

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on July 13, 2016, the following order was made and entered **in vacation**:

State of West Virginia,
Plaintiff Below, Respondent

vs.) No. 15-0933

Brian Daniel Hayslett,
Defendant Below, Petitioner

Notice of Intent to Sanction
And Rule to Show Cause

On this day came the Court, on its own motion, and proceeded to consider sanctions for the failure of petitioner's counsel, David L. White, Esq., to perfect the appeal in this matter.

Pursuant to the Court's amended scheduling order entered on November 17, 2015, the deadline for perfecting the appeal was February 29, 2016. When the appeal was not perfected by the deadline, the Court issued a Notice of Intent to Sanction on March 4, 2016, directing counsel to perfect the appeal within ten days of receipt of the order. The Notice of Intent to Sanction, which was sent by certified mail to Mr. White, was returned to the Court as "unclaimed." On March 21, 2016, Mr. White personally received a copy of the Notice of Intent to Sanction from the Clerk's Office, and therefore the appeal should have been perfected on or before March 31, 2016, in order to avoid being subject to sanctions.

Instead of perfecting the appeal as directed, counsel for the petitioner filed a response to the Notice of Intent to Sanction and a request for relief on April 1, 2016, which requested that the

Court not impose sanctions and allow counsel to perfect the appeal later that same day. The appeal was not perfected on that day.

On April 6, 2016, a rule to show cause in contempt returnable before this Court on April 20, 2016, was issued directing counsel to show cause as to why he should not be held in contempt of Court, unless sooner mooted by the filing of a petitioner's brief and an appendix that fully complied with the Rules of Appellate Procedure. Thereafter, on April 11, 2016, counsel for the petitioner filed a petitioner's brief and appendix along with a motion for leave to perfect the appeal out-of-time. Because the Court did not want the actions of appointed counsel for the petitioner to prejudice the petitioner, the appeal was not dismissed. However the rule to show cause in contempt was not dismissed. The rule to show cause was continued generally and ordered to be returnable on a later date during the Fall 2016 Term of Court so that the Court could consider any necessary sanctions regarding counsel for the petitioner at that time.

By motion filed on April 14, 2016, the respondent, State of West Virginia, notified the Court of significant and numerous problems regarding the appendix filed by counsel for the petitioner, and in addition informed the Court that although counsel for the petitioner certified that he had conferred with the respondent about the contents of the appendix, he had not. Therefore, an amended scheduling order was entered on April 27, 2016. This order directed counsel for the petitioner to review and comply with the Rules of Appellate Procedure by conferring with the Prosecuting Attorney on the contents of the appendix; and by perfecting the appeal, with the filing of a petitioner's brief and appendix that fully complies with the Rules of Appellate Procedure, on or before June 30, 2016.

To date, the appeal has not been properly perfected.

David L. White, Esq., counsel for the petitioner, is hereby ORDERED to properly perfect the appeal within **ten** days of receipt of this order, and show good cause as to why the appeal was

not timely perfected. Failure of counsel for the petitioner to properly perfect the appeal within ten days of receipt of this order will constitute an aggravating factor that the Court will consider when considering necessary sanctions.

The previously issued rule to show cause is ordered returnable on Tuesday, September 13, 2016. David L. White, Esq. is ORDERED to appear before this Court at its courtroom in the City of Charleston, County of Kanawha, at ten o'clock a.m., on Tuesday, September 13, 2016, to show cause, if any he can, as to why he should not be held in contempt of Court for repeated failure to comply with the directives and orders of this Court.

Service of an attested copy of this order shall constitute sufficient notice of the contents herein.

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court

