

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

VS.

Case No. 06-F-60

KEVIN B. PAYNE,

Defendant.

AMENDED SENTENCING ORDER

This matter came on before the Court for purposes of sentencing the Defendant this 25th day of January, 2008; upon the appearance of the Defendant, Kevin B. Payne, in person, and by his counsel B. Craig Hanford; upon the appearance of the State of West Virginia by Debra MH McLaughlin, Prosecuting Attorney for Morgan County; and upon this matter having been duly set down for sentencing hearing this day.

Upon the Defendant having made a Motion for a New Trial and the Court having heard the arguments of counsel the Court DENIED the Motion and incorporates its finding made at the time of the trial and continues to believe that the facts support the verdict and that the verdict was not contrary to the evidence.

The Court notes the exceptions and objections of the Defendant to the denial of said Motion.

Whereupon, the Court having proceeded to the sentencing phase of the hearing, the Defendant called the following witnesses: Tammy Younker, Tiffany Hilton, Sharon Lehman, and Darren Payne. Additionally, the Defendant submitted a letter from his son Tanner Younker and proffered statements of additional family members who would say the same as the family members who spoke.

Thereupon the Court heard arguments from both the Defendant and the State and the Defendant was given the opportunity of allocution, at which time the Defendant stated that he respect

the jury's decision but wanted to be with his family and was asking the Court for probation.

The Court has thoroughly reviewed the file in this matter and all matters heard and read throughout these proceedings, including the evidence presented to the Jury during the Defendant's two day trial, has further considered the reports of the Court's Probation Officer and has heard the testimony of witnesses for both the State and the Defendant and arguments of counsel.

The Court finds that the report of Dr. Kradel provides much helpful information regarding the Defendant's request for probation. The Defendant continues to deny the charges even when asking the Court for probation. The State is not capable of providing the supervision recommended by Dr. Kradel. Sex offenders come from all walks of life and are often those we least suspect. The Court noted that the Defendant's family continues to deny the Defendant's responsibility for the situation he is in. The Court agrees with the State's argument that while the Court is not unsympathetic to the effect of Mr. Payne's absence on his family, there is no reason to believe that placing the Defendant on probation has any deterrence effect in light of the numerous times he has served probation. The Court believes the Defendant is at risk for committing crimes of either this nature or some other nature, in the future.

In sentencing, the Court gives deference to what the Jury found, which is contrary to what the Defendant has maintained. The victim's father has asked for the Defendant to be incarcerated.

Accordingly it is the sentence of the law and the judgment of the Court that the Defendant, upon his conviction of the felony of sexual assault, second degree as contained in Count I of the Indictment, be confined in the penitentiary house of this State for a period of not less than ten nor more than twenty-five years; upon his conviction of the felony of sexual abuse, first degree as contained in Count II of the Indictment, be confined in the penitentiary house of this State for a period of not less than one nor more than five years; upon his conviction of the felony of sexual

assault, second degree as contained in Count III of the Indictment, be confined in the penitentiary house of this State for a period of not less than ten nor more than twenty-five years; and upon his conviction of the misdemeanor of sexual abuse, third degree as contained in Count IV of the Indictment, be confined in the Eastern Regional Jail for a period of ninety days, there to be dealt with according to law, with said sentences to be served consecutively. The Defendant shall serve the ninety day Eastern Regional Jail sentence prior to the penitentiary sentence, as requested by the State.

In addition to the above Ordered sentence of incarceration, it appears to the Court, from the Pre-Sentence Report, argument of counsel and all that has come to the Court's attention in this case, that the Defendant is a sexual predator who should be subjected to supervision under terms and conditions upon his release from incarceration.

ACCORDINGLY, it is hereby ADJUDGED and ORDERED that once the Defendant has served the entirety of his sentence he shall be subject to supervised release pursuant to WV Code §62-12-26 upon strict terms and conditions:

- 1. The Defendant shall maintain good behavior and not violate any laws of the State, any other State or municipality or of the United States.**
- 2. The Defendant shall reside in Morgan County, West Virginia and not take up residence elsewhere without the consent of the Probation Officer.**
- 3. The Defendant shall comply with rules and conditions and of probation as prescribed by the Court, and shall cooperate fully with the Probation Officer at all times.**
- 4. The Defendant shall truthfully answer all inquires of the Probation Officer or of any law enforcement officer.**

5. The Defendant shall report regularly, in person or in writing, as directed by Probation.
6. The Defendant shall immediately (within 48 hours) report any arrest or questioning by police, and the attendant circumstances, to the Probation Officer, and shall report the outcome of any charges brought.
7. The Defendant shall not associate with any know felon, probationer, parolee, nor with any person engaged in criminal activity, nor with any person designated by the Probation Officer.
8. The Defendant shall not drink any alcoholic beverage, including beer, and not be in any bar, club or other such place where alcohol is sold, dispensed or consumed, with the exception of grocery and convenience stores or legitimate restaurants.
9. The Defendant shall not use, consume, purchase, possess, or distribute any narcotic, marijuana, nor any other controlled substance which has not been prescribed by a doctor.
10. The Defendant shall not be present at any place where controlled substances are illegally sold, distributed, kept, or used, nor visit or frequent any place or area forbidden by Probation.
11. The Defendant shall submit to random drug and/or alcohol testing at the Defendant's own expense.
12. The Defendant shall attend a substance abuse treatment program, as directed by the Probation Officer, and shall pay the expenses associated with said program.

13. The Defendant shall regularly and faithfully attend as many Narcotics Anonymous or Alcohol Anonymous meetings per week as the Probation Officer may require.
14. The Defendant shall notify the Probation Officer within 72 hours of being prescribed a controlled substance.
15. During the term of probation, the Defendant shall not own, possess, carry or use any firearm or deadly weapon, including a knife, club, mace, or pepper spray.
16. The Defendant, at all times, shall either be employed or actively seeking employment, or be enrolled in school, unless otherwise directed by the Probation Officer.
17. The Defendant shall assume all moral and legal obligations, including (for example) the payment of child support.
18. The Defendant shall not quit or change employment without first obtaining the consent of the Probation Officer, and shall notify the Probation Officer within 72 hours of any termination of employment or change in residence, and shall keep the Probation Officer informed as to the Defendant's status at all times.
19. In the event the Defendant is not employed or enrolled in school, the Defendant must contact a minimum of 40 employers per month and attempt to secure employment and shall provide the Probation Officer with information/proof regarding same.
20. The Defendant shall not open, either jointly or separately, a checking account or obtain any line of credit such as installment loan or credit card, without the consent of the Probation Officer.

21. The Defendant shall not own or operate a motor vehicle without the consent of the Probation Officer.
22. The Defendant shall be at home, in the Defendant's residence at such times as instructed by the Probation Officer.
23. The Defendant shall submit to random home or employment visits by the Probation Officer.
24. The Defendant shall not marry or enter into any common-law living arrangement without first consulting and obtaining the consent of the Probation Officer.
25. The Defendant shall agree and consent to the search upon reasonable cause of the Defendant's person, home, outbuildings, property, or motor vehicles at any time and at any place by the Probation Officer and shall agree and consent to the seizure of any property found or discovered during such searches which (a) is stolen, embezzled, or obtained by false pretenses, or (b) is or was designed or intended for use or which has been used as a means of committing a criminal offense or a violation of probation, or (c) is or was manufactured, sold, kept, concealed, possessed, controlled, designed, or intended for use or which is or has been used, in violation of the criminal laws of the State of West Virginia, and does waive all constitutional rights to be free from such searches and seizures without a valid search warrant, upon probable cause.
26. The Defendant shall pay all Court costs within the term of this probation, as directed by the Probation Officer, including the costs of any court-appointed lawyer.

27. The Defendant shall pay the following supervision fees associated with this grant of probation: FIVE (\$5.00) DOLLARS per month pursuant to WV Code 62-12-9(a)(5), and; FIVE (\$5.00) DOLLARS per month pursuant to WV Code 62-11C-4(b) and 62-12-99(a)(6).
28. The Defendant shall notify any third parties of risks that may be occasioned by the Defendant's criminal record or personal characteristics, as directed by the Probation Officer.
29. The Defendant shall conform to such additional requirements as the Probation Officer may from time to time reasonably impose as circumstances may warrant.
30. The Defendant shall sign the Waiver of Extradition form.
31. The Defendant shall undergo HIV testing, fingerprinting and be photographed as required by the West Virginia Sexual Offender Registration Act.

In addition to these standard terms and conditions of probation, the Defendant shall be required to sign and agree to abide by the standard terms and conditions for computer use (attached hereto as exhibit 1) and sex offender conditions (attached hereto as Exhibit 2) which shall be executed by the Defendant with his probation officer at the time of his release onto civil probation.

It is further ORDERED that the Defendants bond, if any, shall be refunded and any surety thereon exonerated and the Defendant is assessed the costs of these proceedings which shall be paid within twelve months of his release.

It is further Ordered that the following dates shall be established:

Conviction Date October 3, 2007

Sentencing Date January 25, 2008

Effective Date of Sentencing June 10, 2007

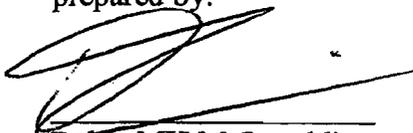
The Court then advised the Defendant of his rights to appeal the decision of the Court.

The record shall reflect the Defendant's objection and exception to the sentence of the Court.

The Clerk shall enter the foregoing Order as of the day and date first hereinabove appearing and shall send attested copies to all counsel of record.


The Honorable Gina M. Groh
Circuit Court Judge
Twenty-Third Judicial Circuit

prepared by:

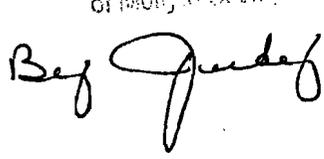

Debra MH McLaughlin

Seen and Agreed to by:


Craig Manford

A TRUE COPY, ATTEST:


Kinshel Jackson
Clerk of the Circuit Court
of Montgomery and West Virginia

By  J. Crosby,
Deputy

cc: 10/28/08

PA
PO
manford
DOC

GUARDIAN MAG
DOM MH
CIVIL JUVENILE
CRIMINAL ADM
ORDER BOOK 33
PAGE _____ INITIAL _____
DATE 10/28/08