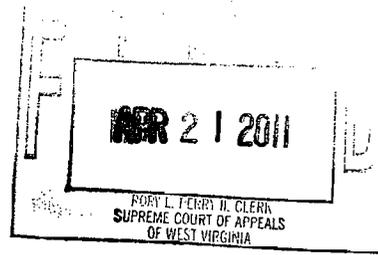


**IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

State of West Virginia ex el.,
Larry F. Parsons,
Petitioner



v.

Docket No.

Judge Michael Thornsby
Respondent

SUPPLEMENTAL PLEADING

COMES NOW, Larry F. Parsons, Executive Director of the West Virginia Regional Jail and Correctional Facility Authority, by Counsel, and provides this supplemental pleading.

As of 4:30 p.m., April 21, 2011, the undersigned was provided with the following relevant and pertinent information concerning the above-styled matter:

Officers Anthony Elkins and Zachary Bassham were disarmed and ordered handcuffed and detained by Judge Michael Thornsby in open court, and on the record charged with contempt. Approximately two hours later, Sgt. Richard Powers was similarly detained.

At approximately 3:00 p.m. on this date, the Court's Bailiffs came to the holding area where these officers were held and advised them that they were now free to leave.

The Judge's Clerk and Secretary further advised Sgt. Powers that they were free to leave, provided that they each pay a fifty dollar (\$50.00) fine no later than Monday, April 25, 2011.

Sgt. Richard Powers was served at that time with a contempt order. Officers Anthony Elkins and Zachary Bassham were not served with any such order.

**Respectfully submitted,
Larry F. Parsons, Executive Director
By counsel,**



**Chad M. Cardinal, Esquire 6016
West Virginia Regional Jail and
Correctional Facility Authority
1325 Virginia Street, East
Charleston, West Virginia 25301**

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CERTIFICATE OF SERVICE

I, Chad M. Cardinal, hereby certify that I have served a copy of the foregoing *Supplemental Pleading* to the Respondent by depositing an exact copy in the United States mail, and postage pre-paid to the following address:

Judge Michael Thornsby
Mingo County Courthouse
75 E. Second Avenue
Williamson, WV 25661

And by fax to:
304-235-0326

Done this 21st day of April 2011



**Chad M. Cardinal, Esquire 6016
West Virginia Regional Jail and
Correctional Facility Authority
1325 Virginia Street, East
Charleston, West Virginia 25301**

SUPREME COURT OF APPEALS OF WEST VIRGINIA

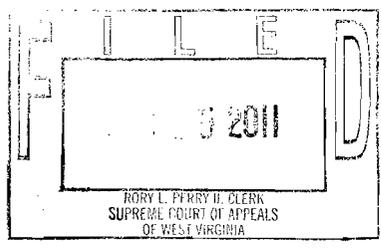
**STATE OF WEST VIRGINIA, ex rel.,
LARRY PARSONS,**

Petitioner,

v.

JUDGE MICHAEL THORNSBURY,

Respondent.



**CIRCUIT COURT'S SUPPLEMENTAL RESPONSE TO EMERGENCY WRIT
OF PROHIBITION WRIT OF HABEAS CORPUS AND MOTION FOR
EXPEDITED RELIEF**

Comes now the Honorable Michael Thornsby and files his Supplemental Response to the Petitioner's Writ Of Prohibition, Writ Of Habeas Corpus and Motion For Expedited Relief. The Supplemental Response is intended to supplement the Court's factual analysis transmitted and filed with the Supreme Court Of Appeals Of West Virginia on April 21, 2011, with legal analysis.

1. The Petitioner's requested relief for Writ Of Prohibition and Writ Of Habeas Corpus is both improper and lacking in legal basis, and contains numerous misstatements of fact and misrepresentations as evidenced by the record. Counsel for Petitioner was afforded the opportunity to participate in the Contempt proceeding on the record but chose not to do so. The failure to transport prisoners timely or at all has been a pervasive, ongoing problem in this circuit and other circuits as well.

Writ Of Habeas Corpus

2. West Virginia Code § 53-4-1 provides that “[t]he writ of habeas corpus ad subjiciendum shall be granted forthwith by the supreme court of appeals, or any circuit court, or any other court given power by any particular statute to grant the same, or any judge of either court in vacation, to any person who shall, by himself or by someone in his behalf, apply for the same by petition, showing by affidavit or other evidence probable cause to believe that he is detained without lawful authority.”
3. “A writ of habeas corpus ad subjiciendum will lie to effect the release of one imprisoned in the State Penitentiary without authority of law.” Syllabus Point 1, *State ex. rel. Vandal v. Adams.*, 145 W.Va. 566 (1960).
4. In the instant action, the Southwestern Regional Jail employees, (“SWRJA employees”), are not detained and were not detained at the time the Petition For Prohibition was filed. The three individuals were given an opportunity to show cause and fined fifty dollars, and were given extended time to pay their fines. The individuals were never committed to any facility. However, pursuant to West Virginia Code § 61-5-26, discussed *infra*, the SWRJA employees could have been detained for ten days. Regardless, the Petitioner’s request for Habeas Corpus relief is improper, as the SWRJA employees were never detained by the Court. In fact, the Court and its staff repeatedly informed the SWRJA employees that they were not detained and free to leave; however, the SWRJA employees delayed leaving the building for their own reasons. The record

of the proceedings are clear as to this point and there is videotape evidence confirming the same. The three individuals had left the courthouse and were transporting prisoners prior to this Court's receipt of the Petition. In fact, as soon as the fines were assessed the correctional offices immediately started attending to prisoners. Therefore, there was absolutely no impact on the transportation system other than the imposed fines.

5. The Court is astounded by the numerous, obvious misstatements and mischaracterizations of the facts contained in the Petition. There is evidence, including the record, Orders, and video footage, which displays the inaccuracies contained in the Petitioner. Furthermore, the Petition contains no affidavit evidence or verified pleadings of the facts contained therein.
6. Accordingly, the Petitioner's request for Habeas Corpus relief should be summarily denied.

Writ Of Prohibition

7. The Petitioner's request for Writ Of Prohibition is also totally without merit and misstates the law.
8. West Virginia Code § 53-1-1 provides that "[t]he writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers."

9. The Petitioner does not contest the Court's jurisdiction in their Writ. However, the Court clearly has the jurisdiction to enforce its own Orders, both by inherent powers and by the clear statutory authority of West Virginia Code § 61-5-26. Instead, the Petitioner contends that the Court exceeded its authority pursuant to West Virginia Code § 61-5-26.
10. West Virginia Code § 61-5-26 provides that:

The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court, in his official character; (d) **disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court.** No court shall, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a fine exceeding fifty dollars, or imprison more than ten days. But in any such case the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. No court shall impose a fine for contempt, unless the defendant be present in court, or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause.

(emphasis added.)

11. Pursuant to West Virginia Code § 61-5-26, the Court had grounds within its "legitimate powers" to hold the SWRJA employees in Contempt.
12. West Virginia Code § 61-5-26(c) is applicable because the SWRJA employees, in their official capacities as officers of the court, did not fulfill their duties and obligation to transport the prisoners in a timely

fashion so to allow the Court to effectuate the prompt administration of justice. See generally West Virginia Code § 30-20-5(v) (providing that it is the responsibility of the Regional Jail Authority to transport prisoners for court appearances).

13. Alternatively, even should West Virginia Code § 61-5-26(c) be found inapplicable, West Virginia Code § 61-5-26(d) is on-point. The SWRJA employees - particularly Sgt. Powers as he has been before the Court for similar actions, or more accurately, inaction - acted in direct disobedience and in resistance of the Court's Orders, requests, and admonishments. This was not the first time the Court has encountered difficulty in getting prisoners transported in a timely fashion. In fact, it has been a pattern of misconduct over a long period of time. Sgt. Powers was previously involved in a lengthy judicial proceeding involving the same issues and was admonished but not given Contempt sanctions. The Court offered every accommodation, including early arrival, so that every court could timely receive prisoners in order to manage their Docket. The employees violated the previous orders from the prior proceeding, the Court's Transport Orders, and the Court's verbal Orders without just cause. This Court had bailiffs available at 7:00 a.m. to receive the prisoners but the SWRJ officials chose not to transport one-half of the ordered Docket until 10:40 a.m., leaving attorneys, court personnel, spectators, and the Court awaiting their arrival, and causing undue burden and delay in the Court's Docket, not to mention the needless expense to the litigants and the State

of West Virginia. Furthermore, the Court gave each of the SWRJA employees the opportunity to show cause in person, on the record. Thus, the Court was well within its discretion and “legitimate powers” to hold the SWRJA employees in Contempt.

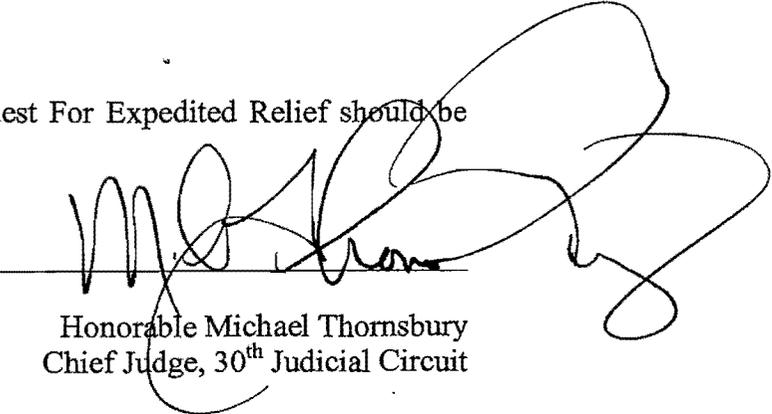
14. The remedy is one of direct appeal by the parties held in contempt since only a fine was imposed not extraordinary relief.

15. It is also important to note, that the Petition does not allege, much less prove, that the Petitioner has standing to assert the instant action, nor does the Court concede this point.

16. Thus, the request for Writ Of Prohibition should be summarily denied.

17. Moreover, the impact of the Court not having the option to hold in contempt individuals who delay court proceedings and fail to transport prisoners in a timely fashion would greatly undermine this Court and all circuit court judges’ ability to manage their respective Dockets in the fair administration of justice. Such decision would in essence put the Regional Jail Authority in control of the courts’ Dockets rather than the courts and their personnel.

Wherefore, any Writ Of Prohibition or Request For Expedited Relief should be summarily denied.



Honorable Michael Thornsby
Chief Judge, 30th Judicial Circuit