

14-0890

IN THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

Case No. 10-F-14

JULIA SURBAUGH,

Defendant.

AMENDED POST-TRIAL MOTIONS HEARING ORDER

On the 19th day of May 2014 before Judge Richard Facemire, came the State of West Virginia, by and through her Prosecuting Attorney of Webster County, Dwayne C. Vandevender, and came the defendant, Julia Surbaugh, in person and by counsel, Dan Hardway, for the purpose of a hearing upon post-trial motions.

Thereupon, the Court made certain notations and observations as more fully set forth upon the record.

Whereupon, counsel for the defendant addressed the defendant's post-trial motions as more fully set forth upon the record. The State resisted the motions for all the reasons previously at trial and such other reasons as more fully set forth upon the record.

Thereafter, the Court discussed the basis of the motion to recuse the Court as more fully set forth upon the record.

Based upon all of which, the Court FINDS and ORDERS that:

1. This Court presided over the trial.
2. The Court has read the pleadings of both parties.
3. The defendant was entitled to a fair trial, but not a "perfect trial".
4. The defendant was afforded a fair trial in this case.
5. In the first trial the WV Supreme Court upheld every action and ruling of the Court with the exception of failing to give a good character instruction.

6. The Court gave the good character instruction in this trial.
7. The Court gave great deference to the defense throughout this trial.
8. The Court allowed the defendant's witness, Andrew Wheeler, to testify even though the Court had serious reservations as to his qualifications as an expert.
9. Throughout the trial the Court tried to give the defendant every opportunity to present witnesses, evidence and defenses.
10. The Court does not believe there are any egregious errors in this case.
11. If there are any errors in the Court's rulings or other issues in this case, the Court believes the same to be harmless error.
12. The Court does DENY the defendant's motions for a new trial and judgement of acquittal and will issue a separate written order regarding the same.
13. The defendant's objections are hereby noted.
14. The defendant has been and is sentenced to life in prison without parole with credit for time served.
15. The defendant shall pay the usual and customary costs of this action as taxed by the Clerk of the Court.

Whereupon, the Court advised the defendant that she had the right to appeal this case to the West Virginia Supreme Court of Appeals. The Court further advised the defendant that a written notice of intent to appeal must be filed within thirty (30) days from the date of entry of the final order in this matter and that said appeal must be perfected within four (4) months by the filing of a petition. The Court further advised the defendant that if she could not afford an attorney to perfect her appeal for her, the Court would appoint an attorney to represent her in this matter and that if she could not afford a transcript of the proceedings herein, the Court would

likewise provide a copy of the transcript to her free of charge.

The Court did take the issue regarding payment of expert fees for both the State and the defendant under advisement and will issue a written opinion regarding the same.

The defendant the moved, pursuant to West Virginia Code § 62-7-1, for the Court to issue a stay on her sentence until the next term of the Supreme Court. The Court took the request under advisement and will issue a written opinion.

Thereafter, Dan Hardway addressed his motion to withdraw as counsel for reasons more fully set forth upon the record. The defendant, in her own and proper person, did not oppose the motion.

Accordingly, it is ORDERED that:

1. Dan Hardway is relieved as counsel in this case.
2. The defendant shall file a new affidavit requesting counsel and the Court will rule on the appointment of new counsel.
3. Dan Hardway shall provide his entire file to the newly appointed counsel.
4. The defendant is hereby remanded to the custody of the Central Regional Jail to be placed in the custody of the Division of Corrections until the Court issues it's ruling on the defendant's motion for stay. However, although the defendant is lodged at the Central Regional Jail, she is in the custody of the Division of Corrections and the Division of Corrections is responsible for the costs from the date of conviction, being March 6, 2014 forward.

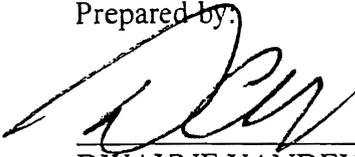
The Clerk of the Court shall provide a certified copy of this order to Counsel of record and to the Division of Corrections.

ENTERED this 17th day of July, 2014.

JACK ALSOP

RICHARD FACEMIRE, Judge

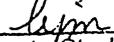
Prepared by:



DWAYNE VANDEVENDER
Prosecuting Attorney of Webster County

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office

Attest: Jeanie Moore
Webster County, West Virginia

By 

Deputy Clerk

Original Order mailed to Judge Facemire and copy mailed to Dan Hardway on 7/10/2014.

Counsel is hereby notified that any objections to this order must be filed, in writing, with the Court, within five (5) days of receipt of the proposed order. Otherwise, the Court shall consider the order approved as to form for entry by the Court.

BOOK # _____

PAGE # _____

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STATE of WEST VIRGINIA,

v.

Case No. 10-F-14

Judge Richard A. Facemire

JULIA SURBAUGH,
Defendant.

ORDER APPOINTING COUNSEL

On a prior date, the Defendant's counsel, Dan Hardway, filed his motion to withdraw as counsel, and the Court shall GRANT counsel's motion to withdraw. On or about May 19, 2014, the Defendant filed with the Court her financial affidavit seeking appointment of new counsel for the purposes of appeal. The Court finds that the Defendant qualifies for appointed counsel pursuant to W.V. Code §29-21-1 *et seq.*, and the Court ORDERS that Christopher Moffatt, a licensed attorney at law practicing before the bar of this Court, shall be appointed to represent the Defendant, Julia Surbaugh, for all further proceedings in this case.

It is further ORDERED that the Clerk of this Court provide a copy of this Order to the Webster County Prosecuting Attorney, Dwayne Vandevender; to former counsel for the Defendant, Dan Hardway; and to counsel for the Defendant, Christopher Moffatt.

It is accordingly so ORDERED.

ENTERED this the 2nd day of June, 2014.

Entered: 2 June 2014

[Signature]
Richard A. Facemire, Judge 6/2/14

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office
Attest: [Signature]
Webster County, West Virginia
By [Signature]
Deputy Clerk

CERTIFICATE OF SERVICE

I, CHRISTOPHER G. MOFFATT, counsel for Julia Surbaugh, do hereby certify that a true and exact copy of the foregoing Notice of Intent to Appeal, has been served upon the Prosecutor for Webster County, by regular United States mail, this 28th day of August, 2014, to the address listed below:

DWAYNE VANDEVENDER
PROSECUTING ATTORNEY
OFFICE OF THE WEBSTER COUNTY PROSECUTOR
36 CHURCH STREET
WEBSTER SPRINGS, WEST VIRGINIA 26288



CHRISTOPHER G. MOFFATT #4574