

APPEAL NO. ~~100313~~
35561

COPY

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff below – Appellee,

v.

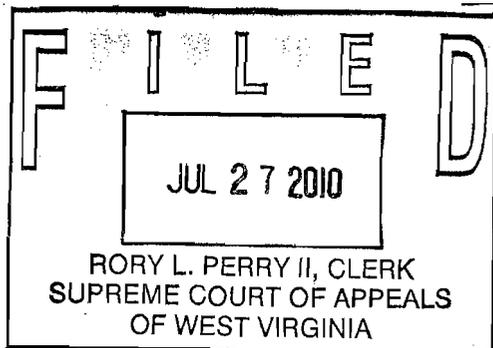
Case No. 09-F-58
Circuit Court of Mineral County

JERRY LEE HEDRICK,

Defendant below – Appellant.

FROM THE CIRCUIT COURT OF MINERAL COUNTY
WEST VIRGINIA

APPELLANT'S BRIEF



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
STATE OF WEST VIRGINIA,

Plaintiff below – Appellee,

APPEAL NO. 100313

v.

Underlying Case No. 09-F-58
Circuit Court of Mineral County

JERRY LEE HEDRICK,

Defendant below – Appellant.

FROM THE CIRCUIT COURT OF MINERAL COUNTY WEST VIRGINIA

**TO THE HONORABLE JUSTICES
OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**APPELLANT’S BRIEF IN SUPPORT OF
PETITION FOR APPEAL ON BEHALF OF
JERRY LEE HEDRICK**

**KIND OF PROCEEDING AND NATURE OF RULINGS BELOW
AND STATEMENT OF FACTS**

Petitioner was indicted by the July, 2008 term of the Grand Jury for Grant County, West Virginia, and charged with two counts of first degree sexual abuse, both felonies pursuant to *W. Va. Code* § 61-8B-7(a)(1). Pursuant to the indictment, Petitioner was charged with one felony count for subjecting Rachel S.

Evans to sexual contact by touching her buttocks without her consent and by forcible compulsion on or about the ____ day of July, 2007, and one felony count for subjecting Rachel S. Evans to sexual contact by touching her breast without her consent and by forcible compulsion on or about the ____ day of July, 2007. Said offenses were alleged by the State to have occurred sequentially on the same date, time, and place.

On the 26th day of January, 2009, this matter came on for trial by jury in the Circuit Court of Grant County. Based upon the responses to the juror questionnaires, however, counsel for Petitioner renewed a previously filed motion for change of venue, asserting that Defendant could not receive a fair trial in Grant County. Upon hearing the respective arguments of counsel, the Circuit Court of Grant County granted Petitioner's motion for change of venue and transferred the matter for trial by jury in the Circuit Court of Mineral County. Said trial commenced in the Circuit Court of Mineral County on May 27, 2009. The State presented its evidence through three witnesses, after which Petitioner elected not to testify or to call any witnesses. Subsequently, Petitioner was found guilty of both felony counts contained in the indictment at the conclusion of trial on May 28, 2009.

Following Petitioner's conviction at trial, counsel for Petitioner filed a motion for new trial and memorandum of law in support thereof asserting that counsel

for the State improperly commented on Petitioner's right to remain silent during the rebuttal portion of the State's closing argument in violation of Petitioner's right, guaranteed pursuant to the Fifth Amendment to the Constitution of the United States. Further, Petitioner asserted in said motion and memorandum that he was denied his constitutional right to due process based upon the State's failure to adequately notify Petitioner of the date of the alleged offense. By order entered on August 10, 2009, the Circuit Court of Mineral County denied Petitioner's motion for a new trial.

By order entered on October 26, 2009, the Circuit Court of Mineral County sentenced Petitioner to the custody of the Department of Corrections for not less than one nor more than five years and fined Petitioner \$10,000.00 upon each count, resulting in an effective sentence of not less than two nor more than ten years in the penitentiary and a \$20,000.00 fine. Additionally, Petitioner was placed upon supervised release pursuant to *W. Va. Code* §62-12-26 for a period of twenty-five (25) years after his release from the Department of Corrections, either by parole or by discharging his sentence.

Accordingly, Petitioner caused a Petition for Appeal to be filed with this Court to challenge (a) the jury verdict rendered against him in the Circuit Court of Mineral County, (b) certain rulings made by the trial court which Petitioner contended were erroneous, and (c) the constitutionality of *W. Va. Code* §62-12-26.

Subsequently, this Court granted the Petition for Appeal solely as to the constitutionality of *W. Va. Code* §62-12-26 and directed the parties regarding the briefing schedule for such issue.

ASSIGNMENTS OF ERROR

A. *W. Va. Code* §62-12-26 is unconstitutional insomuch as it violates Petitioner's constitutional right to due process pursuant to the Fifth Amendment and Fourteenth Amendment to the United States Constitution and Article 3, §§ 10 and 14 of the West Virginia Constitution along with his constitutional right to notice and a trial by jury pursuant to the Sixth Amendment to the United States Constitution and Article 3, § 14 of the West Virginia Constitution.

B. *W. Va. Code* §62-12-26 is unconstitutional insomuch as it violates Petitioner's constitutional right against cruel and inhuman punishment pursuant to the Eighth Amendment to the United States Constitution and Article 3, § 5 of the West Virginia Constitution, both of which proscribe disproportionate sentences.

POINTS AND AUTHORITIES RELIED UPON, A DISCUSSION OF THE LAW, AND RELIEF PRAYED FOR

STANDARD OF REVIEW

“This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings

of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*.”
State v. Keesecker, 222 W. Va. 139; 663 S.E.2d 593 (2008), citing Syl. Pt. 4 *Burgess*
v. Porterfield, 196 W. Va. 178; 469 S.E.2d 114. Further, this Court has ruled, “The
 constitutionality of a statute is a question of law which this Court reviews *de novo*.”
 Syl. Pt. 1, *State v. Rutherford*, 223 W. Va. 1; 672 S.E.2d 137 (2008).

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ARGUMENT AND DISCUSSION OF LAW

I.

W. Va. Code §62-12-26 is unconstitutional inasmuch as it violates Petitioner’s constitutional right to due process pursuant to the Fifth Amendment and Fourteenth Amendment to the United States Constitution and Article 3, §§ 10 and 14 of the West Virginia Constitution along with his constitutional right to notice and a trial by jury pursuant to the Sixth Amendment to the United States Constitution and Article 3, § 14 of the West Virginia Constitution.

“The constitutionality of a statute is a question of law which this Court reviews *de novo*.” Syl. Pt. 1, *State v. Rutherford*, 223 W. Va. 1; 672 S.E.2d 137 (2008). Further, this Court has found,

“In considering the constitutionality of a legislative enactment, courts must exercise due restraint, in recognition of the principle of the separation of powers in government among the judicial, legislative and executive branches. Every reasonable construction must be resorted to by the courts in order to sustain constitutionality, and any reasonable doubt must be resolved in favor of the constitutionality of the legislative enactment in question. Courts are not concerned with questions relating to legislative policy. The general powers of the legislature, within constitutional limits, are almost plenary. In considering the constitutionality of an act of the legislature, the negation of legislative power must appear beyond reasonable doubt.” *Id.* at Syl. Pt. 2, citing Syl. Pt. 4, *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740; 143 S.E.2d 351 (1965).

Even in light of the substantial deference given when determining the constitutionality of a legislative enactment, it is clear from reviewing the controlling authority and the facts of the case *sub judice* that *W. Va. Code* §62-12-26 is unconstitutional pursuant to both the United States Constitution and the West Virginia Constitution because it denies Petitioner his constitutional rights to due process, notice, and trial by jury. *W. Va. Code* § 62-12-26(a) provides in pertinent part,

“[A]ny defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter shall, as part of the sentence imposed at final

disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years: Provided, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, of a violation of section three or seven, article eight-b, chapter sixty-one of this code and sentenced pursuant to section nine-a of said article, shall be no less than ten years: . . . Provided further, That, pursuant to the provisions of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised release imposed pursuant to subsection (a) of this section.” *Id.*

Further, *W. Va. Code* § 62-12-26(c) provides, “The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.” *Id.*

With regard to the revocation of said supervised release, *W. Va. Code* § 62-12-26(d) authorizes the supervising court to:

“ . . . (2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the

provisions applicable to the initial setting of the terms and conditions of post-release supervision; (3) **Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release,** except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release; (4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.” (Emphasis added.)
Id.

Upon being convicted of two felony counts of first degree sexual abuse following a trial by jury before the Circuit Court of Mineral County, Petitioner was sentenced by the Court to the custody of the Department of Corrections for not less than one nor more than five years and fined \$10,000.00 upon each count, resulting in an effective sentence of not less than two nor more than ten years in the penitentiary and a \$20,000.00 fine. (11-26-09 Order) Additionally, Petitioner was placed “under supervised release pursuant to the provisions of §62-12-26 for a period of twenty-five (25) years after he has completed a period of parole supervision or has fully discharged the sentences imposed whichever is applicable.” (11-26-09 Order)

The application of *W. Va. Code* § 62-12-26 in the case *sub judice* requires that Petitioner be subject to the requirements of supervised release for a period of twenty-five (25) years after he completely discharges his sentence of incarceration in the state penitentiary of two (2) to ten (10) years pursuant to the statutory penalty provided in *W. Va. Code* § 61-8B-7(a)(1), whether the discharge results from completing the maximum amount of incarceration or successfully completing the requirements of parole. Further, if **the court**, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, **finds by clear and convincing evidence** that Petitioner violated a condition of supervised release, then he could be incarcerated for twenty-five (25) years for said violation, a term of imprisonment 2 ½ times longer than the maximum of the indeterminate sentence for which he is currently incarcerated. In addition, pursuant to *W. Va. Code* § 62-12-26(d)(2), Petitioner's period of supervised release could be extended in the discretion of the supervising court upon a violation up to fifty (50) years, five times longer than the maximum of the indeterminate sentence Petitioner is currently serving.

The United States Supreme Court, however, has determined that a criminal defendant is entitled to a trial by jury at which the allegations are proven beyond a reasonable doubt for any fact that increases the penalty for a crime beyond

the prescribed statutory maximum, which *W. Va. Code* § 62-12-26 clearly does.

Specifically, the Court found,

“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. With that exception, we endorse the statement of the rule set forth in the concurring opinions in that case: ‘It is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.’” *Apprendi v. New Jersey*, 530 U.S. 466, 490; 120 S. Ct. 2348, 2362-2363 (2000).

The Court distinguished between such facts and prior convictions, finding that the certainty of procedural safeguards were provided for the accused during the proceedings that led to the prior conviction. This Court adopted the Supreme Court’s ruling in *Apprendi*, similarly drawing a distinction between *W. Va. Code* §§ 60A-4-406¹ and 60A-4-408 wherein one statute required proof of a prior conviction and the other statute required proof of additional facts that led to an increased penalty. Specifically, this Court found that the statute properly required a trial by jury and

¹*W. Va. Code* § 60A-4-406 relates to distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of a school or college; and increasing the mandatory period of incarceration prior to parole eligibility. Said information is required to be alleged in the Indictment and the accused is permitted to have the same proven beyond a reasonable doubt at a trial by jury.

proof beyond a reasonable doubt for the elements enumerated in *W. Va. Code* § 60A-4-406 because it involved more than simply proving the fact of a prior conviction as addressed in *W. Va. Code* § 60A-4-408. *State v. Rutherford*, 223 W. Va. 1; 672 S.E.2d 137 (2008).

Seemingly, the Legislature determined that a violation of a similar supervision provision for sexual offenders should be proven beyond a reasonable doubt following an indictment and trial by jury, with all of the constitutional rights that every criminal defendant is afforded pursuant to the principles of our criminal justice system. As codified in *W. Va. Code* § 15-12-1 et seq., the “Sex Offender Registration Act” places a number of requirements upon individuals convicted of sexual offenses, stating, “the intent of this article [is] to assist law-enforcement agencies' efforts to protect the public from sex offenders . . .” *W. Va. Code* § 15-12-1a. Pursuant to *W. Va. Code* § 15-12-8, individuals alleged to have violated the provisions of the registration requirement can be charged with a felony offense for said violation. Consistent with any other criminal offense, the accused is afforded all constitutional safeguards of any other criminal defendant. Specifically, the accused is permitted a trial by jury at which the State is required to prove his non-compliance with the requirements of the statute beyond a reasonable doubt.

Further, the Legislature has recognized in *W. Va. Code* § 61-2-10a that a fact that increases the penalty for a crime beyond the statutory maximum is subject to being proven at a trial by jury with all of the procedural safeguards afforded a criminal defendant before such enhanced penalty may be applied. *W. Va. Code* § 61-2-10a provides that individuals convicted of committing violent crimes against the elderly are not eligible for probation regardless of whether the underlying offense for which they are convicted allows for probation. However, the Legislature did provide that such sentencing enhancement “shall not be applicable unless such fact is (i) found by the court upon a plea of guilty or nolo contendere, or (ii) found by the jury, if the matter is tried before a jury or (iii) found by the court, if the matter is tried by the court, without a jury.” *W. Va. Code* § 61-2-10a(b). Clearly, the only way that a criminal defendant would enter a plea of guilty, enter a plea of nolo contendere, or proceed on a trial solely with the Court is by their consent to do so. As such, the Legislature seemingly recognized that this increased penalty would necessitate a trial by jury, ensuring all constitutional rights that are afforded to a criminal defendant pursuant to the same. Clearly, Petitioner should be afforded the same rights to which he is constitutionally entitled, yet the application of *W. Va. Code* § 62-12-26 serves to deny him of said rights.

In this case, it is abundantly clear that Petitioner's supervised release is a "fact that increases the penalty for a crime beyond the prescribed statutory maximum" and, as such, Petitioner is entitled to a trial by a jury of his peers to make such a determination before he could be incarcerated for a violation of the supervised release requirement imposed by *W. Va. Code* § 62-12-26. As previously stated, Petitioner could potentially be incarcerated for twenty-five (25) years if the Circuit Court of Mineral County determines that he violated the terms of his supervised release, a term 2 ½ times longer than the maximum penalty of the two to ten year indeterminate sentence Petitioner is currently serving.

Further, to the extent that Petitioner is subject to being violated from said supervised release on a clear and convincing evidence standard that is determined by the Court rather than a jury of his peers, *W. Va. Code* § 62-12-26 violates Petitioner's constitutional right to due process pursuant to the Fifth Amendment and Fourteenth Amendment to the United States Constitution and Article 3, §§ 10 and 14 of the West Virginia Constitution in addition to violating his constitutional right to notice and a trial by jury pursuant to the Sixth Amendment to the United States Constitution and Article 3, § 14 of the West Virginia Constitution as previously addressed. Unfortunately, in the case *sub judice*, Petitioner has been denied his constitutional rights to due process, notice, and a trial by jury pursuant to the application of *W. Va.*

Code § 62-12-26. Clearly, he is constitutionally entitled to those rights in relation to the twenty-five (25) year term of supervised release, regardless of whether he has an underlying conviction for a sexual offense. Because *W. Va. Code* § 62-12-26 does not adequately provide for the same, it does not meet constitutional muster.

II.

***W. Va. Code* §62-12-26 is unconstitutional inasmuch as it violates Petitioner's constitutional right against cruel and inhuman punishment pursuant to the Eighth Amendment to the United States Constitution and Article 3, § 5 of the West Virginia Constitution, both of which proscribe disproportionate sentences.**

To the extent that Petitioner is subject to a twenty-five (25) year term of supervised release, which is 2 ½ times longer than the maximum term of incarceration pursuant to the indeterminate sentence Petitioner is currently serving, the same violates his constitutional right against cruel and inhuman punishment pursuant to the Eighth Amendment to the United States Constitution and Article 3, § 5 of the West Virginia Constitution, as said sentence is disproportionate. "Punishment may be constitutionally impermissible, although not cruel or unusual in its method, if it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity, thereby violating West Virginia

Constitution, Article III, Section 5 that prohibits a penalty that is not proportionate to the character and degree of an offense.” Syl Pt. 5, *State v. Cooper*, 172 W. Va. 266, 304 S.E.2d 851 (1983).

In making such a determination as to whether the punishment for the offenses upon which Petitioner was convicted “shocks the conscience and offends fundamental notions of human dignity,” it is extremely important to note that Petitioner was convicted of two counts of first degree sexual abuse for a brief touching of the victim’s breast and buttocks through her clothing. Upon being convicted of the same, said brief actions resulted in Petitioner being ordered to serve an effective thirty-five (35) year sentence when the statutory penalty of the indeterminate two to ten year sentence is added to the twenty-five (25) year term of supervised release.

Additionally, Petitioner’s supervised release could be extended pursuant to *W. Va. Code* § 62-12-26(d)(2) to a period of fifty (50) years and would result in an effective sentence of sixty (60) years when added to Petitioner’s term of incarceration. Certainly, such a sentence is patently disproportionate to the character and degree of the offense, a brief touching through the clothing of the victim. Although a penalty clearly should be imposed for such a violation, the question is whether Petitioner’s effective sentence of thirty-five (35) years is proportionate to the

nature of the crimes for which Petitioner stands convicted. In comparing Petitioner's sentence—what could ultimately wind up being something that Petitioner is subject to for the remainder of his natural life due to the length of the sentence—for a brief touching through the victim's clothing with the statutory punishment for other more serious offenses² clearly “shocks the conscience and offends fundamental notions of human dignity.”

This Court has further determined that two different tests should be utilized when determining whether a sentence is disproportionate, stating:

“The first is subjective and asks whether the sentence for the particular crime shocks the conscience of the court and society. If a sentence is so offensive that it cannot pass a societal and judicial sense of justice, the inquiry need not proceed further. When it cannot be said that a sentence

²See *W. Va. Code* § 61-2-4, which provides a punishment of incarceration for not less than three nor more than fifteen years for voluntary manslaughter; *W. Va. Code* § 61-2-5a, which provides a punishment of incarceration for not less than one nor more than five years for concealment of a deceased human body; *W. Va. Code* § 61-2-7, which provides a punishment of incarceration for not less than three nor more than eighteen years for attempting to kill or injure another person with poison; *W. Va. Code* § 61-2-9(a), which provides a punishment of incarceration for not less than two nor more than ten years for the malicious wounding of another person; *W. Va. Code* § 61-2-10, which provides a punishment of incarceration for not less than two nor more than ten years or, in the alternative being jailed for one year, for assaulting another person during the commission of a felony; *W. Va. Code* § 61-2-14, which provides a punishment of incarceration for not less than three nor more than ten years for abducting a person with the intent to defile or marry such person; *W. Va. Code* § 61-3-2, which provides a punishment of incarceration for determinate sentence of not less than one nor more than ten years for second degree arson; *W. Va. Code* § 61-7-12, which provides a punishment of incarceration for not less than one nor more than five years or, in the alternative being jailed for one year, for wantonly performing an act with a firearm which creates a substantial risk of death or serious bodily injury to another person.

shocks the conscience, a disproportionality challenge is guided by the objective test we spelled out in Syllabus Point 5 of *Wanstreet v. Bordenkircher*, 166 W. Va. 523, 276 S.E.2d 205 (1981): In determining whether a given sentence violates the proportionality principle found in Article III, Section 5 of the West Virginia Constitution, consideration is given to the nature of the offense, the legislative purpose behind the punishment, a comparison of the punishment with what would be inflicted in other jurisdictions, and a comparison with other offenses within the same jurisdiction.” *State v. Cooper*, 172 W. Va. at 272; 304 S.E.2d at 857 (1983).

From reviewing the facts of this case, it is evident that the potential for Petitioner to serve a twenty-five (25) year term of incarceration should the terms of his supervised release be violated would shock the conscience of the court and society insomuch as Petitioner’s criminal convictions resulted in a sentence of not less than two nor more than ten years in the custody of the Department of Corrections. Obviously, the penalty of the supervised release is disproportionate in relation to the offenses upon which Petitioner was convicted and, as such, is violative of his constitutional right against cruel and inhuman punishment pursuant to the Eighth Amendment to the United States Constitution and Article 3, § 5 of the West Virginia Constitution.

Even if this Court were to find that Petitioner’s sentence was not disproportionate pursuant to the subjective test as reiterated in *Cooper*, it is evident that said sentence is disproportionate pursuant to the objective test provided in

Wanstreet. First degree sexual abuse is a felony offense punishable by a term of incarceration in the state penitentiary for not less than one nor more than five years. Said sentence constitutes one of the lesser statutory penalties in the West Virginia State Code for a felony offense. In fact, other than a few felony offenses which carry a potential penalty of not less than one nor more than three years³ along with a couple of felony offenses (mostly property crimes) which permit the circuit court discretion to sentence a defendant to one year in the regional jail,⁴ an indeterminate one to five year sentence is the shortest term of incarceration statutorily permitted for a felony offense. As such, it is clear that the Legislature has determined that first degree sexual assault is on the lower end of the spectrum of felony offenses and to require Petitioner to serve a twenty-five (25) year term of supervised release upon completion of his sentence is disproportionate in and of itself, regardless of whether said supervised release actually results in violation and incarceration.

Further examining the elements of the objective test, the legislative purpose behind the punishment provided in *W. Va. Code* § 62-12-26 is to deter individuals previously convicted of a sexual offense from violating the terms of the supervised release and to minimize re-offending. However, Petitioner is subject to

³See *W. Va. Code* §§ 17B-4-3(b), 17C-5-2(1), and 61-2-10b(d).

⁴See *W. Va. Code* § 61-4-5.

the same terms and conditions of supervised release as that of an individual convicted of first degree sexual assault, a far more serious and violent offense than that for which Petitioner was convicted. Regardless of the legislative purpose behind the statute, the goals should be achieved through means that are not in direct contravention of our constitutional principles.

Our criminal justice system is founded upon the premise that, upon conviction, an individual must pay their debt to society. The sentencing court, in determining what judgment is appropriate, must look at all the goals of sentencing, including rehabilitation, protection of the public, deterrence, and punishment for the offense that was committed. Following that determination, the individual standing convicted of the criminal offense must pay his debt to society, be that through incarceration, probation, community service, or otherwise. An equally fundamental notion upon which our criminal justice system is founded is the premise that once an individual pays that debt to society and satisfies his sentence, he should proceed with a clean slate. In this case, however, Petitioner is required to face an additional twenty-five (25) year term of supervised release resulting in an effective thirty-five (35) year sentence and, potentially, a sixty (60) year sentence if the supervised release is extended. Clearly, such a sentence for the offenses upon which Petitioner currently stands convicted is disproportionate. Hence, *W. Va. Code* § 62-12-26 is

unconstitutional because it violates Petitioner's constitutional right against cruel and inhuman punishment pursuant to the Eighth Amendment to the United States Constitution and Article 3, § 5 of the West Virginia Constitution due to the disproportionate nature of Petitioner's sentence.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, the Petitioner, Jerry Lee Hedrick, respectfully requests that this Honorable Court grant his Petition for Appeal, find that *W. Va. Code* § 62-12-26 is unconstitutional, overturn the portion of Petitioner's sentencing order entered by the Circuit Court of Mineral County that requires Petitioner to be subject to supervised release following the discharge of his sentence for the underlying offense, and award any additional relief that this Honorable Court deems fair and just.

Respectfully submitted,

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Appellant,

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a true copy of the foregoing upon all other parties to this action by:

_____ Hand delivering a copy hereof to the parties listed below:

or by

 X Depositing a copy hereof in the United States Mail, first class postage prepaid, properly addressed to the parties listed below.

Dated at Elkins, West Virginia, this 26th day of July, 2010.



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