

14-1141

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

CASE NO: 13-F-04

CHRIS W. FLEMING,

Defendant

ORDER

This matter came on before the Court on the 17th day of September, 2014, upon the appearance of Daniel M. James, Prosecuting Attorney for Hampshire County, West Virginia; upon the appearance of the Defendant, Chris W. Fleming, represented by his counsel Lary D. Garrett, Esq., and Jonathan G. Brill, Esq.; upon the Defendant's Rule 33 Motion for New Trial.

Whereupon counsel for the Defendant moved the Court for a New Trial, alleging fourteen separate errors. The Court advised that Defendant's Motion only contained thirteen alleged errors. The State responded that it did not object to the late disclosure and advised the Court that it would respond accordingly. The Court therein listened to the arguments of the Defendant and the State's response. Wherein, having listened to the arguments of counsel, the Court denies the Defendant's Motion for New Trial, for the reasons which were set out on the record.

The Court notes the Defendant's objection to the Court's adverse ruling.

There being nothing further, the Court shall enter this Order for the date first appearing above and shall transmit an attested copy to all counsel of record.

ENTERED: This 10th day of October, 2014.

A TRUE COPY ATTEST:

Sanja K Embrey Clerk of the Circuit/Family Courts of Hampshire County, West Virginia.

THE HONORABLE H. CHARLES, CARL, III 22nd JUDICIAL CIRCUIT COURT JUDGE

given Dms/CH/JGB mailed LBG 10-10-14 SKL/c

Prepared by:

Agreed to by:

[Signature of Daniel M. James]

[Signature of Lary D. Garrett]

Daniel M. James Prosecuting Attorney

Lary D. Garret, Esq. Counsel for Defendant

received 10/9/14

SONJA K. EMBREY, CLERK HAMPSHIRE COUNTY CIRCUIT COURT 2014 OCT 10 PM 3:04 FILED

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

CASE NO: 13-F-04

CHRIS W. FLEMING,

Defendant

SENTENCING ORDER

On the 17<sup>th</sup> day of September, 2014, came the State of West Virginia, by Daniel M. James, Prosecuting Attorney for Hampshire County, West Virginia and upon the appearance of the Defendant, Chris W. Fleming, in his own proper person, and being represented and assisted by Lary D. Garrett, Esq., and Jonathan G. Brill, Esq., counsel for the Defendant, upon the matter having been scheduled for sentencing.

The Court informed the parties that it had received a copy of the pre-sentence investigation report completed by Hampshire County Probation Officer, Laurie Hartman on August 19, 2014. The Court inquired if there were any objections to the above named report and/or with proceeding to sentencing. Both the State and Defendant advised that there were no objections to the reports and moved to proceed to sentencing. The Court then heard from family members, acquaintances, law enforcement and the lead investigating officer, all who testified on behalf of the Defendant and/or State. The Court then inquired of the Defendant if he had anything to say or offer prior to judgment and sentence being pronounced upon him, wherein the Defendant addressed the Court. Therein the Court found there was no sufficient cause or reason to the contrary being shown or appearing to the Court, and proceeded to sentencing.

Accordingly, upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count I of the

SONJA K. EMERY  
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HAMPSHIRE COUNTY CIRCUIT COURT  
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Indictment, it is, ADJUDGED and ORDERED, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of two (2) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count II of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of two (2) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count III of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Attempted Murder, a felony offense, in manner and form as the State of West Virginia has charged in Count V of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the indeterminate term of not less than (3) years nor more than fifteen (15) years, pursuant to the terms of Chapter 61, Article 11, Section 8(1) of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count VI of the Indictment, that the Defendant, Chris W. Fleming, be

confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count VII of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count VIII of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count IX of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count X of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count XI of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count XII of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of three (3) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Fleeing in Reckless Indifference for Safety of Others, a felony offense, in manner and form as the State of West Virginia has charged in Count XIII of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the indeterminate term of not less than (1) year, nor more than five (5) years and fined \$1,000.00, pursuant to the terms of Chapter 61, Article 5, Section 17(f) of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West Virginia has charged in Count XIV of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of five (5) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that upon the Defendant's conviction for the offense of Wanton Endangerment, a felony offense, in manner and form as the State of West

Virginia has charged in Count XV of the Indictment, that the Defendant, Chris W. Fleming, be confined to the State Penitentiary of West Virginia for the determinate term of five (5) years, pursuant to the terms of Chapter 61, Article 7, Section 12 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that Counts I, II and IV shall run concurrently with each other. Counts V, VI, VII, VIII, IX, X, XI and XII shall run concurrent to each other, but consecutive to Counts I, II and IV. Count XIII shall run consecutive to Counts V, VI, VII, VIII, IX, X, XI and XII. That Counts XIV and XV shall run concurrent to each other, but consecutive to Count XIII.

**OFFENSE: Wanton Endangerment – Count I - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... April 4, 2013  
(\*\*\*Giving the Defendant Credit for 532 days served. Any additional/leftover time shall be applied to Count V)**

**OFFENSE: Wanton Endangerment – Count II - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... April 4, 2013  
(\*\*\*Giving the Defendant Credit for 532 days served. Any additional/leftover time shall be applied to Count V)**

**OFFENSE: Wanton Endangerment – Count IV - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... April 4, 2013  
(\*\*\*Giving the Defendant Credit for 532 days served. Any additional/leftover time shall be applied to Count V )**

**OFFENSE: Attempted Murder – Count V - Felony**

Conviction Date ..... July 16, 2014  
Sentencing Date ..... September 17, 2014  
Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV.

**OFFENSE: Wanton Endangerment – Count VI - Felony**

Conviction Date ..... July 16, 2014  
Sentencing Date ..... September 17, 2014  
Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Count V.

**OFFENSE: Wanton Endangerment – Count VII - Felony**

Conviction Date ..... July 16, 2014  
Sentencing Date ..... September 17, 2014  
Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Counts V and VI.

**OFFENSE: Wanton Endangerment – Count VIII - Felony**

Conviction Date ..... July 16, 2014  
Sentencing Date ..... September 17, 2014  
Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Counts V, VI and VII.

**OFFENSE: Wanton Endangerment – Count IX - Felony**

Conviction Date ..... July 16, 2014  
Sentencing Date ..... September 17, 2014

**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Counts V, VI, VII and VIII.**

**OFFENSE: Wanton Endangerment – Count X - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Counts V, VI, VII, VIII and IX.**

**OFFENSE: Wanton Endangerment – Count XI - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Counts V, VI, VII, VIII, IX and X.**

**OFFENSE: Wanton Endangerment – Count XII - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts I, II and IV and shall run concurrently with Counts V, VI, VII, VIII, IX, X and XI.**

**OFFENSE: Fleeing in Reckless Indifference for Safety of Others – Count XIII - Felony**

**Conviction Date ..... July 16, 2014**

**Sentencing Date ..... September 17, 2014**

**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Counts V, VI, VII, VIII, IX, X and XI.**

**OFFENSE: Wanton Endangerment – Count XIV - Felony**

**Conviction Date ..... July 16, 2014**  
**Sentencing Date ..... September 17, 2014**  
**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Count XIII.**

**OFFENSE: Wanton Endangerment – Count XV - Felony**

**Conviction Date ..... July 16, 2014**  
**Sentencing Date ..... September 17, 2014**  
**Effective Date of Sentencing ..... Shall begin to run upon completion of the Defendant's sentence for Count XIII and shall run concurrent with Count XIV.**

It is further ORDERED that the Defendant is required to pay the costs of these proceedings and attorney fees within two (2) years from his release from the penitentiary.

It is further ORDERED that the Defendant pay restitution in the amount of \$1,917.24. The Circuit Clerk shall forward said restitution payments as follows: Hampshire County Sheriff's Office - \$300.00. Brian Slade - \$1,617.24 at HC 71, Box 93, Capon Bridge, WV 26711. Mr. Slade is directed to forward \$617.24 to his insurance company.

The Department of Corrections may deduct monies from the Defendant's earnings or inmate account pursuant to W.Va. Code §25-1-3c for payment towards court costs and restitution.

The Court thereupon noted that DNA sampling shall be performed pursuant to statutory directive relating to the DNA database. If such sampling has not been completed following the Defendant's conviction, the Division of Corrections is hereby directed to ensure that the blood sample is drawn and delivered to the West Virginia State Police. In the event the Defendant refuses

such sampling, the Court directs that an appropriate Order be prepared by the State and submitted to the Court ordered DNA sampling.

The Court does further find that the Defendant has served for several years as law enforcement officer and recommends the Department of Corrections considers said service when determining the Defendant's DOC placement, for safety considerations.

Thereupon, the Court advised the Defendant of rights with respect to appeal. The Defendant then moved for Post-Conviction Bail, which was DENIED. The Court notes the parties' objections and exceptions, if any, to today's rulings. Thereupon, the defendant was remanded to the Potomac Highlands Regional Jail awaiting transfer to the Penitentiary of this State.

It is further ORDERED that the Clerk of this Court transmit a copy of this Order, duly certified, to all parties of record, Hampshire County Probation Office, Parole Officer, Gary Parrish at: West Virginia Division of Parole Services, P.O. Box 244, Keyser, West Virginia 26726, the Potomac Highlands Regional Jail.

*given  
DMJ/JBB/KH  
mailed  
LDG/G. Parrish  
Faxed  
DOC/PHRS  
10-21-14  
self*

Entered: This 2 day of October, 2014



THE HONORABLE H. CHARLES CARL, III  
22<sup>nd</sup> JUDICIAL CIRCUIT COURT JUDGE

Prepared by:

Agreed to by:

Agreed to by:



Daniel M. James  
Prosecuting Attorney



Lary D. Garrett, Esq.  
Counsel for Defendant



Jonathan G. Brill, Esq.  
Counsel for Defendant.

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