

15-0696

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ADMITTED TO RECORD

Plaintiff,

2015 JAN 29 A 11: 28

MINGO COUNTY CIRCUIT CLERK

v.

Indictment S14-F105

KENNETH ALLEN MARCUM,

Defendant.

SENTENCING ORDER

On the 22nd day of January, 2015, appeared the Defendant, Kenneth Allen Marcum, in person and by counsel, Jerry M. Lyall, and the State of West Virginia, by Mingo County Prosecuting Attorney, Teresa Maynard, for a sentencing hearing previously scheduled for this date after the Defendant's guilty plea on the 17th day of November, 2014, to one count of Conspiracy [Destruction of Property >\$2,500], a violation of West Virginia Code § 61-10-31 and § 61-3-30(b), as charged in Count II of Indictment S14-F105 and one count of Attempt [Grand Larceny], a violation of West Virginia Code § 61-11-8(2) and § 61-3-13(a), as charged in Count IV of Indictment S14-F105.

After careful consideration of the pre-sentence investigation report, arguments of counsel, Defendant's allocution, victim impact and full record herein, the Court hereby incorporates by reference its findings made on the record and does ADJUDGE, ORDER and DECREE that the Defendant shall be taken from the bar of this Court to Southwestern Regional Jail to be kept, confined and subject to all rules and regulations thereof and be delivered to the custody of the West Virginia Division of Corrections to be transported to a state correctional facility to be kept and confined as follows:

- Count II – Conspiracy [Destruction of Property >\$2,500] – West Virginia Code § 61-10-31 and §61-3-30(b) – indefinite term of not less than one (1) year nor more than five (5) years.
- Count I – Attempt [Grand Larceny] - West Virginia Code §61-11-8(2) and § 61-3-13(a) – indefinite term of not less than one (1) year nor more than three (3) years.

It is further ORDERED that the sentences shall run consecutive.

It is further ORDERED that the Defendant's request for probation and/or alternative sentencing is DENIED.

It is further ORDERED that the Defendant shall receive credit for seventy-nine (79) days served at Southwestern Regional Jail, any other jail facility and any hospital of any type while undergoing or awaiting evaluation.

It is further ORDERED that the Defendant shall be assessed fines, costs and restitution as follows:

FELONY

Prosecuting Attorney Fee [PRO] [§ 59-2-17]	\$35.00
Crime Victim Compensation Fund [CVF] [§ 62-5-10(a&b)]	\$100.00
Community Corrections Fund [CCF] [§ 62-5-10 (a&b)]	\$50.00
Circuit Clerk [§ 59-1-11]	\$105.00
Community Corrections Conviction Fee [CCC] [§ 62-11C-4(d)]	\$10.00
Law Enforcement Training [LET]	\$2.00
Home Confinement [<i>payable to Mingo County Tax Dept.</i>]	\$-0-
Drug Screening Fees	\$-0-
Appointed Counsel Fees	\$-0-
Jury Costs	\$
Restitution	\$7,106.00
DNA Analysis	\$150.00

Total of assessed fines, costs and restitution is \$7,558.00

It is further ORDERED that the Defendant shall pay restitution of \$6,628.00 to

Ernestine Richardson and \$478.00 to Randy Gillman.

It is further ORDERED that the Defendant shall provide a DNA sample to be used for DNA analysis pursuant to West Virginia Code § 15-2B-6(c).

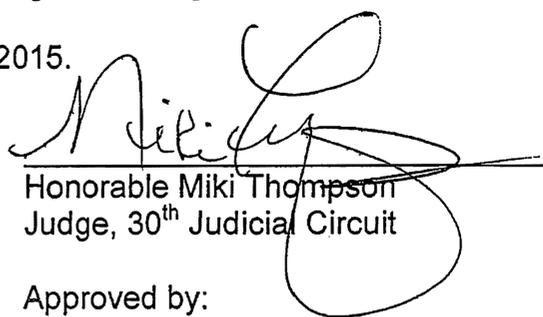
It is further ORDERED that the Defendant's counsel shall be given ten (10) days to file any written objections to this Sentencing Order. If no such objections are timely filed, this Sentencing Order shall continue with full force and effect.

It is further ORDERED that the Clerk shall forthwith prepare the necessary commitment papers and forward a certified copy of this Sentencing Order to Southwestern Regional Jail and the West Virginia Division of Corrections.

It is further ORDERED that the Clerk shall forward a certified copy of this Sentencing Order to counsel of record and the Mingo County Probation Office.

It is further ORDERED that the Clerk shall forward a certified copy of all orders granting release on probation, refusing such release in felony cases and revoking any previous orders to the West Virginia Board of Probation and Parole within five (5) days after the entry date thereof pursuant to West Virginia Code § 62-12-8.

Entered on the 29th day of January, 2015.

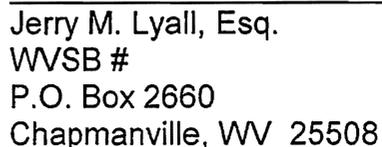

Honorable Miki Thompson
Judge, 30th Judicial Circuit

Prepared by:



Teresa D. Maynard, Esq.
WWSB # 6901
MINGO COUNTY PROSECUTING
ATTORNEY'S OFFICE
75 East 2nd Avenue, Suite 201
Williamson, WV 25661

Approved by:


Jerry M. Lyall, Esq.
WWSB #
P.O. Box 2660
Chapmanville, WV 25508

Llyall
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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

ADMITTED TO RECORD

2015 JUN 18 P 12:10

MINGO COUNTY CIRCUIT CLERK

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Indictment No.: S14-F-105
Judge Miki Thompson

KENNETH ALLEN MARCUM,

Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION OF SENTENCE

This matter comes before the Court pursuant to Defendant's Motion, by counsel, Jerry M. Llyall, for Reconsideration of Sentence, filed on April 20, 2015. The Court held a hearing on Defendant's Motion on the 12th day of May, 2015, whereby it heard arguments by counsel. After considering this Motion, relevant legal authorities, and the complete record in this matter, the Court hereby **DENIES** Defendant's Rule 35(b) Motion for Reduction of Sentence, based on the following Findings of Fact and Conclusions of Law, to-wit:

I. Findings of Fact

1. The Defendant, Kenneth Allen Marcum, on November 17, 2014, pleaded guilty in the Circuit Court of Mingo County, West Virginia, to the felony offenses of *Conspiracy [Destruction of Property]*, a violation of West Virginia Code § 61-10-31 and § 61-11-30(b) and *Attempt [Grand Larceny]*, a violation of West Virginia Code § 61-11-8(2) and § 61-3-13(a).

2. The Court, on January 22, 2015, sentenced the Defendant to an indefinite term of not less than one (1) year nor more than three (3) years on the guilty plea to *Attempt [Grand Larceny]* and confinement for an indefinite term of not less than one (1) year nor more than five (5) years on the guilty plea to *Conspiracy [Destruction of Property]*. The Defendant was given

credit for seventy-nine (79) days served at Southwestern Regional Jail and was ordered to pay restitution in the amount of \$6,628.00 to Ernestine Richardson.

3. The Court did not follow the State's recommendation of concurrent sentences and instead sentenced consecutive sentences.

4. Defendant, in his Motion, requests his sentences run concurrent.

II. Conclusions of Law

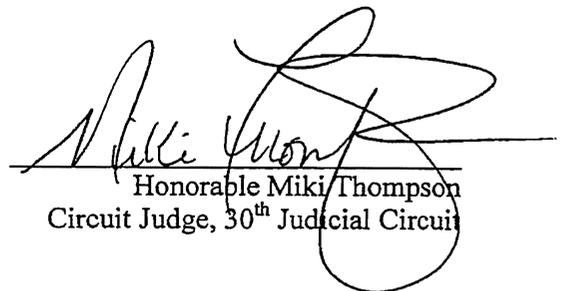
1. Rule 35(b) of the West Virginia Rules of Criminal Procedure, states as follows:

(b) Reduction of sentence. - A motion to reduce a sentence may be made, or the court may reduce a sentence without motion within 120 days after the sentence is imposed or probation is revoked, or within 120 days after the entry of a mandate by the supreme court of appeals upon affirmance of a judgment of a conviction or probation revocation or the entry of an order by the supreme court of appeals dismissing or rejecting a petition for appeal of a judgment of a conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

2. The Court, after considering the record and Defendant's circumstances outlined in his Motion hereby **DENIES** Defendant's instant Motion.

The Clerk is **DIRECTED** to send attested copies of this Order to Teresa D. Maynard, Esq., and Jerry M. Lyall, Esq.

ENTERED this the 18th day of June 2015.


Honorable Miki Thompson
Circuit Judge, 30th Judicial Circuit

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

INDICTMENT NO.: S14-F-05

KENNETH ALLEN MARCUM,

Defendant.

ADMITTED TO RECORD
2014 SEP 24 P 4: 50
MINGO COUNTY CIRCUIT CLERK

ORDER APPOINTING COUNSEL

The Court hereby appoints JERRY LYALL to serve as Counsel for the Defendant

Kenneth Allen Marcum, in the above proceedings.

The Circuit Clerk is ORDERED to mail a certified copy of this ORDER to all parties/counsel of record and all correctional facilities involved.

ENTERED: 9/23/14


HON. MIKI THOMPSON
CIRCUIT COURT JUDGE