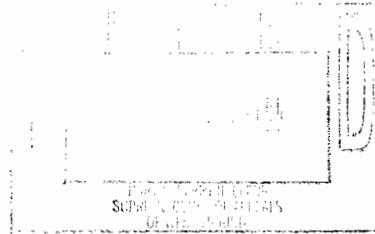


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Larry F. Parsons,  
Executive Director of the West  
Virginia Regional Jail and  
Correctional Facility Authority,  
Petitioner



v.

Docket No. 11-0693

The Honorable Michael Thornsby,  
Judge of the Circuit Court of Mingo County,  
Respondent

**RESPONSE TO JUDGE THORNSBURY'S REPLY**

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**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

State of West Virginia ex rel.,  
Larry Parsons,  
Petitioner

v.

Docket No. 11-0693

Judge Michael Thornsburg,  
Respondent

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**RESPONSE TO JUDGE THORNSBURY'S REPLY**

**COMES NOW;** Petitioner Larry F. Parsons, by counsel, Chad M. Cardinal, to submit this *Response to Judge Thornsburg's Reply*.

**A. IT IS AN ABUSE OF DISCRETION TO FINE AND DETAIN CORRECTIONAL OFFICERS FOR THE PERFORMANCE OF THEIR OFFICAL DUTIES.**

1. Judge Thornsburg abused his official discretion when he ordered the detention of three (3) Correctional Officers on April 21, 2011. These officers were acting in good faith, and were performing their duties as lawfully assigned by a supervisor. (Exhibits 1, 2, & 3)
2. Correctional Officer Bassman had never been on a court run before April 21, 2011. Indeed he had never been in that or any other court room ... ever. He was never before this Court, and had never spoken to this Judge. (Exhibit 1, 2, & 3). CO Bassman was ordered to fill in on transportation duty due to a staffing shortage. Officer Bassman was simply following the facially lawful orders of his supervisor. Holding these

officers in contempt for the performance of their official duties as Correctional Officers is a serious breach of judicial discretion.

3. Correctional Officer Elkins too, had never been before the Circuit Court of Mingo County. Correctional Officer Elkins has never been in front of Judge Thornsbery before, or spoken with the Respondent regarding any matter; let alone, the Judges dissatisfaction with the West Virginia Regional Jail's transport services. Indeed Correctional Officer Elkins had never been late to court (Exhibits 1, 2, & 3).
4. Neither Correctional Officer Elkins nor Correctional Officer Bassman was ever warned that they were expected to deliver inmates to Judge Thornsbery at any time other than the times listed in the docket statement. (Exhibits 1, 2, & 3) Officer Elkins was never informed of any inadequacies in his transport duties.
5. Correctional Officer Elkins and Sgt. Powers were aware that a certain number of inmates were due for court at 8:15am. All these inmates were delivered to Court on time. (Exhibits 1, 2, and 3). The inmates that were claimed to be late were held on capias orders that directed the inmates to appear before the court "forthwith." (Exhibit 4) It is the legitimate understanding of these officers that "forthwith" does not mean 8:15am, but rather as soon as is reasonably practical, or without undue delay. (Exhibits 1, 2, 3 & 4.) Simply put none of these Correctional Officers were in violation of any written order or directive of the Circuit Court of Mingo County. (Exhibits 1, 2 and 3).

6. Judge Thornsbery abused his discretion by fining and holding individual officers who were in good faith, complying with the lawful orders of their supervisors.
7. The Respondent's argument rests only on the premise that Regional Jail Correctional Officers fail to comply with the order of the Court. A review of documentation reveals that all the inmates required to arrive at the Court at 8:15am were indeed in Court by 8:15am. (Exhibits 1, 2, 3 &4) The inmates who arrived at 10:40am were the new commitments, who were transported pursuant to capias orders. (Exhibit 4) There was no order to be in contempt of.

**B. THERE IS NO DOUBT THAT THESE OFFICERS WERE DETAINED, DISARMED AND UNDER DIRECT SUPERVISION OF THE COURT.**

1. The undersigned concedes that the transcript does not contemplate jail time; however, the Correctional Officers were advised by Court Officers that they were not free to go, and were under constant observation by Court Officers. (Exhibits 1, 2, & 3) Their weapons were not returned to them. These officers were obviously detained for five (5) to six (6) hours. (Exhibits 1, 2, & 3)
2. All three of these jail officials were advised by officers of the Court that they were not free to leave. (Exhibits 1, 2, & 3) The officers were disarmed, and their weapons were not returned until it became clear to the Court that all of the available transportation vehicles, and staff for the southwestern region of West Virginia were detained in Mingo County.

Simply put, there was no one available to pick up the inmates now detained along with the Regional Jail Correctional Officers at the Mingo County Court House. It was only then that Correctional Officers Elkins, Bassman, and Sgt. Powers were released and directed to take the inmates back to the jail. (Exhibits 1, 2, 3)

3. The Court clearly abused its discretion by disrupting the orderly operations of a vital state and public safety function.

**C. IT IS AN ABUSE OF JUDICIAL DISCRETION TO DETAIN AND FINE A CORRECTIONAL OFFICER FOR THE GOOD FAITH PERFORMANCE OF A MINISTERIAL FUNCTION.**

1. The transcripts are replete with Judge Thornsby's dissatisfaction with the manner in which the Agency, not the individual Correctional Officers, performed its non-discretionary transport duty.

"If it takes me going to the Board, if it takes me going to the Governor, I'll do that. Trust me, I'll do that. I'll do that in the next five minutes and I'll tell them it's broke, our system is broke, and it ain't working. We got to fix it. If you'll tell me who is giving these orders and if they're limiting your vehicles, if they're limiting your employees I'll stand up and kick a trash can for you, and if that's the problem-it's a sad day that they create the problem and put you here in the lion's den, frankly, but whatever the cause may be I don't know where these other folks went." (Respondent's Exhibit B) (Emphasis added)

2. Writ of Mandamus is the correct remedy to compel a non-discretionary ministerial function of a Governmental Instrumentality. "Mandamus lies to require the discharge by public officers of a non-discretionary duty." State ex rel. Theodore Milton Judy v. Marvin R. Kiger, Judge of the Circuit Court of Monongalia County, etc. 153 W.Va. 764; 172 S.E. 2d 579; (1970)

3. The West Virginia Regional Jail and Correctional Facility Authority does not dispute that it has the non-discretionary duty to transport inmates to the Court and to local holding facilities for Court appearances. W.V. Code 31-20-5 (v). Indeed, there is no dispute that Court orders compelling the appearance of an inmate at a particular time must be complied with. At bar however; Judge Thornsbery elected to personally fine and detain correctional officers in an effort to punish these individuals with criminal contempt because he was unhappy with the manner of method of the performance of these ministerial functions. Mandamus is the proper remedy to compel performance with non-disgressionary duties. State ex rel. Judy v. Kiger, 153 W.Va. 764, 172 S.E. 2d 579 (170)
4. Judge Thornsbery abused his disgression by personally punishing officers with personal criminal contempt fines and sanctions. This was done for what is essentially his belief that a performance of their non-discretionary transport duties was inadequate. Indeed these officers were acting in good faith and in compliance with the orders of their supervisors. (Exhibits 1, 2, & 3)
5. If Judge Thornsbery was dissatisfied with the procedures used by the West Virginia Regional Jail Authority to perform its non-discretionary ministerial duties, the Court should have issued a writ of Mandamus against the Regional Jail Authority, rather than to hold these three (3) individuals personally accountable for a criminal offence. An offence which none of them ever dreamed they were committing. Criminally

procedural or substantive law; and 5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." (Respondent's Argument B. Page 12-13)

At hand; it is obvious that Judge Thornsby was not sanctioning these officers for willful disobedience to the court orders, or for their disruption of Court proceedings, but rather as an attempt to alter the method by which the State Agency operates. As such, the ruling is contrary to law, and the facts.

"The Court: Spread the messages, and I thought it was spread far, widely and clearly the last time. Obviously, the Regional Jail is like talking to that wall right there. They think they answer to nobody. Well, they do answer. They do answer. I answer, as all these lawyers do, as the other defendants do, so Fifty Dollars (\$50.00) each. Take your checks now. If you want to borrow it from somebody you can, and, let me tell you, the very next time it comes over here I'm not doing the Fifty Dollar (\$50.00) option. It will be ten (10) days and you will go back without your weapons and you will go back to the Regional Jail in a holding cell in custody, and make that clear to every transport officer over there, and when Mr. Powers gets here it's going to be painfully clear to him." (Respondent's Exhibit F, Page 4 paragraphs 16-23, Page 5 paragraphs 1-2) (Emphasis added)

Further, the Judge makes clear that the contempt charges are not properly against these officers for their wrong doing, but rather his assessment of the resources available to the Regional Jail Authority, as an agency.

"The Court: The sealed ones, I'll give you that; I'll give you that; and that's probably going to keep you from spending ten (10) days in jail. This can't happen. I'm not going to tolerate it happening. You know, you've got to have substitute people. One guy said he wasn't even a transport guy. He was off maintenance or something like that, and apparently, you have other people over there that are employed as well. The Regional Jail Authority has a surplus. You have money. If you were broke-if this County wasn't paying you I'd look the other way, but they pay you religiously every month and they pay you \$1.3 million

dollars a year to house these prisoners and to get them over here on time and I had a hundred (100) people waiting on you today, a hundred (100) people....I can't manage the Regional Jail. I can't manage the transport team. That's your job, and I don't know how you're going to do it. Its' your mandate to do it. I have you a court order last time to do it and you ignored it again. Now, I don't know what these other judges are going to do. They may be able to accept it, adopt it, and sit around and twiddle their thumbs, waiting for you to show up mid-morning with their prisoners. I will not do that. Do you understand me, sir?" (Respondent's Exhibit F pages 8-9)

There can be no doubt that Respondent is holding Correctional Officers accountable for what he believes is a state wide Agency problem. It is an abuse of discretion to personally fine these Correctional Officers for what Respondent apparently views as a state wide problem with a State Agency.

Respectfully Submitted,  
Larry F. Parsons, Executive Director  
By Counsel:



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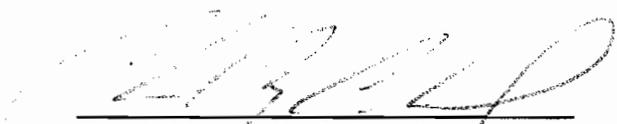
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CERTIFICATE OF SERVICE

I, Chad M. Cardinal, hereby certify that I have served a copy of the foregoing  
*Response to Judge Thornsby's Reply to the Respondent' Attorney* by depositing an  
exact copy in the United States mail, and postage pre-paid to the following address:

Ancil G. Ramey, Esquire  
W.Va. Bar No. 3013  
Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, WV 25326

Done this 12<sup>th</sup> day of May 2011.



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**EXHIBITS**

**ON**

**FILE IN THE**

**CLERK'S OFFICE**