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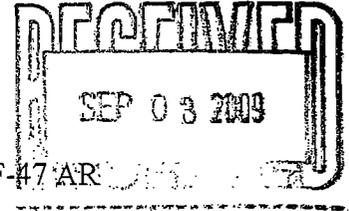
IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

CASE NO. 09-F-47 AR



CHARLES J. JAMES,

Defendant.

**PLEA AND SENTENCING ORDER**

On the 10<sup>th</sup> day of August, 2009, came the State of West Virginia, by Shawn R. Turak, Assistant Prosecuting Attorney, and as well came the Defendant, Charles J. James, in person, and by his counsel, Shayne Welling, Assistant Public Defender, this date and time having been set for consideration of a Plea Agreement by the Court.

**WHEREUPON**, the Court called this matter to hearing and noted it was set for consideration of a proposed Plea Agreement.

**THEREUPON**, the Defendant was placed under oath by the Court and the Court did question him to determine his intent and ability to enter into a Plea Agreement with the State of West Virginia as well as to enter a guilty plea in this matter.

**THEREUPON**, in response to the Court's inquiries, the Defendant, Charles James, indicated that he was 26 years old and had an eighth grade education. The Defendant stated that he could read, write and understand the English language. The Defendant, Charles James, indicated that he was currently taking medication for depression, anxiety and bi-polar disorder but that said medications did not in any way impact his ability to communicate and appreciate the nature of the proceedings.

The Defendant, Charles James, indicated that he was thinking clearly and wished to proceed with the proposed Plea Agreement.

**THEREUPON**, the Court did review all of the terms of the Plea Agreement with the Defendant, in open Court, specifically noting that the Defendant's guilty plea was pursuant to *Kennedy v. Frazier/Alford v. North Carolina*; that the Defendant specifically reserved his right to challenge the "Supervised Release" pursuant to W.Va. Code §62-12-26; and that any success in challenging the "Supervised Release" pursuant to W.Va. Code §62-12-26 would not vacate the underlying conviction or the incarceration imposed pursuant to W.Va. Code §61-8B-7(a)(1).

**WHEREUPON**, the Defendant indicated that he understood all of the proposed terms of the agreement; that he understood the matter was proceeding through a *Kennedy/Alford* guilty plea; that he reserved his right to challenge the "Supervised Release" pursuant to W.Va. Code §62-12-26; that he would have to register as a sex offender pursuant to W.Va. Code §15-12-1 et seq.; and that he wished to proceed with the Court's consideration of the Plea Agreement.

**THEREUPON**, the Court did review further the standards for entering a guilty plea under *Kennedy/Alford* and questioned the Defendant as to his understanding of the same.

**WHEREUPON**, the Defendant indicated that he understood the requirements of *Kennedy/Alford* and that he wished to proceed by entering a guilty plea pursuant to those cases.

**THEREUPON**, in response to the Court's inquiry, the Defendant acknowledged his signature on page 4 of the Plea Agreement which the Court

**ORDERED FILED.**

**THEREUPON**, the Court did review with the Defendant, Charles James, whether he understood the nature of the charge and his defenses available, to which the Defendant responded

affirmatively and did further state that he was satisfied with the representation of his attorney, Shayne Welling.

**WHEREUPON**, the Court reviewed with the Defendant, Charles James, the entire Grand Jury process and his right to proceed by and through the Grand Jury.

**THEREUPON**, the Defendant indicated that he understood his right to be indicted by the Grand Jury but that he wished to waive this right and proceed by way of Information.

**WHEREUPON**, the Court did

**FIND** that the Defendant, Charles James, did make a knowing, intelligent and voluntary waiver of his right to be indicted. Accordingly, it is

**ORDERED** that the Defendant, Charles James, did make a knowing, intelligent and voluntary waiver of his right to be indicted.

**THEREUPON**, in response to the Court's inquiry, the Defendant affirmed his signature on the Waiver of Indictment and indicated that he read it and understood it, which the Court then

**ORDERED FILED** and made a part of the record of these proceedings.

**THEREUPON**, the Court did advise the Defendant of his constitutional, statutory and procedural rights and questioned him as to his understanding and waiver of the same.

**THEREUPON**, the Defendant acknowledged his understanding of his constitutional, statutory and procedural rights, indicated that he had discussed the same with his counsel, that he was satisfied with counsels' representation, and that he wished to waive those rights and proceed with the Plea Agreement at this time.

**WHEREUPON**, counsel for the State did proffer the facts it believed would be presented should this matter go to trial.

**WHEREUPON**, counsel for the State advised the Court that all of the relevant parties, including the victim and her mother, as well as the arresting officers, had been advised of the terms and conditions of the Plea Agreement and that they were in agreement with the same.

**THEREUPON**, the Court did FIND that the record supported that a jury could return a guilty plea on the count of “Sexual Abuse, First Degree” as contained in the Information, as well as potentially the possibility of a charge of “Sexual Abuse by a Custodian” if this matter proceeded to trial.

**THEREUPON**, the Court did further FIND that all the requirements of Call vs. McKenzie have been satisfied and accordingly did inquire as to whether the Defendant wished to proceed.

**WHEREUPON**, the Defendant indicated that he did not wish to go to trial but that he wished to proceed with the Plea Agreement.

**WHEREUPON**, the Court did read the charges contained in the Information and inquired as to whether the Defendant did plead guilty or not guilty to the same.

**WHEREUPON**, the Defendant stood and, under oath, entered a guilty plea pursuant to *Kennedy/Alford* to “Sexual Abuse, First Degree”.

**THEREUPON**, the Court did FIND as follows:

1. That the Defendant has the intent and ability to knowingly, intelligently and voluntarily enter into a Plea Agreement with the State of West Virginia and to enter a guilty plea in this matter;
2. That the Defendant understands his constitutional, statutory and procedural rights and has knowingly, intelligently and voluntarily waived the same;

3. That there are sufficient facts for the Court to accept the Defendant's guilty plea in this matter and, further, that should this matter go to trial there are sufficient facts to indicate that a catastrophe may occur should the Court not accept the Defendant's *Kennedy/Alford* guilty plea;
4. That the Defendant's guilty plea to "Sexual Abuse, First Degree" shall be accepted as knowingly, intelligently and voluntarily given;
5. That the Defendant shall be adjudicated guilty of the felony offense of "Sexual Abuse, First Degree" as contained in the Information.

Accordingly, the Court

**ORDERED** that the Defendant has the intent and ability to knowingly, intelligently and voluntarily enter into a Plea Agreement with the State of West Virginia and to enter a guilty plea in this matter. It is further

**ORDERED** that the Defendant understands his constitutional, statutory and procedural rights and has knowingly, intelligently and voluntarily waived the same. It is further

**ORDERED** that there are sufficient facts for the Court to accept the Defendant's guilty plea in this matter and, further, that should this matter go to trial there are sufficient facts to indicate that a catastrophe may occur should the Court not accept the Defendant's *Kennedy/Alford* guilty plea. It is further

**ORDERED** that the Defendant's guilty plea to "Sexual Abuse, First Degree" shall be accepted as knowingly, intelligently and voluntarily given. It is further

**ORDERED** that the Defendant shall be adjudicated guilty of the felony offense of “Sexual Abuse, First Degree” as contained in the Information.

**WHEREUPON**, the Court advised the Defendant of his right to a Pre-Sentence Investigation in this matter prior to sentencing.

**THEREUPON**, the Defendant indicated that he wished to waive the same.

**WHEREUPON**, the Court did

**FIND** that the Defendant, Charles J. James, did knowingly, intelligently and voluntarily waive his right to a Pre-Sentence Investigation report and further that the Court possesses sufficient information upon which to meaningfully conduct sentencing.

**WHEREUPON**, the Court did afford the Defendant his right of allocution, which the Defendant exercised.

**THEREUPON**, counsel for the Defendant did argue sentencing and specifically requested that the Court find that W.Va. Code §62-12-26 is unconstitutional.

**THEREUPON**, counsel for the State did argue sentencing. The Court, based upon the record, as well as the arguments of counsel did

**ORDER** that the Defendant be sentenced to not less than one (1) nor more than five (5) years in the penitentiary. It is further

**ORDERED** that the Defendant be given credit for all time served. It is further

**ORDERED** that the Defendant’s Motion Requesting the Court Find W.Va. Code §62-12-26 unconstitutional be **DENIED**. It is further

**ORDERED** that the Defendant shall be on supervised release for a period of thirty (30) years following his release from the penitentiary pursuant to W.Va. Code §62-12-26. It is further

**ORDERED** that the Defendant shall register as a lifetime sex offender.

**WHEREUPON**, the Court did provide the Defendant the Notification of Sex Offender Registry Requirements which the Defendant executed in open Court. There being nothing further, it is

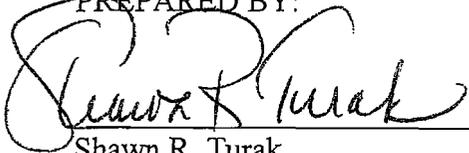
**ORDERED** that the Circuit Clerk of Ohio County shall provide an attested copy of this Order to respective counsel and the West Virginia Northern Regional Jail.

ENTER this 2<sup>nd</sup> day of ~~August~~<sup>September</sup>, 2009.

**/s/ Arthur M. Recht**

ARTHUR M. RECHT, JUDGE

PREPARED BY:



Shawn R. Turak  
Assistant Prosecuting Attorney

**A copy, Teste:**

  
Brenda L. Miller  
Circuit Clerk