

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
Plaintiff,

V.

CASE NO. 07-F-69
Judge Silver, Div. III

MICHAEL S. HUTZLER,
DOB: 4/02/66
SS#: 233-17-4421
Defendant.

CONVICTION AND SENTENCING ORDER

On the 14th day of January, 2008, appeared the State of West Virginia by Assistant Prosecuting Attorney Greg Jones and the Defendant in person and by counsel, Elizabeth Giggerbach, for a change of plea hearing.

On October 1, 2007, the parties appeared before this Court and presented a written a plea agreement which contained the following conditions:

1. The Defendant pleads guilty to Felony Destruction of Property as charged in Count III.
2. The Defendant would be sentenced to not less than one year nor more than ten years in prison.
3. This sentence would be suspended for 3 years probation. The parties agree that jail time will not be a condition of probation as defined in W. Va. Code §61-12-9(b)(4). It will be a term and condition of probation that the Defendant is to have no contact with John and Sharla Campbell. Other terms and conditions of probation will be in the discretion of the Court.
4. The remaining counts of the indictment would be dismissed.
5. This would be a conditional plea pursuant to W.Va.R.Cr.P. Rule 11(a)(2) wherein the Defendant is allowed to preserve two of the pre-trial issues set forth in the Defendant's Amended Motion to Dismiss: dismissal of all counts because of double jeopardy and dismissal of all counts because of destruction of evidence. Pursuant to Rule 11(a)(2), if the Defendant prevails on appeal to the West Virginia Supreme Court of Appeals, he is allowed to withdraw his plea.

BERKELEY COUNTY
CIRCUIT CLERK

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6. The Defendant understands that he must be sentenced prior to filing an appeal with the West Virginia Supreme Court of Appeals. The Defendant further understands that he must abide by the terms and conditions of probation once sentenced. If the Defendant does not comply with probation the Court may revoke the suspension of his sentence and order that the underlying sentence of not less than one year nor more than ten years be served in a correctional facility in the discretion of the West Virginia Division of Corrections.

Today, both sides acknowledged they received a copy of the pre-plea investigation report. Any objection of the parties to portions to the report are contained in the record. After considering the information in the report the Court found the plea agreement is in the interest of the public, and the Court accepted the agreement of the parties.

The Court then engaged the Defendant in a dialogue regarding those matters set forth in Call v. McKenzie and Rule 11 of the West Virginia Rules of Criminal Procedure. The Defendant provided the Court a factual foundation for the tendered plea.

Thereafter, the Defendant, in open court, did enter a plea of guilty to count three charging the offense of Felony Destruction of Property in violation of W. Va. Code § 61-3-30(b). The Defendant executed a written guilty plea form, witnessed by the Deputy Clerk of this Court and by the Defendant's counsel, and the same, being in proper form, is ordered filed herein.

The Court finds that the Defendant understands the nature of the charge lodged against him, the nature and consequences of the tendered plea of guilty, that there is a factual basis and foundation for the tendered plea of guilty, and that the Defendant tendered his plea of guilty intelligently, knowingly, and voluntarily of his own free will and accord.

Accordingly, it is ordered and adjudged that the plea of Guilty by the Defendant is accepted by the Court. It is ordered and adjudged that the Defendant, Michael S. Hutzler, now stands convicted of Felony Destruction of Property, in violation of W. Va. Code § 61-3-30(b), by virtue of his plea of guilty.

Thereafter, the Court did inquire of the Defendant and his counsel if either had any just or legal cause why sentence should not now be pronounced. Neither the Defendant or his counsel provided the Court with any cause to delay sentencing. The Court then gave the Defendant and his counsel an opportunity to address the Court.

In consideration of the agreement reached by the parties, it is ordered that for the Defendant's conviction of count three, charging Felony Destruction of Property, the Defendant is sentenced to **not less than one year nor more than ten years** in the penitentiary.

Further, it is ordered that the Defendant's sentence is hereby suspended and the Defendant is placed on **probation for three years**, starting today, under the terms and conditions set forth in Exhibit A: Terms and Conditions of Probation signed by the Defendant on January 14, 2008, which is attached and incorporated by reference herein.

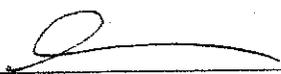
It is further ordered that the Defendant pay the costs of this action within the term of his probation as directed by his probation officer.

The remaining counts of the indictment are dismissed.

Any bond posted for the Defendant in this matter is exonerated.

The Clerk shall enter this order and send copies to Elizabeth Giggenbach of Mills and Wagner, to Greg Jones at the Berkeley County Prosecutor's Office, and to the Berkeley County Probation Department. The Clerk shall then remove this case from the Court's active docket and report it as closed.

1/16/08
ENTERED



GRAY SILVER, III, Circuit Judge
23rd Judicial Circuit

Prepared by:
Greg Jones, A.P.A.