Jessica Wilson at 3)

A review of the confession reveals Wilson attempted to stab, but did not believe she stabbed Ms. Lynch. She stated she was in fear and coerced by her co-defendant, Timothy M. Shafer. (JA Statement of Jessica Wilson at 55) The State, in its Brief, disregards the issue of the inaccurate reporting of Wilson's confession. The State, in its brief, repeats the same inaccuracy as stated in the pre-sentence report: "Wilson ultimately admitted stabbing the victim." (JA at 37)

The State's brief presents the evidence that co-defendant, Timothy M. Shaffer, blamed Wilson for the murder of Ms. Lynch in their brief as if his self-serving statement is credible. "A Statement was taken from Shafer. He said he and Wilson planned to rob Ms. Lynch. Shafer stated he had a toy gun and Wilson had a knife. The pair approached the victim outside her house, and Shafer told Ms. Lynch she was being robbed. The two took Ms. Lynch inside her home. After the victim was unable to provide much money or the correct sequence of numbers for an ATM card, Shafer said Wilson told him to look away. Wilson then stabbed Ms. Lynch repeatedly." (JA at 73-74) The State, in its brief, argues Wilson's confession differs from the co-defendant's statement and is ...therefore... a factual inaccuracy. The State presumes that the co-defendant's self-serving statement is a fact.

Further, the State argues in its appeal that Wilson returned to the house after the night of the incident. (JA Motion to Vacate Plea Transcript at 11) This was misconstrued as shown by Wilson's statement in her presentence report: "I never went back to Nancy's house." (JA at 37) Wilson's confession clearly states she went back the same night, but not after the night of the murder. (JA Statement of Jessica Wilson at 15) The State argues the prosecutor could correct a factual inaccuracy at sentencing because defense counsel presented the mitigating evidence that Wilson had not returned to the house after the night of the murder (the other two co-defendants had returned days after the night of the murder). JA at 37-38) The fact remains that Wilson did not return to the house after the night of the murder.

Wilson maintains that the facts given in her confession and presented during her sentencing as mitigating evidence were truthful, and not factual inaccuracies. Wilson attempted to stab the victim under coercion, but did not believe she stabbed the victim. She did not return to the crime scene after the night of the incident. (JA Statement of Jessica Wilson 35, Continuation of Jessica Wilson's Statement at 3) The Office of the Prosecuting Attorney had knowledge of these facts, in her statements, before offering the plea agreement to stand silent. The State had no factual inaccuracies to correct.

II.

In ruling this matter, this Court should construe the existence of ambiguity in a court-approved plea agreement against the State and in favor of Wilson and to presume the breach of the plea agreement to be prejudicial to Wilson

The State seems to suggest in its brief that his Court is not required to and should not construe the ambiguity in the court-approved plea agreement against the State and in favor of Wilson. This suggestion is in direct conflict with recent decisions issued by this court.

Syl. Pt.3, *State ex rel. Thompson v. Pomponio*, 233 W.Va. 212, 757 S.E. 2d 636 (2014) held “Due to the significant rights a criminal defendant waives in connection with the entry of a guilty plea, the burden of insuring both precision and clarity in a plea agreement is imposed upon the State. Consequently, the existence of ambiguity in a court-approved plea agreement will be construed against the State and in favor of the defendant.”

The ambiguity in the plea agreement is the definition of factual inaccuracy. What is a factual inaccuracy? *Black's Law Online Dictionary 2nd Edition* defines a fact as a thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. A fact is either a state of things, that is, an existence, or a motion, that is, an event. A circumstance, event or occurrence as it actually takes place or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error. A review of the transcript of Wilson’s confession reveals there was no factual inaccuracy at sentencing. There was no “white-washing” of Wilson’s role in the offense (as stated by the prosecutor at sentencing). The confession stands as facts as experienced by Wilson. Wilson did not believe she stabbed the victim and was in fear of, and coerced by her co-defendant, Timothy M. Shafer. Wilson could present her mitigation evidence without the State arguing the she had actually stabbed the victim and returned to the house when she had not.

Further, the State maintains any breach was harmless. This position is directly in conflict with this Court’s ruling in *State v. Myers*, 204 W.Va. 449, 513 S.E. 2d 676, (1998). *Myers* stands for the proposition that if Wilson proves a breach, such breach is presumptively prejudicial. Wilson was clearly allowed to present her mitigating evidence at sentencing, in

accord with her confession, without the State arguing she had returned to the house after the night of the murder (when she did not); and, arguing that she stabbed the victim (when she believed she had not). The State argued non-existent factual inaccuracies.

At sentencing, the Court ruled it's decision of no mercy was not influenced by the argument of the State. The Court gleaned the ambiguous evidence. The Court stated: " I can't imagine, whatever version we're to believe from you, that you stood by and idly watched someone stab another human being 19 times, left them there to bleed out without contracting anybody to provide help or first aid, allowing them to bleed to death in a slow manner, or whether you actively participated by stabbing as you indicated in the statements that you did. Neither way is defensible. (JA Sentencing Transcript at 28-29) However, Wilson did not have a plea agreement with the Court. The plea agreement was with the Office of the Prosecuting Attorney to stand silent at sentencing. Very simply, a deal is a deal. The State agreed to stand silent at sentencing. Instead of standing silent; the State argued for no mercy under the guise of correcting factual inaccuracies breaching their agreement with Wilson.

VI.

CONCLUSION

For the reasons set forth herein, Wilson moves the Court for an Order overturning the decision of the Circuit Court of Kanawha County, West Virginia by finding that Wilson's plea agreement was breached by the Office of the Prosecuting Attorney and ordering that Wilson be allowed to withdraw her plea agreement.

JESSICA MAY WILSON, Petitioner
By Counsel

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CERTIFICATE OF SERVICE

I, Charles R. Hamilton, do hereby certify that on November 3, 2015, filed the foregoing **PETITIONER'S REPLY BRIEF** with the Clerk of Court and served the same upon counsel for Respondent via U.S. mail, postage prepaid, a true copy thereof to the following:

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Charles R. Hamilton