

11-0519

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
Division No. 2  
STATE OF WEST VIRGINIA

Vs.

FELONY NO. 07-F-183 & 07-F-184

BRIAN JOHN STONE,  
Defendant.

**RE-SENTENCING ORDER**  
**Re-Sentencing Defendant to Allow Opportunity for Appeal of Convictions**  
**(11-16-10)**

The above-referenced Petitioner, Brian Stone, has filed a Petition for Writ of Habeas Corpus to challenge his convictions in Monongalia County Circuit Court case numbers 07-F-183 and 07-F-184. After reviewing the procedural history of the criminal cases, the Petitioner's appointed attorney has filed a motion for re-sentencing of the Petitioner. In the motion for re-sentencing counsel points out that a direct appeal of the Petitioner's convictions was never filed with the West Virginia Supreme Court of Appeals.

This Court is aware that the Petitioner had disagreements with his trial attorney, and thereafter, the attorney who was appointed to represent the Petitioner after his trial. These disagreements and withdrawals from representation by the attorneys may account for a petition for a direct appeal not having been filed.

The Court is in agreement that the Petitioner's legal remedies should include an opportunity to appeal his convictions at trial. Accordingly, the Court is further of the opinion that the procedural remedy is re-sentencing the Petitioner so that the opportunity for an appeal and the timeframes for appeal are reinitiated.

Therefore, the Court hereby re-sentences the defendant as follows:

1. For the offense of Driving Under the Influence of Alcohol, the felony charged in count one of the indictment, the defendant shall serve a term of one (1) to three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
2. For the offense of Driving While License Suspended or Revoked for Driving Under the Influence of Alcohol, Third-Offense, the felony charged in count two of the indictment, the defendant shall serve a term of one (1) to three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
3. For the offense of Driving Under the Influence of Alcohol Recklessly Causing Death, the felony charged in count three of the indictment, the defendant shall serve a term of two (2) to ten (10) years in the West Virginia State Penitentiary and pay a fine of \$3,000.00.
4. For the offense of Driving Under the Influence of Alcohol Recklessly Causing Death, the felony charged in count four of the indictment, the defendant shall serve a term of two (2) to ten (10) years in the West Virginia State Penitentiary and pay a fine of \$3,000.00.
5. For the offense of Driving Under the Influence of Alcohol Recklessly Causing Death, the felony charged in count five of the indictment, the defendant shall serve a term of two (2) to ten (10) years in the West Virginia State Penitentiary and pay a fine of \$3,000.00.
6. For the offense of Driving Under the Influence of Alcohol Recklessly Causing Death, the felony charged in count six of the indictment, the defendant shall serve a term of two (2) to ten (10) years in the West Virginia State Penitentiary and pay a fine of \$3,000.00.
7. For the offense of Driving Under the Influence of Alcohol Recklessly Causing Death, the felony charged in count seven of the indictment, the defendant shall serve a term of two (2) to ten (10) years in the West Virginia State Penitentiary and pay a fine of \$3,000.00.
8. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count eight of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
9. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count nine of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
10. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count ten of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
11. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count eleven of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.

12. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count twelve of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
13. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count thirteen of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
14. For the offense of Driving Under the Influence of Alcohol Causing Injury, the misdemeanor charged in count fourteen of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
15. For the offense of Leaving the Scene of an Accident Resulting in Death, the felony charged in count fifteen of the indictment, the defendant shall serve a term of three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
16. For the offense of Leaving the Scene of an Accident Resulting in Death, the felony charged in count sixteen of the indictment, the defendant shall serve a term of three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
17. For the offense of Leaving the Scene of an Accident Resulting in Death, the felony charged in count seventeen of the indictment, the defendant shall serve a term of three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
18. For the offense of Leaving the Scene of an Accident Resulting in Death, the felony charged in count eighteen of the indictment, the defendant shall serve a term of three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
19. For the offense of Leaving the Scene of an Accident Resulting in Death, the felony charged in count nineteen of the indictment, the defendant shall serve a term of three (3) years in the West Virginia State Penitentiary and pay a fine of \$5,000.00.
20. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
21. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty-one of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.
22. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty-two of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.

23. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty-three of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.

24. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty-four of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.

25. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty-five of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.

26. For the offense of Leaving the Scene of an Accident Resulting in Injury, the misdemeanor charged in count twenty-six of the indictment, the defendant shall serve a term of one (1) year in the North Central Regional Jail and pay a fine of \$1,000.00.

**The Court then ORDERED that the sentences ordered above shall each run CONSECUTIVELY to each other and ORDERED that the sentences to the North Central Regional Jail shall be served and discharged prior to the defendant being transferred to the West Virginia Division of Corrections for incarceration on the felony sentences, each of which shall also run CONSECUTIVELY.**

**The Court also ORDERED that the sentences in this case, no. 07-F-183, shall be served CONSECUTIVELY to the sentence currently being served by the defendant in the State Corrections system on Monongalia County case no. 05-F-88.**

**CONVICTION DATE: March 21, 2008**

**SENTENCE DATE: June 9, 2008**

**EFFECTIVE SENTENCE DATE: Date of discharge of sentence in Monongalia County Case No. 05-F-88  
(With credit from July 8, 2007 to November 6, 2007\*\*)**

**RE-SENTENCING DATE: November 16, 2010**

**\*\*July 8, 2007 – date of arrest on 07-F-183 charges**

**\*\*November 6, 2007 – date of parole revocation on 05-F-88 charge(s)**

The Court then ORDERED that the defendant shall pay all Court costs and attorney's fees associated with this case.

Restitution has been requested as set forth in the victim impact statement. The Court advised the parties that they may enter an agreed order regarding restitution or schedule a subsequent hearing for the Court's determination of restitution if necessary.

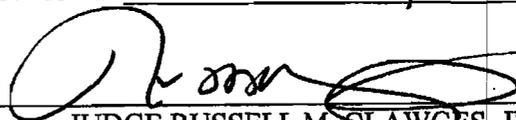
The Court then advised the defendant of his right to appeal and to do so with the assistance of an attorney.

Thereafter, the Court remanded the defendant to the custody of the Division of Corrections for completion of his sentence in case no. 05-F-88, and for compliance with the provisions of this Order following the defendant's discharge of that sentence.

It is ORDERED that a copy of this **Re-Sentencing Order** shall be provided to Brian Stone's present attorney, Stephanie Shepherd; to Robert Arnold, Division of Corrections, Parole Services, 215 West Main Street, Clarksburg, WV 26301; to the West Virginia Division of Corrections, attn: Diann Skiles, 112 California Ave., Bldg. 4, Room 300, Charleston, WV 25305; and to the Prosecuting Attorney's Office.

ENTERED: \_\_\_\_\_

*November 16, 2010*



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JUDGE RUSSELL M. CLAWGES, JR.