

12-1446

122  
PUTNAM COUNTY CIRCUIT COURT  
FILED  
2014 JAN 21 11 AM 8:11  
RONNIE W. MATTHEWS

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

Case # 12-F-42

WILLIAM SHINGLETON.

SECOND AMENDED SENTENCING ORDER

On the 22nd day of March, 2013, came the State of West Virginia by the Office of the Prosecuting Attorney, and came the defendant, William Shingleton, in person and by his counsel, Ryan Ruth, for sentencing of the defendant pursuant to his conviction of Twenty (20) felony offenses of possession of material visually portraying a minor engaged in sexually explicit conduct.

Upon addressing counsel for the defendant, the Court determined that the defendant and his counsel have had the opportunity to participate in the pre-sentence investigation, and had read and discussed the report thereof made available to them pursuant to Rule 32(b) of the West Virginia Rules of Criminal Procedure. Further, the Court determined that there were no unresolved objections to said pre-sentence report.

Pursuant to Rule 32(c) of the West Virginia Rules of Criminal Procedure, the Court then afforded the defendant's counsel an opportunity to speak on behalf of the defendant; addressed the defendant personally to determine whether the defendant wished to make a statement and to present any information in mitigation of sentence; permitted the defendant the opportunity to speak and to present evidence as to sentencing; and, afforded the attorney for the state the opportunity equivalent to that of the defendant's counsel to speak as to sentencing. The Court thereafter imposed sentence, which was entered on May 3, 2013.

The intent of this Court's May 3, 2013 Amended Sentencing Order was to impose a total sentence of 17 years on the Defendant. But on December 10, 2013, the parties, by counsel, notified the Court that certain aspects of that order had caused confusion. As a result, the parties jointly submitted a proposed amended sentencing order to the Court. The Court has adopted that proposed order, and the May 3, 2013 Amended Sentencing Order is therefore amended as follows.

Nothing being offered or alleged in delay of judgment, it is the ORDER, JUDGMENT and SENTENCE of the Court that the defendant, William Shingleton, shall be:

- (1) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count One of Criminal Proceeding #12-F-42;

- (2) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count One of Criminal Proceeding 12-F-42;
- (3) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Two of Criminal Proceeding #12-F-42;
- (4) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Two of Criminal Proceeding 12-F-42;
- (5) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Three of Criminal Proceeding #12-F-42;
- (6) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Three of Criminal Proceeding 12-F-42;
- (7) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Four of Criminal Proceeding #12-F-42;
- (8) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Four of Criminal Proceeding 12-F-42;
- (9) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Five of Criminal Proceeding #12-F-42;
- (10) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Five of Criminal Proceeding 12-F-42;
- (11) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Six of Criminal Proceeding #12-F-42;

The sentences imposed above upon the defendant in Criminal Proceeding 12-F-42 Counts One thru Six shall be served CONSECUTIVELY.

- (12) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Six of Criminal Proceeding 12-F-42;
- (13) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Seven of Criminal Proceeding #12-F-42;
- (14) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Seven of Criminal Proceeding 12-F-42;
- (15) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Eight of Criminal Proceeding #12-F-42;
- (16) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Eight of Criminal Proceeding 12-F-42;
- (17) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Nine of Criminal Proceeding #12-F-42;
- (18) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Nine of Criminal Proceeding 12-F-42;
- (19) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Ten of Criminal Proceeding #12-F-42;
- (20) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Ten of Criminal Proceeding 12-F-42;

- (21) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Eleven of Criminal Proceeding #12-F-42;
- (22) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Eleven of Criminal Proceeding 12-F-42;
- (23) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Twelve of Criminal Proceeding #12-F-42;
- (24) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Twelve of Criminal Proceeding 12-F-42;
- (25) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Thirteen of Criminal Proceeding #12-F-42;
- (26) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Thirteen of Criminal Proceeding 12-F-42;
- (27) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Fourteen of Criminal Proceeding #12-F-42;
- (28) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Fourteen of Criminal Proceeding 12-F-42;
- (29) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Fifteen of Criminal Proceeding. #12-F-42;
- (30) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Fifteen of Criminal Proceeding 12-F-42;

- (31) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Sixteen of Criminal Proceeding #12-F-42;
- (32) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Sixteen of Criminal Proceeding 12-F-42;
- (33) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Seventeen of Criminal Proceeding #12-F-42;
- (34) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Seventeen of Criminal Proceeding 12-F-42;
- (35) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Eighteen of Criminal Proceeding #12-F-42;
- (36) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Eighteen of Criminal Proceeding 12-F-42;
- (37) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Nineteen of Criminal Proceeding #12-F-42;
- (38) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Nineteen of Criminal Proceeding 12-F-42;
- (39) confined in the Penitentiary of this State for two (2) years on his conviction of the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Twenty of Criminal Proceeding #12-F-42;
- (40) shall be fined the sum of Two Thousand Dollars (\$2,000.00) for the felony offense of possession of material visually portraying a minor engaged in sexually explicit conduct, as contained in Count Twenty of Criminal Proceeding 12-F-42;

The sentences imposed above upon the defendant in Criminal Proceeding 12-F-42 for Counts Seven thru Twenty shall be served CONCURRENTLY to each other and CONCURRENTLY to Counts One through Six.

- (1) shall be confined in the Penitentiary of this State for a determinate sentence of Five (5) years for the charge of recidivist for Count One.

The sentence imposed above upon the defendant in Criminal Proceeding 12-F-42 for recidivist shall be served CONSECUTIVELY to the sentences for Counts One through Twenty.

It is further ORDERED that the defendant shall be given Five-Hundred Eighty-Five (585) days credit for his incarceration time previously served thereon.

It is further ORDERED that Thirty-Five Thousand (\$35,000.00) of the fine imposed above shall be suspended.

It is further ORDERED pursuant to West Virginia Code § 62-12-26 that the defendant shall serve a period of Supervised Release of Twenty-Five (25) years. The period of supervised release shall begin upon expiration of the sentence of incarceration hereinbefore imposed or upon the expiration of any period of parole supervision resulting from the sentence of incarceration hereinbefore imposed, whichever expires later.

Terms of supervised release specifically directed to the defendant are as follows:

1. You shall not violate any criminal law of the State of West Virginia or any other State, or of the United States of America.
2. You shall comply with the orders of the Court and any rules and regulations prescribed by the Probation Officer.
3. You shall report as directed to the Court or your Probation Officer and permit the officer to visit your home, place of employment or school. You shall answer truthfully all reasonable inquiries made of you by the Probation Officer. You shall submit to any and all searches of your person, residence, property or effects by your probation officer at any time your probation officer deems it necessary and voluntarily agree to the seizure of any property found or discovered as a result of the search.
4. You shall not leave the State without first obtaining the written consent of your probation officer.
5. You shall refrain from frequenting unlawful and disreputable places or consorting with disreputable persons. You shall not associate with any persons or be at any places prohibited by your probation officer.

6. You shall obey the Federal Omnibus Crime Control & Safe Streets Act, Title VII, which forbids the receipt, possession or transportation of any firearms.
7. You shall, when requested, immediately submit to physical examinations, intoxilizer examination (breath test) and medical testing to determine the use of alcohol and/or any controlled substance. Random alcohol and drug testing may be requested and must be performed at any time in the discretion of the probation officer. You shall be responsible for the costs of such testing. Further, if you attempt to alter, adulterate, substitute or tamper with the drug screen specimen in any manner, it will be treated as a positive screen and will be considered a violation of your supervised release.
8. You are required to inform all persons living at your place of residence about all the sex related conditions of your supervised release.
9. You shall maintain full-time employment and/or perform community service as approved by your probation officer. Your probation officer must first approve any employment or community service and locations, and may contact your employer at any time. You will not work in certain occupations that involve being in the private residences of others, such as, but not limited to, door-to-door sales, soliciting, home service visits or delivery.
10. As an adult you shall register with the West Virginia State Police as a sex offender within three (3) days of being released to probation supervision in accordance with West Virginia Code § 15-12-2. This registration shall be for the defendant's lifetime.
11. You shall report to the Putnam County Probation Department within three (3) days of being release from incarceration.
12. You shall not establish a residence or accept employment within one thousand (1,000) feet of a school or childcare facility or within one thousand feet (1,000) feet of the residence of a victim or victims of any sexually violent offense for which you have been convicted in accordance with West Virginia Code § 62-12-26(b)(1).
13. You shall not live in the same residence as any minor child, nor exercise visitation with any minor child nor have any contact with the victim of the offense if the offense is a violation of West Virginia Code § 61-8-12, § 61-8B-1 et seq., or § 61-8D-1 et seq., without petitioning the court for a modification of this condition and being granted permission to do so in accordance with West Virginia Code § 62-12-9(a)(4); and if you were convicted of a sexually violent offense, only if the court further makes a finding that such residency or other living accommodations meets the specific conditions and requirements of West Virginia Code 61-12-26(b)(2). Contact includes face-to-face, telephonic, written, electronic, or any indirect contact via third parties.

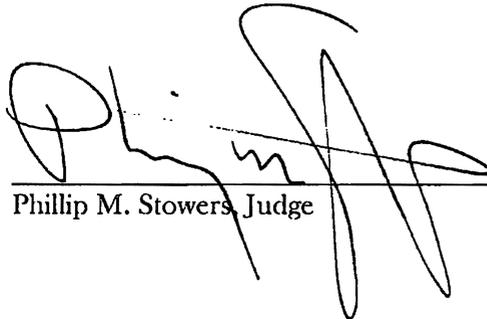
14. You shall attend, actively participate in, and successfully complete a court-approved sex offender treatment program as directed by the court and in accordance with West Virginia Code § 62-12-2. Prompt payment of any fees is your responsibility and you must maintain steady progress toward all treatment goals as determined by your treatment provider. Unsuccessful termination from treatment or non-compliance with other required behavioral management requirements will be considered violation of your probation. You are not permitted to change treatment providers without the prior written permission of your probation officer or subsequent to a written Order from the Court.
15. You shall not be present at nor be within two blocks of any park, school, playground, swimming pool, daycare center or other specific locations where children are known to congregate unless approved by your probation officer.
16. You shall not participate in any activity which involves children under 18 years of age, such as, but not limited to youth groups, Boy Scouts, Girl Scouts, Cub Scouts, Brownies, 4-H, YMCA, youth sports teams, babysitting, volunteer work, or any activity your probation officer deems inappropriate.
17. You must report any incidental contact with persons under age 18 to your probation officer within 24 hours of the contact.
18. You shall not possess obscene matter as defined by West Virginia Code § 61-8A-1 or child pornography as defined in 18 § U.S.C. 2256(8), including but not limited to: videos, magazines, books, DVD's, and material downloaded from the Internet. You shall not visit strip clubs, adult bookstores, motels specifically operated for sexual encounters, peep shows, bars where partially nude or exotic dancers perform or businesses that sell sexual devices or aids.
19. You shall not miss any appointments for treatment, psychotherapy, counseling, or self-help groups such as any 12 Step Group, Community Support Group, etc., without the prior approval of your probation officer. You shall comply with the attendance policy for appointments as outlined by your probation officer.
20. You shall continue to take any medication prescribed by your physician until otherwise directed.
21. You shall sign a waiver of confidentiality, release of information, and any other document required that permits your probation officer and other behavioral management or treatment provider to collaboratively share and discuss your behavioral management conditions, treatment progress and probation needs, as a team. This permission may extend to: (1) sharing your relapse prevention plan and treatment progress with your significant others and/or your victim's therapist as directed by your probation officer or treatment provider(s); and, (2) sharing of your modus operandi behaviors with law enforcement personnel.
22. You shall be subject to a curfew at the direction of your probation officer.

23. You shall notify your probation officer of your establishment of any dating, intimate and/or sexual relationship.
24. You shall not engage in a daring, intimate or sexual relationship with any person who has children under the age of eighteen years.
25. You shall submit to polygraph testing in accordance with West Virginia Code § 62-11D-2 to assist your probation officer in monitoring your compliance with your conditions of supervised release and treatment, which testing shall be at your expense, unless you have been judicially determined to be unable to pay for such tests.
26. You shall submit to electronic monitoring in accordance with WV Code § 62-11D-3, which shall be at your own expense, unless you have been judicially determined to be unable to pay for such monitoring. Such monitoring may be subject to curfew.

.....

The Court hereby advises the Defendant, William Shingleton, of the right to appeal the sentence, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of intent to appeal on behalf of the defendant.

Entered this 16<sup>th</sup> day of January, 2014.



Phillip M. Stowers, Judge