

IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

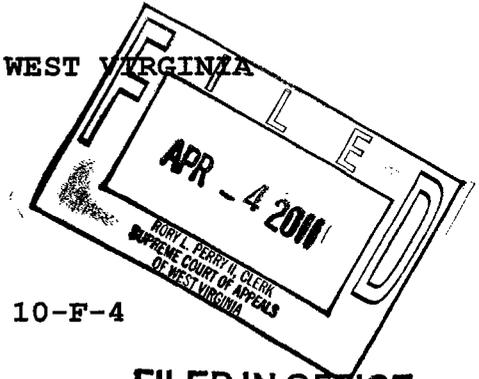
vs.

CASE NO. 10-F-4

PAUL EDWARD BOSTIC,

Defendant.

ORDER OF CERTIFICATION TO THE
WEST VIRGINIA SUPREME COURT OF APPEALS



FILED IN OFFICE

APR 01 2011

MILLIE FARNSWORTH
CIRCUIT COURT CLERK
PLEASANTS CO WV

Paul Edward Bostic ("Mr. Bostic") was charged January 16, 1997 in Wood County, West Virginia in case number 97-F-12 with the offense of sexual abuse in the first degree by allegedly unlawfully and feloniously subjecting RMB to sexual contact, at which time RMB was eleven years of age and the Defendant was over the age of fourteen. Pursuant to negotiations a plea agreement was reached by which Mr. Bostic pled guilty to sexual abuse in the second degree, a lesser included misdemeanor offense. The Defendant was required to execute in Court a formal Notice of Sexual Offender Requirements which expressly stated he was to register as a sex offender for ten (10) years. Subsequently, Mr. Bostic failed to report properly and was charged in Wood County, West Virginia with failure to comply with the registration requirements imposed upon him as a convicted sex offender. The violation in Wood County was

during the ten year registration period required by the plea agreement for Mr. Bostic's second degree sexual assault conviction. Mr. Bostic was subsequently convicted of this failure to register offense.

On March 13, 1999 the West Virginia Legislature subsequently revised the Sex Offender Registration Act, West Virginia Code §15-12-1, et seq. The previous statute required Mr. Bostic to register for ten (10) years after his release from incarceration; the subsequently enacted provision made registration mandatory for life if a person had been convicted of a qualifying offense. Sexual abuse in the second degree with a child as the victim, the offense to which Mr. Bostic had pled, was a qualifying offense.

It is now alleged that on May 29, 2009 Mr. Bostic terminated his telephone service without notifying the West Virginia State Police within ten (10) days. It is further alleged that on July 9, 2008 and August 14, 2008 Mr. Bostic committed the offense(s) of "providing false information on sex offender registration" by failing to report his employment to the West Virginia State Police.

The issue at bar arose because the July 9, 2008, August 14, 2008, and May 29, 2009 alleged offenses all occurred outside the ten year registration period, under which Mr. Bostic was originally sentenced.

The late Judge Robert L. Holland, Jr. originally

expressed a desire to have the issue certified to the West Virginia Supreme Court. The State did not oppose certification, and did not challenge the wording of the questions to be certified. After much consideration, this Court finds that certification is appropriate in this case. The contractual and constitutional ramifications have far reaching effects on this case and the parties thereto, as well as on matters that go beyond this case. This ruling will effect a large number of individuals required to register under the applicable revised statutes, not to mention the police, prosecutors, and judges who enforce and uphold the laws. Answering the questions posed will promote fair and efficient adjudication, as well as potentially effecting a segment of the registering population of West Virginia, such that further review by the West Virginia Supreme Court of Appeals by way of Certified Question is warranted.

Accordingly, pursuant to the provisions of West Virginia Code §58-5-2, it is ORDERED that following questions be certified to the West Virginia Supreme Court of Appeals:

Question 1: Does the 1999 amendment of the West Virginia Code §15-1-1 et seq., which retroactively increased the registration period for certain sex offenders from ten (10) years to life based upon the age of the

victim, violate the State Constitution, Art. 3 §4, and Federal Constitution, Art. I, §10, prohibiting impairment of existing contract obligations, the contract obligations herein having been created under a 1997 plea agreement between the State of West Virginia and the defendant, a significant part of which required registration as a sex offender for a period of only ten (10) years, and not life?

Answer by the Circuit Court: No.

Question 2: Does the 1999 amendment of West Virginia Code §15-12-1 et seq., authorizing the State Police/Department of Public Safety, under certain circumstances, to impose an increase in the length of sex offender registration for earlier convicted sex offenders, from ten (10) years to life, without notice and right to a judicial hearing, violate the Federal Constitution and the West Virginia Constitution, Art. 5, §1, relating to the separation of powers?

Answer by the Circuit Court: No.

It is further **ORDERED** that this action is stayed pending acceptance and resolution by the Supreme Court pursuant to Rule 17(a)(1) of the revised Rules of Appellate Procedure. The parties are directed to prepare a joint appendix of the record sufficient to permit review of the certified questions. The Parties are directed to comply with all additional requirements of Rule 17 of the revised

Rules of Appellate Procedure.

It is further **ORDERED** that the Circuit Clerk of this Court shall transmit the Order certifying the questions, and list of docket entries in the case to the Clerk of the West Virginia Supreme Court of Appeals.

ENTERED

April 1, 2011

Robert B. Stone

ROBERT B. STONE SENIOR STATUS JUDGE

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office

Attest: Millie Farnsworth
Pleasants County of West Virginia

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Millie Farnsworth
Clerk