

15-0037

**IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA,**

**Plaintiff**

**vs.**

**Case No. 13-F-63**

**NICK VARLAS**

**Defendant.**

**SENTENCING ORDER**

On the 18<sup>th</sup> day of December, 2014, came the State of West Virginia by and through Joseph E. Barki, III, Prosecuting Attorney, and as well came the defendant, Nick Varlas in person and by counsel, M. Eric Frankovitch.

Whereupon, the Court called this matter to hearing indicating that it was scheduled for today's date to address various motions filed by the defendant seeking a new trial and possibly to proceed with a sentencing hearing.

Whereupon, the Court conveyed this matter in chambers, with the defendant being present in person and by represented by defense counsel.

Whereupon, the Court did initially address the defendant's Motion for a New Trial based upon an allegation that a juror, Brittany Matazinski, was biased and was friends with the victim, Nicole Salerno, not disclosing the same to the Court.

Whereupon, the Court did solicit the testimony of the juror, Brittany Matazinski, questioning her regarding her knowledge of the events tried in the criminal matter before the Court, as well as any familiarities she had with either the victim, the defendant, or any other witnesses in this matter.

Thereupon, the juror denied having any knowledge of the victim, the defendant, or any witnesses in this matter, not being familiar with the facts of this case in any way, and denied any allegations made in the Affidavit filed by the defendant in which the defendant's cousin, Bobby

Lancaster, alleges that the juror represented to him that she knew the victim and did not disclose it to the Court.

Thereupon, upon the Court's conclusion of its questioning defense counsel and counsel for the State did have the opportunity to question the juror.

Whereupon, the Court did find that the juror had no familiarity with the victim, defendant, or any witnesses in this matter nor was she biased in any way from sitting as a juror in this case.

Whereupon, the Court did deny the defendant's request for a new trial based on the allegation of juror bias.

Whereupon, defense counsel did take up its Motion for a New Trial based on the Court's denial of the admission of various text messages under the rape shield ruling as well as relevancy.

Whereupon, the State did respond to the argument presented by defense counsel.

Whereupon, the Court did find that the denial of the admission of the text messages into this trial, as outlined on the record, was appropriate, reaffirming its previous rulings and denying the defendant's request for a new trial based upon the failure to admit the same.

Whereupon, defense counsel took up its final argument arguing ineffective assistance of counsel in this case, setting forth facts that the defendant alleged were presented to defense counsel, and were not used at trial.

Whereupon, the State did respond to the same.

Whereupon, the Court did find that there were no new facts in this matter which would be a basis for a new trial, and further indicated that an argument of ineffective assistance of counsel is inappropriate at this time, thus denying the defendant's request for a new trial in this matter.

Whereupon, the Court did move this matter to the sentencing phase and the parties did convene in open Court to proceed with a sentencing hearing.

Whereupon, the Court did address the Presentence Investigation Report and the LSCMI Report inquiring whether the parties had any changes, alterations or objections to the same.

Thereupon, the parties indicated that they had no changes, alterations or objections to the Presentence Investigation Report and the LSCMI as filed with the Court.

Thereupon, the Court did file the Presentence Investigation Report and the LSCMI Report making them part of the record in this proceeding.

Whereupon, defense counsel indicated that it had no witnesses to present for the sentencing phase but that the defendant did wish to exercise his right to allocution.

Whereupon, the Court did extend the defendant an opportunity to allocute prior to sentencing, and the defendant did exercise his right to allocution at that time.

Thereupon, the Court inquired as to whether the victim wished to make a victim impact statement, and the State advised that the victim would stand by the written statement presented in the Presentence Investigation Report as well as argument presented by the State of West Virginia.

Thereupon, defense counsel did present argument to the Court requesting leniency in the sentencing of the defendant.

Thereupon, the State did present argument on behalf of the State of West Virginia and the victim in this matter seeking that the defendant receive the maximum sentence for each charge and that the same be run consecutively.

Thereupon, the Court, having considered the Presentence Investigation Report and the LSCMI Report, the allocution of the defendant, the argument of counsel, and the facts as presented during the trial of this matter, it did accordingly Adjudge and Order as follows:

1. That the defendant be sentenced to not less than one nor more than three years in the West Virginia state penitentiary system for the felony offense of “Attempted Sexual Abuse in the First Degree” as returned by a guilty verdict on September 4, 2014;
2. That the defendant be sentenced to not less than ten nor more than twenty five years in the West Virginia state penitentiary system for the felony conviction of “Sexual Assault in the Second Degree” as returned by jury verdict on September 4, 2014;
3. That the defendant be placed in the care and custody of the West Virginia Commissioner of Corrections and remanded to the West Virginia Northern Regional Jail to begin serving his one to three year sentence for the felony offense of “Attempted Sexual Abuse in the First Degree”;
4. That the ten to twenty five year sentence for “Sexual Assault in the Second Degree” be suspended in lieu of a five year period of probation to begin upon the defendant being paroled or completing his sentence for the felony offense of “Attempted Sexual Abuse in the First Degree”;
5. That the defendant was provided a Notice to Register as a Sex Offender as well as a Notice of his Requirement to Complete Extended Sexual Offender Supervision and that he signed the same filing those documents, making them part of the record in this matter;
6. That the defendant’s period of extended supervision shall begin upon his completion of the sentences in this matter or upon his completion of the subsequent five year period of probation and shall be for ten years;

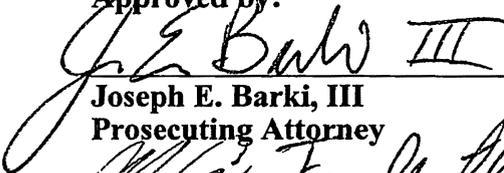
7. That all of the terms and conditions of extended supervision covered with the defendant in open court are incorporated in this Order as if fully set forth herein;
8. That the defendant's Motion Seeking a Stay of Sentence while he files his appeal is denied;
9. That the defendant is remanded to the West Virginia Northern Regional Jail where this Court recommends he be housed on the Department of Corrections side of that facility while perfecting his appeal in this matter;
10. That an attested copy of this Order be provided to all counsel of record; the Brooke County Adult Probation Office; the West Virginia Northern Regional Jail; and the West Virginia Commissioner of Corrections.

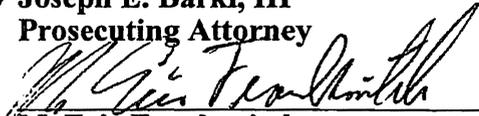
**All the foregoing being ordered on this 18<sup>th</sup> day of December, 2014.**

ENTERED: 1/5/2015

  
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**MARTIN J. GAUGHAN, JUDGE**

Approved by:

  
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**Joseph E. Barki, III**  
**Prosecuting Attorney**

  
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**M. Eric Frankovitch**  
**Counsel for the Defendant**

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 ...  
 Clerk, ...  
 Brooke County, West Virginia  
 By: Mary L. ... Deputy