

15-0345

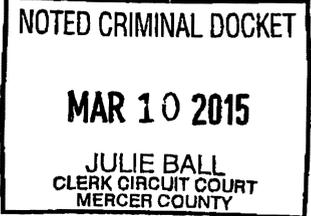
IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA.

STATE OF WEST VIRGINIA,

VS.

INDICTMENT NO. 04-F-300-DS

JERRY DEEL.



ORDER

This matter comes on this day for a hearing upon defendant's motion to modify probation. There appearing are the State of West Virginia, by John McGinnis, her Assistant Prosecuting Attorney; and the defendant, in person and by counsel, Steven Mancini.

After due consideration, it is the **ORDER** and **DECREE** of this Court that the defendant's probationary period be modified to five (5) years followed by twenty (20) years of intensive supervision as a sex offender.

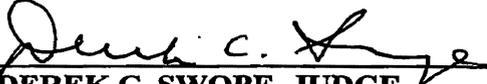
Upon review of defendant's financial affidavit, the Court finds defendant is unable to pay for his required polygraph examinations, as well as his sex offender counseling; therefore, it is the **ORDER** and **DECREE** of this Court that the Division of Probation Services with the Supreme Court of Appeals of West Virginia be financially responsible for the costs of defendant's polygraph examinations and sex offender counseling.

It is the further **ORDER** and **DECREE** of this Court that Steven Mancini be and is hereby appointed to represent defendant for appeal purposes.

The Clerk shall forward a copy of this Order to counsel for the defendant and the probation department.

Dated the 2nd day of March 2015.

ENTER:


DEREK C. SWOPE, JUDGE

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA.

STATE OF WEST VIRGINIA,

VS.

INDICTMENT NO. 04-F-300-F

JERRY DEEL.

ORDER

This matter comes on this day for disposition, there appearing is the State of West Virginia by Deborah K. Garton, her Assistant Prosecuting Attorney; the defendant being led to the bar of the Court in the custody of the Sheriff, and counsel for the defendant, Steven Mancini.

Whereupon, counsel for defendant renewed their motion to set aside the verdict of the jury and grant unto the defendant a new trial based upon his allegation that he had been unable to thoroughly question Dr. Fred Jay Krieg, Ph.D., and alleged improper statements made by the prosecutor. And the Court, after due consideration of the pleadings filed herein and argument of counsel, **FINDS** that Dr. Krieg's testimony, as an expert, was limited; given the facts in this case, the Court would not have permitted testimony regarding the witness' belief as to the ultimate question; and if the witness had been asked the question and answered it, it would not have changed the outcome of this matter. It was further found that the prosecutor's statement did not constitute reversible error. Therefore, the Court is of the opinion that the matters and things contained therein are not sufficient in law or fact to set aside the verdict of the jury and grant unto the defendant a trial; therefore, defendant's motion is overruled, to which action of the Court the defendant objected, which objection the Court overruled, and to which ruling of the Court the defendant excepted.

64

117

The Court having received the report of the defendant's pre-sentence investigation, and after considering said report and the statements of counsel and the defendant, the Court finds that the defendant is not a fit and proper person for probation because: (1) there is a substantial risk that the defendant will commit another crime during any period of probation or conditional discharge; (2) probation or conditional discharge would unduly depreciate the seriousness of the defendant's crime; (3) the public good would not be served by placing the defendant on probation; and (4) the public good would be served by the Court imposing a sentence of incarceration.

Whereupon, the Court inquired of the defendant if anything for himself he had or knew to say why the Court here should not now proceed to pronounce judgement against him and nothing being offered or alleged in delay of judgment, it is the **ORDER** and **DECREE** of this Court that the defendant, Jerry Deel, be taken from the bar of this Court to the Southern Regional Jail and therein confined until such time as the warden of the penitentiary can conveniently send a guard for him, and that he be taken from the Southern Regional Jail to the penitentiary of this State and therein confined for the indeterminate terms of not less than one (1) nor more than five (5) years as provided by law for the offense of "Sexual Abuse - First Degree" as the State in Count 1 of its Indictment herein hath alleged and by a jury hath been found guilty, not less than one (1) nor more than three (3) years as provided by law for the offense of "Attempt to Commit a Felony of Sexual Assault - First Degree" as the State in Count 2 of its Indictment herein hath alleged and by a jury hath been found guilty, not less than fifteen (15) nor more than thirty-five (35) years as provided by law for the offense of "Sexual Assault - First Degree" as the State in Count 3 of its indictment herein hath alleged and by a jury hath been found guilty, and not less than ten (10) nor more than twenty (20) years as provided by law for the offense of "Sexual Abuse by a Custodian" as the State in Count 4 of its indictment herein hath alleged and by a jury hath been found guilty; that these sentences run

concurrent with one another; that the defendant be given credit for seven (7) months and twelve (12) days, this being the time he has been confined on said charge; and that he be dealt with in accordance with the rules and regulations of that institution and the laws of the State of West Virginia.

After due consideration, it is the further **ORDER** and **DECREE** of this Court that imposition of the defendant's sentences as to Counts 1, 2 and 3 of the Indictment *only* be suspended, and that when the defendant is discharged from the penitentiary with regard to his remaining 10-20 year sentence imposed as to the offense of "Sexual Abuse by a Custodian" contained in Count 4 of the Indictment, he shall be placed on probation for a period of ten (10) years with the following specific conditions:

1. That the defendant pay his court costs within two (2) years of his release from incarceration or his driver's license will be subject to suspension;
2. That the defendant obey all laws;
3. That the defendant not use any alcohol/drugs, or have any in his possession, unless prescribed by a physician;
4. That the defendant be subject to random urinalysis;
5. That the defendant not associate with anyone who abuses drugs/alcohol or convicted felons;
6. That the defendant not frequent places where drugs/alcohol are served or used;
7. That the defendant not be around any children under the age of 18 years;
8. That the defendant register as a sexual offender;
9. That the defendant participate in sexual offender treatment.

Thereupon, the Court advised the defendant of his right to appeal this Court's judgement. Counsel for defendant notified the Court of their intent to appeal said judgement to the Supreme Court of Appeals and moved the Court to grant unto the defendant a stay of execution and post-conviction bond. After due consideration, the Court **GRANTS** the defendant's motion for a stay

of execution, but **DENIES** the defendant's motion for a post-conviction bond. It is further **ORDERED** that Steven Mancini be appointed to represent the defendant in his appeal subject to the filing of a financial affidavit, and that the court reporter prepare transcripts of the proceedings in this matter upon counsel's completion of appropriate forms.

Thereupon, counsel for defendant moved the Court to appoint co-counsel for appeal purposes, which motion the Court **GRANTS** and directs counsel to prepare the Order appointing co-counsel.

The Clerk shall forward a copy of this Order to counsel for defendant, the probation department, and the Southern Regional Jail.

And the defendant is remanded to the Southern Regional Jail.

Dated this 5th day of August 2005.

ENTER:



JOHN R. FRAZIER, JUDGE