

15-0289

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Vs.

Case No. 13-F-112-3
(James A. Matish, Chief Judge)

ENNIS CHARLES PAYNE, II,

Defendant.

SENTENCING ORDER/ORDER
COMMITTING DEFENDANT TO CUSTODY OF WEST VIRGINIA DIVISION OF
CORRECTIONS

On the 27th day of January, 2015, came the State of West Virginia by James F. Armstrong, Assistant Prosecuting Attorney for Harrison County, West Virginia, and came also the defendant, Ennis Charles Payne, II, in person and in the custody of the Sheriff of Harrison County, West Virginia, and by Christopher Wilson and David DeMoss, his counsel. Also present for said proceedings were Michael A. Fawcett, Adult Probation Officer, and Lieutenant Joshua Cox of the Clarksburg Police Department. All parties were present for a hearing on post trial motions and sentencing in the above captioned matter.

Whereupon, the Court reviewed the procedural history of the above captioned matter for the record.

Thereupon, counsel for the defendant, advised the Court that his client requested that no post trial motions be filed in this matter. This Court did thereafter inquire of defendant as to whether this was in fact the case and defendant advised that he did not wish for his counsel to file any post trial motions in this matter.

Thereupon, the Court inquired of the parties as to whether they had received the corrected Presentence Investigation Report and the parties advised that they had. Defendant's counsel thereafter advised this Court that his client wished for additional changes to be made to said Report and, without objection, this Court did ORDER that the probation office prepare a revised Presentence Investigation Report containing the changes requested by defendant and file the same with this Court.

Thereupon, the Court heard the sentencing recommendations of counsel for the State and counsel for the defendant. Thereafter, members of the victim's family addressed this Court relative to sentencing.

Thereupon, the defendant, by counsel, objected to the restitution requested in this matter. In support of the restitution requested in this matter, the State called a member of the victim's family as a witness to testify relative to the restitution requested. Following said testimony, this Court did FIND that the restitution requested in this matter was reasonable and appropriate.

The Court thereupon advised the defendant of his right of allocution and the defendant, Ennis Charles Payne, II, declined to address the Court prior to imposition of sentence.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty of the felony offense of First Degree Murder with a recommendation of mercy as contained in Count One of the Indictment in this case as contained in Count One of the Indictment in this case, it was considered and ORDERED by the Court that said defendant, Ennis Charles Payne, II, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a period of life from the 18th day of September, 2012, thereby giving the defendant credit for time previously served. The defendant, Ennis Charles Payne, II, may be considered for parole after serving fifteen (15) years from September 18, 2012.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty of the felony offense of Conspiracy to Commit Burglary as contained in Count Two of the Indictment in this case, it was considered and ORDERED by the Court that said defendant, Ennis Charles Payne, II, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a period of not less than one (1) year nor more than five (5) years. It was further ORDERED that said term of imprisonment run consecutively with the term of imprisonment theretofore imposed upon the defendant pursuant to his finding of guilty of the felony offense of First Degree Murder with a recommendation of mercy as contained in Count One of the Indictment in this case.

The Court thereupon recommended that the defendant be transferred to a state facility as soon as is practicable.

Thereupon, the Court advised the defendant of his rights with respect to appeal.

Thereupon, the Court advised the defendant that pursuant to Chapter 62, Article 4; Section 17 of the Code of West Virginia, if costs, fines, forfeitures, penalties or restitution imposed by the Court on the defendant in this matter are not paid in full when Ordered to do so by the Court, the Circuit Clerk shall notify the West Virginia Division of Motor Vehicles of such failure to pay and upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid. The original notice advising the defendant of the same was ORDERED filed and made a part of the record in this case and a copy of said notice provided to the defendant, counsel for the defendant and counsel for State.

It was further ORDERED that the defendant, Ennis Charles Payne, II, pay the costs assessed in this matter within six (6) months of his ultimate release from imprisonment or placement on parole and the State of West Virginia was granted a judgment for said costs.

It was further ORDERED that the defendant, Ennis Charles Payne, II, make restitution to the following parties, in the following amounts, and in the following order, in the following time periods subsequent to his release from imprisonment or placement on parole:

Estate of Jayar Poindexter (Marlene Poindexter) 3008 Stewart Street McKeesport, Pennsylvania 15132 (Within eighteen (18) months of release)	\$4,516.80
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West Virginia Crime Victims Fund 1900 Kanawha Boulevard East, Room W-334 Charleston, West Virginia 25305-0610 RE: CV-010-0061-X (Within thirty (30) months of release)	\$7,000.00
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This Court did further ORDER that in the event that Ms. Poindexter is unable to receive the restitution as Ordered herein due to infirmity or death, said monies shall be payable to her estate.

It was further ORDERED that payment of Court costs and restitution shall be paid by the defendant through the Harrison County Circuit Clerk's Office.

COUNT ONE OFFENSE: FIRST DEGREE MURDER
TERM: LIFE (WITH PAROLE CONSIDERATION)

CONVICTION DATE:	NOVEMBER 13, 2014
SENTENCE DATE:	JANUARY 29, 2015
EFFECTIVE SENTENCE DATE:	SEPTEMBER 18, 2012

COUNT TWO OFFENSE: CONSPIRACY TO COMMIT BURLGARY
TERM: 1-5 YEARS

CONVICTION DATE: NOVEMBER 13, 2014
SENTENCE DATE: JANUARY 29, 2015
EFFECTIVE SENTENCE DATE: TO BEGIN UPON COMPLETION OF TERM
OF IMPRISONMENT IMPOSED WITH
REGARD TO COUNT ONE

It was further ORDERED that the Clerk of this Court transmit a copy of this Order, duly certified, to the following parties:

James F. Armstrong
Assistant Prosecuting Attorney
Third Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

Christopher Wilson, Esq.
400 Adams Street
Fairmont, West Virginia 26554

David DeMoss, Esq.
301 Adams Street, Suite 802
Fairmont, West Virginia 26554

Adult Probation Office
Sixth Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia

North Central Regional Jail
#1 Lois Lane
Greenwood, West Virginia 26415

West Virginia Division of Corrections
112 California Avenue
Charleston, West Virginia 25305

John Madia
Victim Services Coordinator
Third Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

Mt. Olive Correctional Complex
One Mountainside Way
Mount Olive, West Virginia 25185

Ennis Charles Payne, II
Mt. Olive Correctional Complex
One Mountainside Way
Mount Olive, West Virginia 25185

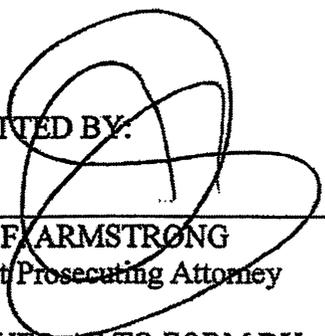
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01/29/2015



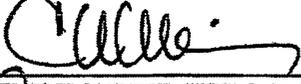
JAMES A. MATISH, JUDGE

SUBMITTED BY:

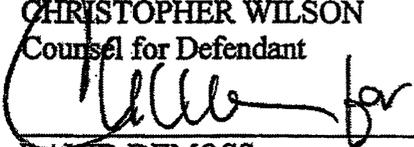


JAMES F. ARMSTRONG
Assistant Prosecuting Attorney

APPROVED AS TO FORM BY:



CHRISTOPHER WILSON
Counsel for Defendant



DAVID DEMOSS
Counsel for Defendant

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 29 day of January, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 29 day of January, 2015.

Donald L. Kopp II /s/
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

VS.

Felony No: 13-F-112-3
(James A. Matish, Judge)

ENNIS CHARLES PAYNE, II,

Defendant.

ORDER APPOINTING COUNSEL

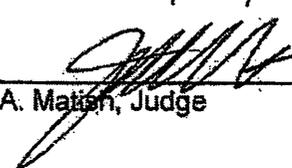
A Motion for Appointment of Appellant Counsel has been filed by the defendant in the above-styled matter. Accordingly, it is **ORDERED** that Jason Gain, a licensed Attorney at Law practicing before the Bar of this Court, is appointed to represent the defendant in the appeal in this matter.

It is hereby **ORDERED** that Christopher Wilson and David DeMoss meet with the appellant counsel promptly, and provide him with a copy of their complete file.

It is further **ORDERED** that the Clerk of this Court send a certified copy of this Order to Jason Gain, at his address of 103 East Main Street, Bridgeport, West Virginia 26330; unto the defendant, Ennis C. Payne, II, at his address of Mount Olive Correctional Complex, 1 Mountainside Way, Mount Olive, West Virginia 25185; unto Christopher Wilson, at his address of 300 Adams Street, Fairmont, West Virginia 26554; David B. DeMoss, at his address of 301 Adams Street, Suite 802, Fairmont, West Virginia 26554; and unto James Armstrong, ~~Assistant Prosecuting Attorney, at his address of 301 West Main Street, Room 201, Clarksburg,~~
West Virginia 26301.

ENTER: _____

02/25/2015



James A. Matish, Judge

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 26 day of February, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

the Seal of the Court this 27 day of February, 2015.

Donald L. Kopp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

vs.

Case No. 13-F-112-3
(James A. Matish, Chief Judge)

ENNIS CHARLES PAYNE, II,

Defendant.

**TRIAL ORDER/ORDER DIRECTING PRESENTENCE INVESTIGATION/ORDER
SCHEDULING SENTENCING HEARING**

On the 3rd day of November, 2014, came the State of West Virginia by James F. Armstrong and Traci M. Cook, Assistant Prosecuting Attorneys for Harrison County, West Virginia, and came also the defendant, Ennis Charles Payne, II, not in person, but by Christopher Wilson and David DeMoss, his counsel. Also present was the investigating officer, Lieutenant Joshua Cox of the Clarksburg Police Department.

Whereupon, the Court reviewed the procedural history of the above captioned matter for the record.

Thereupon, counsel for the defendant advised the Court that the defendant had refused to meet with his attorneys and had refused to change into street clothes.

Thereupon, the Court, on its own motion, entered an order for security and for the defendant to appear in jail clothing with shackles and handcuffs.

Thereafter, the defendant, Ennis Charles Payne, II, appeared in the Courtroom, but refused to stand when the Judge entered the Courtroom. Deputies Sheriffs of Harrison County, West Virginia, thereafter lifted the defendant, Ennis Charles Payne, II, into a standing position.

Thereupon, pursuant to the admonitions of State v. Neuman, 179 W.Va. 580 (1988), the Court, out of presence of the jury panel, advised the defendant that he had a right to testify in his own behalf, that if he did so, he was obligated to answer cross-examination questions put to him by the State, that he would not have the right to refuse to answer any cross-examination questions by invoking his Fifth Amendment Rights, and that he also had the right to remain silent and not take the stand and give testimony.

The Court further advised the defendant, pursuant to Rule 43 of the W.V.R.Cr.P., that if he chose to absent himself from the trial or if he displayed inappropriate behavior, such that the Court would have to have him removed from the Courtroom, that the trial would proceed in his absence.

Thereupon, counsel for the State and the defendant reviewed proposed voir dire questions and, after review of the same, indicated there was no objection to the proposed questions.

Thereupon, the Court gave a cautionary instruction to the jury regarding the wearing of jail attire by the defendant.

Thereupon, upon joint motion of counsel for the defendant and counsel for the State, the Court ORDERED that witnesses for the State and the defendant in this case be excluded from the Courtroom during the trial in this case except while testifying, and further that there be no communication between the witnesses after their testimony for the duration of the trial.

ON November 5, 2014, From 11/24/2014
Thereupon, came a jury, who were duly selected and impaneled according to law and sworn to well and truly try and true deliverance make between the State of West Virginia and the defendant and render a true verdict according to the evidence present before them. *The defendant did appear hereforth in street clothing with humane leg restraints not visible to*

Thereupon, the jury panel heard the opening statements of counsel for the State and *the jury.*
Jan
11/24/2014
counsel for the defendant.

Thereupon,^{ON November 5, 6, 7 & 9, 2014, Jan 11/24/2014} witnesses for the State testified relative to the charges contained in the Indictment in this case and the State rested.

Thereupon, counsel for the defendant moved the Court for a judgment of acquittal in favor of the defendant, which motion was opposed by the State and was denied by the Court.

Thereupon, pursuant to the admonitions of State v. Neuman, 179 W.Va. 580 (1988), the Court, out of presence of the jury panel, again advised the defendant that he had a right to testify in his own behalf, that if he did so, he was obligated to answer cross-examination questions put to him by the State, that he would not have the right to refuse to answer any cross-examination questions by invoking his Fifth Amendment Rights, and that he also had the right to remain silent and not take the stand and give testimony.

The Court again advised the defendant, pursuant to Rule 43 of the W.V.R.Cr.P., that if he chose to absent himself from the trial or if he displayed inappropriate behavior, such that the Court would have to have him removed from the Courtroom, that the trial would proceed in his absence.

Thereupon,^{ON November 12, 2014, a Jan 11/24/2014} witnesses for the defendant testified relative to the charges contained in the Indictment in this case and the defendant rested.

Thereupon, counsel for the defendant renewed his motion for a judgment of acquittal in favor of the defendant, which motion was opposed by the State and was denied by the Court.

Thereupon, instructions of the Court were read to the jury.

Thereupon, counsel for the State and counsel for the defendant presented their closing arguments.

Thereupon, after hearing all the testimony, instructions of the Court, and arguments of counsel, the said jury retired to their chamber to consider their verdicts.

Thereupon, after mature and due deliberations, the jury returned into open Court on the 13th day of November 2014, and announced its verdicts to be as follows:

“We, the Jury, find the defendant, Ennis Charles Payne, II, Guilty of the offense of First Degree Murder, with Mercy, as charged in Count One of the within Indictment.”

/s/ Adam Lee, Foreperson

“We, the Jury, find the defendant, Ennis Charles Payne, II, Guilty of the offense of Conspiracy to Commit Burglary as charged in Count Two of the within Indictment.”

/s/ Adam Lee, Foreperson

On motion of counsel for the defendant, the Clerk polled each member of the jury panel to determine whether the guilty verdicts returned were his/her verdicts, to which all twelve (12) jurors responded in the affirmative.

Thereupon, the jury was released.

Thereupon, the Court, on its own motion, ORDERED that the Harrison County Adult Probation Office conduct a presentence investigation in this matter. *And LSC/MI ASSESSMENT.*

It was further ORDERED that the Harrison County Adult Probation Office supply to *JAM 11/24/14* counsel of record a copy of its report within ten (10) days prior to sentencing. It was further ORDERED that counsel file any objections to said report, in writing, within five (5) days of receipt of the same. It was further ORDERED that the Harrison County Adult Probation Office file with the Court and supply to counsel of record, a final, corrected copy of its report at least three (3) days prior to sentencing.

Thereupon, the Court, on its own motion, ORDERED that hearing shall be held in this matter on JANUARY 29, 2015, at 10:30 o'clock A.M., at which time the Court shall address post trial motions and/or sentence the defendant.

From: Harrison County Commission

11/20/2014 10:32 #026 P.006/006

Case No. 13-F-112-3

It was further ORDERED that the Clerk of this Court transmit a copy of this Order, duly certified, to the following parties:

James F. Armstrong
Traci M. Cook
Assistant Prosecuting Attorneys
Third Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

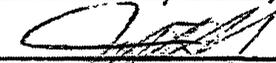
Christopher Wilson, Esq.
300 Adams Street
Fairmont, West Virginia 26554

David DeMoss, Esq.
301 Adams Street, Suite 802
Fairmont, West Virginia 26554

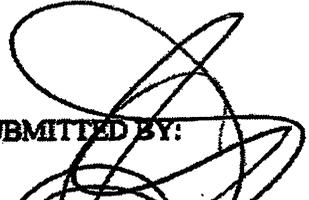
Adult Probation Office
Third Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

North Central Regional Jail
#1 Lois Lane
Greenwood, West Virginia 26415

ENTER: 11/24/2014



JAMES A. MATISH, CHIEF JUDGE

SUBMITTED BY: 

JAMES F. ARMSTRONG
Assistant Prosecuting Attorney



TRACI M. COOK
Assistant Prosecuting Attorney

APPROVED AS TO FORM BY: 

CHRISTOPHER WILSON
Counsel for Defendant



DAVID DEMOSS
Counsel for Defendant

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 24 day of November, 2014.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 24 day of November, 2014.

Donald L. Kopp II / dj
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

Plaintiff,

V.

Case No.: 13-F-112-3

ENNIS CHARLES PAYNE, II,

Defendant.

ORDER EXTENDING PERIOD FOR FILING OF NOTICE OF APPEAL

On the 25th day of February, 2015, came the Defendant, *pro se*, and submitted to the Court a request to have new counsel appointed for the appeal of his conviction as set forth in the Judgment and Commitment Order entered by this Court on the 29th day of January, 2015.

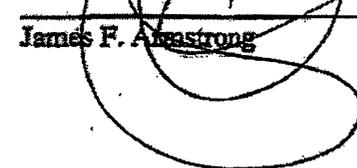
By separate Order, the Court has granted the Defendant's request and appointed Jason T. Gain, an attorney of the Bar of this Court, to handle the appeal of the Defendant's conviction. Upon recognition of the need for newly appointed counsel to become acquainted with the Defendant's file, the Court finds that it is necessary to extend the period for the filing of a Notice of Appeal by thirty (30) days. Accordingly, it is hereby ORDERED that the time period for the filing of a Notice of Appeal by the Defendant shall be extended by thirty (30) days.

The Clerk of the Court is directed send certified copies of this Order to Christopher M. Wilson, 300 Adams Street, Fairmont, WV, 26554; David B. DeMoss, 301 Adams Street, Ste. 801, Fairmont, WV, 26554; James F. Armstrong; and Jason T. Gain, ^{103 East Main St.} ~~211 Charleston Avenue,~~ Bridgeport 26330 Jan 02/26/2015, ~~Clerksburg, WV, 26301.~~

ENTER: 02/26/2015



Christopher M. Wilson



James F. Armstrong



James A. Matish, Judge
Circuit Court of Harrison County

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 26 day of February, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

the Seal of the Court this 26 day of February, 2015.

Donald L. Kopp II /ps
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia