

11-0261

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA,**

Plaintiff,

Vs.

**FELONY CASE NO. 2010-F-51
Judge David W. Hummel, Jr.**

MICHAEL JOHN MCGILL,

Defendant.

SENTENCING ORDER

2010 DEC 29 PM 2:36

The 29TH day of December, 2010, came the State of West Virginia by duly elected Prosecuting Attorney for Marshall County, Jeffrey D. Cramer, Esquire, and as well came David Zehnder, Chief Public Defender, Attorney for the Defendant, and the Defendant, Michael John McGill, appeared in person.

This defendant was transported to this Honorable Court by the authorities of the Northern Regional Jail and Correctional Facility.

WHEREUPON, this matter came on for *the Sentencing phase* of this proceeding.

WHEREUPON, the Court noted the appearance of Detective Ross Lockhart, of the Marshall County Sheriff's Department, and further reviewed the status of this proceeding, wherein the Defendant had previously entered a "Guilty" plea to the Felony offense of "**Escape from Custody**" as contained in Count I of the Indictment, to which Mr. Zehnder, responding in the affirmative.

WHEREUPON, the Court noted that the defendant previously waived the preparation of a Pre-Sentence Investigation Report, on December 20, 2010.

In addition, the Court noted that the defendant plead guilty to "Escape From Custody" forty-one (41) days subsequent to the Indictment, in this proceeding, known as Felony Case Number 10-F-51. Further, the Court noted that the defendant herein, Michael John McGill is before this Honorable Court fifty (50) days subsequent to Indictment, for the Sentencing phase of this proceeding.

Upon inquiry by the Court, Mrs. Becky McGill, as well as the defendant previously provided written statements to Counsel, Mr. Zehnder, wherein the Court granted Counsel ample opportunity to read the statements aloud, while in Open Court. In conclusion, the statements of Mrs. Becky McGill, as well as the defendant herein requested the Court's consideration for leniency.

Upon further inquiry, Mr. Zehnder orally argued before the Court, during the summation of the oral argument, Mr. Zehnder moved for the Court to consider leniency for the defendant, and in conclusion moved for the Court to impose the minimum sentence for the defendant herein.

Further, upon inquiry by the Court, Mr. Cramer requested permission to approach for the filing of a detailed report which depicted the Members of the West Virginia and Federal Fugitive Task Force, with the Total Hours of Operation in an effort to capture the defendant, while he was a Fugitive

from Justice. In conclusion, the total amount of restitution for the "Man Hours" as well as the "Vehicle Costs" in totality is \$8,261.56.

At which time, the Court filed the Report, noting on the record that Mr. Zehnder, Counsel for the Defendant does not agree with the report submitted to this Court, by the State.

Therefore, the Court filed the Report, said two (2) page document was filed and made a part of the record herein, noting the objection from Mr. Zehnder.

Upon further inquiry by the Court, Mr. Cramer reminded the Court that the defendant plead "Guilty" to the Felony offense of "Escape From Custody" on December 20, 2010, without coercion or duress and with full knowledge of the consequences herein. Further, Mr. Cramer placed on the record the criminal history of Michael McGill, wherein he has previously twenty-five (25) Misdemeanor convictions, which would have been disclosed to the Court, if the defendant did not waive the preparation of the Pre-Sentence Investigation Report. Therefore, in conclusion, Mr. Cramer moved for the Court to impose the maximum sentence herein for the Felony Offense of "Escape from Custody", together with restitution.

Upon additional inquiry by the Court, Detective Ross Lockhart of the Marshall County Sheriff's Department, made a brief statement to the Court.

Therefore, the Court re-addressed the defendant, wherein the defendant declined to provide an oral statement to the Court. However,

Mr. Zehnder provided a brief statement to the Court, on behalf of Mr. McGill.

THEREFORE, the Court after due consideration and after hearing the oral arguments of Counsel, as well as considering the written statement read aloud by Counsel, from the defendant, as well as Mrs. Becky McGill, and upon reviewing and examination of the underlying case, known as Marshall County Felony Case Number 09-F-71, currently pending before The Honorable Mark A. Karl, Division I, Judge of the Circuit Court of Marshall County, WV, it is the **JUDGEMENT AND ORDER** that the defendant is sentenced to the West Virginia Penitentiary for Men for a period of **three (3) years, with credit for time served**, for the Felony offense of "Escape from Custody" as contained in Count I of the Indictment, in Marshall County Felony Case Number 10-F-51.

In addition, it is the **JUDGMENT AND ORDER** of this Court that a **DECRETAL JUDGMENT** is entered against the defendant herein, Michael John McGill, in the amount of **\$8,261.56**, which said amount represents the restitution owed in this proceeding.

Further, it is the **ORDER** of the Court that the Defendant pay the cost of Court-appointed Counsel fees.

In addition, the Court **ORDERED** that the defendant **SHALL NOT BE ASSESSED** the Costs of Prosecution, with the exception of the Law Enforcement Detention Costs, namely \$8,261.56.

Further, the Court advised the defendant as to his right to appeal the sentence in this proceeding, as well as his right to Counsel, including that of Court Appointed Counsel, if he can not afford to retain private Counsel.

The Clerk of this Court is **DIRECTED** to complete the appropriate commitment form as follows and forward the same to the Commissioner of Corrections:

CONVICTION DATE: 12-20-2010
SENTENCE DATE: 12-29-2010
CREDIT FOR TIME SERVED: Sixty (60) Days
EFFECTIVE SENTENCE DATE: 10-31-2010

THEREFORE, the defendant was **REMANDED** to the authorities of the Northern Regional Jail and Correctional Facility to be **TRANSFERRED FORTHWITH** to the Commissioner of Corrections, to serve the remainder of the Court imposed sentence.

It is further **ORDERED** that the Clerk of this Court transmit an attested copy of this Order to Defendant, Michael John McGill, by and through his Attorney, David Zehnder of The Public Defender Corporation, the Northern Regional Jail and Correctional Facility, the Commissioner of Corrections and Jeffrey D. Cramer, Prosecuting Attorney.

ENTER:

Dated this 29 day of December, 2010.

Entered 12-29, 2010, and
Recorded in LAW ORDER
BOOK No. 89, at Page 616

David R. Ealy



DAVID W. HUMMEL, JR., JUDGE

CERTIFICATE OF SERVICE

I, Matthew D. Brummond, hereby certify that on this 9th day of February, 2011, I sent the foregoing "Notice of Intent to Appeal" to Jeffrey D. Cramer, Marshall County Prosecutor by US mail to: 600 7th Street, Moundsville, WV 26041.



Matthew D. Brummond
Counsel for Defendant