

11-0361

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA

VS.

CRIMINAL ACTION NO 09-F-155

JUDGE WILKES

DONALD SURBER JR.

SENTENCING ORDER

This matter came on for hearing this 2nd day of August, 2010, upon the papers and pleading had herein, upon the appearance of the defendant, in person, pro se, and by stand by counsel Deborah Lawson and John Adams, Esquire, and upon the appearance of the State of West Virginia by Pamela Jean Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

Whereupon, this matter comes on for sentencing. The defendant having entered a guilty plea to murder in the first degree, kidnapping, attempted kidnapping, burglary, felony destruction of property, domestic battery and attempted escape on the 25th day of June, 2010. The Court then inquired if the State had made a decision as to the prosecution of the remaining two counts. The State advised that the local representative of the Regional Jail advised that due to the amount of time that the defendant was facing, and the fact that the defendant admitted the attempted escape, they would request not to proceed on the two remaining counts. The State would move to nolle prosequi counts eight and nine of the indictment

The defendant addressed his issues to the Court. The first issue is in regard to the cameras in the courtroom. The defendant was concerned about the names of the children being used in Court. The Court advised that there

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CIRCUIT CLERK

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M. SWE. CLERK
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was no audio on any camera. The Court allowed the cameras to remain.

The defendant then addressed a letter that he had sent to stand by counsel regarding the names of the children being published. The Court advised that the names as they appear in the pre-sentence investigation documents are not available to the public; however, to the extent that the any of the children's names are stated in court by those making victim impact statements, or if they take the stand, the Court cannot order the press not to print or use the names.

The defendant then addressed that fact that he did not receive his presentence investigation ten days before this hearing. The defendant advised that he did receive the document three days before this hearing. He further had an opportunity to discuss his concerns or inaccuracies with the probation officer, Mark Hofe. The Court believes that he has had adequate time to review the documents and prepare for this hearing.

The defendant further advised the Court that he wished to call his father to the stand. His father advised through standby counsel that he did not wish to speak. The defendant's ex-wife and children were in the courtroom. The defendant wanted to call the children to the stand, but after being explained the purpose of a victim's impact statement did not call them.

Whereupon the Court inquired if there were any inaccuracies in the pre-sentence report. Neither party reported any additional errors or inaccuracies. The Court heard the pro se statement of the defendant, the statements of Reba Weller caretaker of Tori Weller, Julie the fiancé of Jeremy Madison the victim's brother, Tori Weller daughter of the victim and victim herself, Jesse Rogers the victim's brother in law on behalf of the victim's sisters, mother and other family members, Tammy Cole friend of the victim, Paula Rolle co-worker and friend and the argument of counsel,

Thereafter, the Court asked if either party had had any just or legal

cause why sentence should not now be pronounced and no just or legal cause to the contrary being shown, the Court proceeded to sentencing.

Accordingly, it is ORDERED that counts 8 and 9 of the indictment shall be dismissed as moved by the State.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED a determinate sentence of natural life in the custody of the Commissioner of the Division of Corrections upon his conviction of murder in the first degree under Count 1, a felony, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED that there shall be no mercy attached to Count 1, murder in the first degree.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED a determinate sentence of natural life in the custody of the Commissioner of the Division of Corrections upon his conviction of kidnapping under Count 2, a felony, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED that there shall be no mercy attached to Count 2, kidnapping. The Court finds that there was concession and advantage yielded.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED an indeterminate sentence of three to fifteen years in the custody of the Commissioner of the Division of Corrections upon his conviction of attempted kidnapping under Count 3, a felony, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED an indeterminate sentence of one to fifteen years in the custody of the Commissioner of the Division of Corrections upon his

conviction of burglary under Count 4, a felony, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED an indeterminate sentence of one to ten years in the custody of the Commissioner of the Division of Corrections upon his conviction of destruction of property (felony amount) under Count 5, a felony, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED a determinate sentence of six months in the custody of the Regional Jail Authority upon his conviction of domestic assault under Count 6, a misdemeanor, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED and ADJUDGED that the Defendant Donald Surber Jr. is hereby SENTENCED a determinate sentence of five years in the custody of the Commissioner of the Division of Corrections upon his conviction of attempted escape under Count 7, a felony, and that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED that these sentences shall run consecutive to each other.

CONVICTION DATE: June 25, 2010

SENTENCING DATE: August 2, 2010

EFFECTIVE SENTENCING DATE: June 15, 2009 (consecutive sentences)

It is ORDERED that the defendant shall pay restitution through the Clerk of this Court the sum of \$4,366.90 to the family of Kathryn Sharp, in care of Jerry "Boo" Rogers, Administratrix of the Estate of Kathryn Sharp, 87 Academy Lane, Martinsburg, West Virginia ; and the sum of \$40,814.17 to the Farmers and Mechanics Insurance, P.O. Box 191, Martinsburg, West

Virginia 25402.

It is ORDERED that restitution shall be paid from any inmate accounts according to law or any assets of the defendant.

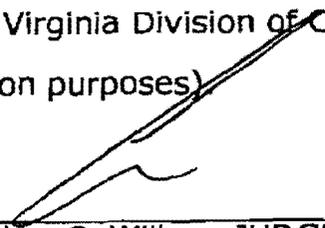
It is ORDERED that the defendant shall pay court costs.

The Court advised the defendant of his rights to appeal and re-appointed as stand-by counsel, Deborah Lawson and John Adams, to assist.

The Defendant is remanded to the custody of the Commissioner of the Division of Corrections to begin serving the sentence herein imposed, but until such time that a representative of the Division of Corrections can be sent to take custody of the Defendant, he is remanded to the temporary custody of the Superintendent of the Regional Jail Authority.

And it is further ORDERED and ADJUDGED that the per diem cost of housing this Defendant temporarily at the Regional Jail awaiting transfer to the Division of Corrections shall from the date of this Order be paid solely by the Division of Corrections.

THE CLERK shall enter the order as of this date and shall transmit attested copies to all counsel of record including stand-by counsel, to the defendant, to the Central Regional Jail, probation office, West Virginia Probation and Parole and to the West Virginia Division of Corrections, to the West Virginia State Police (for validation purposes)



Christopher C. Wilkes, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

PREPARED BY:
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