



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-0261

STATE OF WEST VIRGINIA,

Respondent,

v.

MICHAEL MCGILL,

Petitioner.

**BRIEF OF THE RESPONDENT,
STATE OF WEST VIRGINIA**

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**BRIEF OF THE RESPONDENT,
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Comes now the State of West Virginia, by counsel, Barbara H. Allen, Managing Deputy Attorney General, and files this brief in response to the within appeal from the Petitioner's conviction of Escape from Custody, W. Va. Code § 61-5-10.

I.

ASSIGNMENTS OF ERROR

1. The facts of the instant case, wherein the Petitioner was on home confinement as a condition of bail, cut off his monitoring defense, left his required place of residence, and disappeared for nine days, armed and making statements that "if he ran into law enforcement, he wouldn't go back to prison," were sufficient to constitute the crime of Escape from Custody, W. Va. Code § 61-5-10.

2. The State confesses error with respect to the second assignment of error raised by the Petitioner: whether the court below erred in imposing restitution under the Victim Protection Act

of 1984, W. Va. Code § 61-11A-1 *et seq.*, for law enforcement costs incurred in apprehending the Petitioner.

II.

STATEMENT OF THE CASE

On November 9, 2010, a Marshall County Grand Jury indicted the Petitioner on a charge of Escape from Custody, W. Va. Code § 61-5-10, and a charge of Grand Larceny, W. Va. Code § 61-3-13(a). (App. 2-3.) The factual underpinning for the charges was that the Petitioner, while on home confinement imposed as a condition of bail pending trial on charges of Domestic Battery Third Offense and Malicious Assault, cut off his monitoring bracelet and left the residence where he was required to be. He was “on the lam” for nine days, and for at least part of that time was in the West Milton area of Pittsburgh, Pennsylvania. (App. 83.)¹

Significantly, prior to his escape the Petitioner had moved the court for a modification of the home confinement order to allow him to change his residence, but his motion was denied. (App. 82.) Therefore, there can be no claim by the Petitioner that he didn’t know he wasn’t allowed to move; as the court below noted at sentencing, “the defiance of the Court, it ranks extremely high there.” (*Id.*)

On December 10, 2010, the court below held a pretrial conference and heard extensive argument on the Petitioner’s motion to dismiss. The motion asserted that the Petitioner was not “in custody” while on home confinement and therefore could not be prosecuted on a charge of Escape from Custody. (App. 24, 45-64.) Following the court’s review of the material facts proffered by

¹As a result of extensive pretrial publicity surrounding these matters, the court granted a change of venue in both the underlying case and the instant case. (App. 19-21.)

counsel, as well as the authorities and precedents cited in their briefs and arguments, the court ruled that:

Let's not kid each other. Mr. McGill - Defense counsel has argued that Mr. McGill had no way of knowing that he was in the custody, but I'm going to - I think there's at least 15 or 16 hearings in [the underlying] case, and every time he came in and every time he was released on his former bond, but Mr. McCoid, in his own order, writes that he served on such detention without incident. I think the detention was clear in his mind as it was his client's mind, and certainly that's for a jury to determine. Well, actually for the Court to determine.

In any instance, I do find that he was in the custody, legal custody of the Marshall County Sheriff's Department, specifically Representatives Wallace and Cook.

And with that, Motion to Dismiss denied. Objections and exceptions preserved.

(App. 63-64.)

On December 20, 2010, the date scheduled for trial, the Petitioner pled guilty to Escape from Custody. As part and parcel of the plea bargain, the charge of Grand Larceny was dismissed, and the State agreed not to file a Recidivist Information. (App. 70, 74.)

During the plea colloquy, the Petitioner made the following statements:

Q: You decided to take leave of your residence and leave it, correct?

A: Yes, I did.

Q: In so doing, you cutoff (sic) the home incarceration bracelet, correct?

A: Yes, I did.

Q: You knew you were not permitted to do so, correct?

A: No, I knew. Yes, I cut it off.

(App. 73.)

Significantly, the plea was *not* a conditional guilty plea under Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

On December 29, 2010, the Petitioner was sentenced to serve three years in the penitentiary² and ordered to pay \$8,261.56 in restitution for the State's costs in apprehending him. (App. 4, 9, 77.) In this regard, the court found that section 4(a) of the Victim Protection Act of 1984, W. Va. Code § 61-11A-1 *et seq*, was sufficiently broad to include law enforcement authorities within the meaning of the word "victim," thus giving those authorities the right to an award of restitution.³

This appeal followed.

It should be noted that the Petitioner's Statement of the Case is primarily a pastiche of claims made by the Petitioner and/or his wife in statements read by Petitioner's counsel at sentencing, as well as arguments made by counsel prior to entry of the Petitioner's guilty plea and at sentencing. Conspicuously missing from the factual and procedural recitation in his brief is the fact that the Petitioner had twenty-five misdemeanor convictions on his record – domestic assaults, domestic batteries, fleeing from police, concealed weapons, brandishing obstructing officers, possession of a firearm – as well as a federal felony conviction for possession of a firearm by a prohibited person. (App. 80.) Also conspicuously missing is the following information given to the court at sentencing by Detective Lockhardt, which totally contradicts the "defense spin" about why so much time, effort and expense was put into the police effort to apprehend the Petitioner:

²The State had advocated a maximum five year sentence.

³Subsequently, on March 11, 2011, following a jury trial, the Petitioner was acquitted of the underlying charge of Domestic Battery, Third Offense, and convicted of Misdemeanor Battery, a lesser included offense of the charge of Malicious Assault. (App. 85, 90-91.)

DETECTIVE LOCKHARDT: Just a few of the specifics in the case. When Mr. McGill originally fled the area, the United States Marshall's office, myself and members of the Fugitive Task Force began an investigation to try to track him down.

Throughout that investigation, we obtained search warrants for a cell phone that Mr. McGill and his wife used. We were able to track that cell phone to the West Milton area of Pennsylvania, Pittsburgh area. We also tracked the phone to Washington, Pennsylvania, where I actually determined that they had stayed in a hotel.

So I don't believe it was just Mr. McGill leaving to go find work or leaving to go to his camp where he had requested the Court allow him to live. He was actually attempting to flee the area, I just don't believe he had the means to get any further from the area.

During the investigation where his wife actually became a witness for the United States Marshall's office, it was also determined that he had requested that she bring him a firearm, which was a rifle. And he told her that was going to be for hunting purposes. But he also made the statement that if he ran into law enforcement that he wasn't going back to prison. Which obviously to a law enforcement officer, leads us to believe that he's willing to kill one of us to try to escape.

Therefore, that's why we had 37 officers that were available that day. When the plan was put into place, along with the assistance of Mrs. McGill, to try to capture him, we had to surround the area to ensure that he didn't flee the area once again.

THE COURT: I wondered why there was so many officers involved. For the record, I just wanted to put a little more meat on the bones. It's an escape in determining what happens to this gentleman, as well as to determine what's fair, I need to know why there was so many officers involved. He was brought back safely.

DETECTIVE LOCKHARDT: Yes, sir.

(App. 83.)

III.

SUMMARY OF ARGUMENT

Whether an individual on home confinement as a condition of bail is in "the custody of a county sheriff" as those words are used in West Virginia Code § 61-5-10 is an issue of statutory

construction, not an issue of jurisdiction. Therefore, the Petitioner waived or forfeited his right to appeal by failing to seek a writ of prohibition, failing to enter a conditional guilty plea, and/or failing to go to trial, all procedures which would have permitted him to preserve the issue for review.

In the alternative, “custody” in the context of home confinement is an elastic term which encompasses the legal custody and authority of a sheriff in this situation. Under this Court’s precedents, home confinement is not incarceration and is not penal in nature. This does not, however, foreclose the State from charging an individual with “escape from custody” where he seeks *and is denied* the right to change his home confinement residence, and thereafter cuts off his monitoring bracelet, leaves the residence and heads for parts unknown, acquires a firearm and makes statements to the effect that he won’t go back to prison quietly, and is missing for nine days before being apprehended.

The State concedes that the court below erred in imposing restitution pursuant to the Victim Protection Act of 1984, W. Va. Code §§ 61-11A-1 *et seq.*, for the costs incurred by law enforcement officers in apprehending the Petitioner. This Court’s precedents indicate that courts “have not been inclined to expand the scope of statutorily-defined restitution . . .,” that a victim under the Act means a *direct* victim of the charged criminal activity, and that only costs specifically enumerated in the statute are recoverable. In this case, law enforcement officers were not direct victims, and the costs of apprehension are not enumerated in the statute.

V.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State believes that this case is appropriate for oral argument and for consideration under Rule 20 of the Revised Rules of Appellate Procedure. Both of the issues in this case are issues of first impression.

V.

ARGUMENT

- A. **THE FACTS OF THE INSTANT CASE, WHEREIN THE PETITIONER WAS ON HOME CONFINEMENT AS A CONDITION OF BAIL, CUT OFF HIS MONITORING DEFENSE, LEFT HIS REQUIRED PLACE OF RESIDENCE, AND DISAPPEARED FOR NINE DAYS, ARMED AND MAKING STATEMENTS THAT “IF HE RAN INTO LAW ENFORCEMENT, HE WOULDN’T GO BACK TO PRISON,” WERE SUFFICIENT TO CONSTITUTE THE CRIME OF ESCAPE FROM CUSTODY, W. VA. CODE § 61-5-10.**

Standard of review: “Where the issue on appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review.” *Crystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995), Syl. Pt. 1; *State v. Hicks*, No. 35670 (W. Va., Apr. 14, 2011), Syl. Pt. 1.

1. **Waiver/Forfeiture**

The Petitioner attempts to frame this first issue as one involving the jurisdiction of the court below, in order to escape the consequences of his decision to plead guilty to the offense. But this is not an issue of jurisdiction; rather, it’s an issue of statutory construction. Specifically, this Court is asked to decide whether an individual on home confinement as a condition of bail is in “the custody of a county sheriff” as those words are used in West Virginia Code § 61-5-10.

Under the facts and circumstances of this case, the Petitioner was waived or forfeited his right to raise this argument on appeal. First, if this were truly an issue involving the lower court's jurisdiction, the Petitioner could have filed a petition for writ of prohibition after the court denied his motion to dismiss. Second, the Petitioner could have entered a conditional guilty plea under Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure, thus preserving the issue for appellate review. Instead, what the Petitioner did was to sandbag the court below by going through what was in essence a sham plea hearing, giving all the "right" answers during the plea colloquy and entering a plea with full knowledge that he intended to appeal its validity. Third, the Petitioner could have gone to trial, where he would have the opportunity to put the State to its proof and then, in the event of an adverse verdict, file an appeal on a fully developed record.⁴

In short, the court below had jurisdiction to rule on the Petitioner's motion to dismiss, and thereafter the Petitioner had three procedural vehicles available to him to preserve the issue for appellate review. The Petitioner failed to avail himself of any of these procedural vehicles, entered a fully counseled plea of guilty to the charge, and therefore waived or forfeited his right to appeal from the court's earlier ruling.

2. The Merits

Assuming *arguendo* that the Court finds the issue to be properly before it, the State contends that where, as here, the Petitioner was on home confinement imposed as a condition of bail in a felony case, he was in "the custody of a county sheriff" and could therefore be prosecuted on a

⁴As it is, the Petitioner tells this Court, in a masterpiece of understatement, that "the evidentiary record is scant . . .," after which he makes a number of unsupported claims of selective prosecution, unfair tactics on the part of the sheriff's department, why he was in Pennsylvania and for how long, and the like.

charge of Escape from Custody, W. Va. Code § 61-5-10, when he cut off his monitoring bracelet, left his residence, and disappeared for nine days.

As noted previously, this is an issue of statutory construction; it is also an issue of first impression.

The statute provides that:

Whoever escapes or attempts to escape by any means from the custody of a county sheriff, the director of the regional jail authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the Division of Corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not more than five years; and if the custody or confinement is by virtue of a charge or conviction for a misdemeanor, is guilty of a misdemeanor and, upon conviction thereof, he or she shall be confined in a county or regional jail for not more than one year.

W. Va. Code § 61-5-10.

The Petitioner's argument boils down to this: if home confinement isn't custody for purposes of credit for time served, then it isn't custody for any purposes. As the Petitioner concedes, there is no case law in this jurisdiction directly on point. Instead, counsel sets up a *post hoc ergo propter hoc* argument based on *State v. McClain*, 211 W. Va. 61, 561 S.E.2d 783 (2002), and *State v. Hughes*, 197 W. Va. 518, 476 S.E.2d 189 (1996). The argument must fail, as neither case addresses the issue of custody; rather, the issue in both is confinement.

In *McClain*, 211 W. Va. at 67, 561 S.E.2d at 789, this Court held that pursuant to the Due Process and Double Jeopardy Clauses of the West Virginia Constitution, "time spent in jail before conviction shall be credited against all terms of incarceration in a correctional facility imposed in a criminal case as a punishment upon conviction when the underlying offense is bailable." The

McClain case is clearly inapplicable to the case at bar, where the charge against the Petitioner was that he had escaped from “the *custody* of a county sheriff . . .,” not that he had escaped “from any institution, facility, or any alternative sentence *confinement*, by which he or she is lawfully *confined*.” W. Va. Code § 61-5-10 (emphasis supplied). In this regard, the statute describes the offense of escaping from custody, and the offense of escaping from confinement, in the disjunctive. “It is axiomatic that ‘where the disjunctive “or” is used, it ordinarily connotes an alternative between the two [or more] clauses it connects.’” *State v. Saunders*, 219 W. Va. 570, 574, 638 S.E.2d 173, 177 (2006), citing *State v. Taylor*, 176 W. Va. 671, 675, 346 S.E.2d 822, 825 (1986) (and collecting numerous authorities).

In *Hughes*, Syl. Pt. 4 in part, this Court held that when an individual is admitted to pre-trial bail with the condition that he be restricted to home confinement, “the home confinement restriction is not considered the same as actual confinement in a jail, nor is it considered the same as home confinement under the Home Confinement Act, West Virginia Code §§ 62-11B-1 to -12 (1993). Therefore, the time spent in home confinement when it is a condition of bail under West Virginia Code §62-1C-2(c) does not count as credit toward a sentence subsequently imposed.” As was the case with *McClain*, nothing in *Hughes* has anything to do with the issue of custody. Pre-trial home confinement may not be the same as incarceration, and may not be penal in nature – the two holdings underpinning the Court’s decision in *Hughes* – but that doesn’t answer the question of whether home confinement is custody, a completely separate issue.

There is a paucity of law in West Virginia on the issue of what constitutes custody, other than in the specific context of *Terry*⁵ stops and custodial interrogation. See, e.g., *State v. Jones*, 193

⁵*Terry v. State of Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).

W. Va. 378, 456 S.E.2d 459 (1995); *State v. Middleton*, 220 W. Va. 89, 640 S.E.2d 152 (2006); *Damron v. Haines*, 223 W. Va. 135, 672 S.E.2d 271 (2008); *State v. Newcomb*, 223 W. Va. 843, 679 S.E.2d 675 (2009).

The case most persuasive to the court below in the instant matter was *Craig v. Legursky*, 183 W. Va. 678, 398 S.E.2d 160 (1990), wherein this Court held that a convict who is transferred to a work release and/or study center remains in the custody of the officers of the Department of Corrections. Although the case dealt with a different statute than the one at issue here, W. Va. Code § 62-8-1 (Offenses by Inmates), the Court cited Black's Law Dictionary 347 (5th ed. 1979) for the proposition that the term custody is "very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession." *Craig*, 183 W. Va. at 680 n. 5, 398 S.E.2d at 162 n.5.

In *Hoover v. Blankenship*, 199 W. Va. 670, 487 S.E.2d 328 (1997), this Court held that an arrestee who had been injured prior to his arrest, was taken to the hospital and then released from custody so that he could be treated, could not require the sheriff to pay his medical bills. The Court's ruling in *Hoover* was quite limited: because any responsibility the sheriff had vis-a-vis medical treatment was based solely on his duties under West Virginia Code § 7-8-2, i.e., his duties as the keeper of the county's jail, the plaintiff was not in custody under the statute at the time of his treatment and the sheriff had no duty to pay. In this regard, the Court cited *Craig* and *Jones* respectively for the proposition that custody is an elastic concept and that "[w]hat constitutes 'custody' for various purposes, and when custody begins and ends, has been litigated extensively in the criminal law area." *Hoover v. Blankenship*, 199 W. Va. at 673 n. 3, 487 S.E.2d at 331 n. 3.

The State contends that the elastic concept of “custody” extends to its application in this case, i.e., that a person on home confinement is in the custody of the county’s sheriff within the meaning of West Virginia Code § 61-5-10. In this regard, the custody does not constitute confinement, and it is not penal in nature; that is a given under this Court’s precedents. But what custody does mean in the context of home confinement, in a very real sense, is that the Petitioner is within the legal control of the sheriff and the sheriff has legal authority vis-a-vis the Petitioner. In the instant case, home confinement imposed upon the Petitioner an obligation, *inter alia*, to reside at a specific location, and gave authority to the sheriff to apprehend him if he left without permission.

Where, as here, the Petitioner left his residence for nine days, out of touch, armed, and making veiled threats about what would happen if he were apprehended, the facts were more than sufficient to constitute an “escape from custody” and he was properly convicted upon his plea of guilty to a violation of West Virginia Code § 61-5-10.

B. THE STATE CONFESSES ERROR WITH RESPECT TO THE SECOND ASSIGNMENT OF ERROR RAISED BY THE PETITIONER: WHETHER THE COURT BELOW ERRED IN IMPOSING RESTITUTION UNDER THE VICTIM PROTECTION ACT OF 1984, W. VA. CODE §§ 61-11A-1 *ET SEQ.*, FOR LAW ENFORCEMENT COSTS INCURRED IN APPREHENDING THE PETITIONER.

Standard of review: “Where the issue on appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review.” *Crystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995), Syl. Pt. 1; *State v. Hicks*, No. 35670 (W. Va., Apr. 14, 2011), Syl. Pt. 1.

This is another issue of statutory interpretation, and another issue of first impression, although the Court’s precedents clearly presage a finding that the court below erred in imposing

restitution to law enforcement authorities as “victims” under the Victim Protection Act of 1984, W. Va. Code §§ 61-11A-1 *et seq.*, for their costs incurred in apprehending the Petitioner.

In the instant case, the court concluded that one provision of the Act, § 61-11A-4(a), was broad enough to include law enforcement authorities within the meaning of the word “victim,” thus giving those authorities the right to an award of restitution. The specific provision cited by the court provides in relevant part that:

(a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical as set forth in this article.

W. Va. Code § 61-11A-4.

The first problem with the court’s analysis is that the court did not consider the Legislature’s statement of findings and purpose contained in § 61-11A-1. This legislative expression of intent indicates that the genesis of the Act was legislative concern for the rights of *direct* victims of crime, those who “suffer physical, psychological or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system not totally responsive to the needs of such victims.”

Nothing in the legislative statement indicates that the Act was intended to benefit the State or law enforcement authorities for their costs incurred at any stage of a criminal investigation or prosecution.

The second problem with the court’s analysis is that the court did not consider subsection (b) of West Virginia Code § 61-11A-4, which inferentially defines a victim as a *direct* victim of the

criminal offense by setting forth the specific type of restitution allowable under the Act.

Subsection (b) provides in relevant part that:

(b) The order shall require that such defendant:

(1) In the case of an offense resulting in damage to, loss of, or destruction of property of a victim of the offense

(A) Return the property to the owner of the property or someone designated by the owner; or

(B) If return of the property under subparagraph (A) is impossible, impractical or inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of sentencing, or (ii) The value of the property on the date of the damage, loss or destruction less the value (as of the date the property is returned) of any part of the property that is returned;

(2) In the case of an offense resulting in bodily injury to a victim

(A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) Reimburse the victim for income lost by such victim as a result of such offense;

(3) In the case of an offense resulting in bodily injury that also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) In any case, if the victim (or if the victim is deceased, the victim's estate) consents, or if payment is impossible or impractical, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

W. Va. Code § 61-11A-4(b).

It is impossible to fit “costs of apprehension” within this statutory language, because these are not direct costs incurred by direct victims; rather, they are consequential costs incurred by state actors.

The third problem with the court’s analysis is that it did not consider this Court’s decisions in either *State v. Lucas*, 201 W. Va. 271, 496 S.E.2d 221 (1997), or *State v. Cummings*, 214 W. Va. 317, 589 S.E.2d 48 (2003).

In *Lucas*, the issue before the Court was whether a sentencing court could order restitution under the Act on behalf of an insurance company, for insurance proceeds that the company paid as a result of an arson committed by the defendant. The Court concluded that the restitution order was proper, since “where a criminal defendant intends to and does obtain money or other benefit from an insurance company by committing a criminal act of arson, the insurance company is a *direct* victim of the crime and is eligible for restitution under [the Act].” *State v. Lucas*, 201 W. Va. at 287, 496 S.E.2d at 237 (emphasis supplied). Of note, in the course of its opinion the Court stated that restitution may be ordered only for injuries “as defined and permitted by the statute . . .,” explaining that for example, in cases involving offenses causing bodily injuries, medical costs are eligible for a restitution award but pain and suffering are not. *Id.*, 201 W. Va. at 278 & n.6, 496 S.E.2d at 228 & n.6.

In *Cummings*, the issue before the Court was whether a sentencing court could order restitution under the Act for the defendant’s attorney and expert witness fees, or for the victim’s lost wages resulting from his attendance at court hearings.⁶ With respect to the attorney and expert witness fees, the State confessed error and the majority opinion did not address the issue. In

⁶Other items of restitution considered in *Cummings* are not material to this case.

concurrence, Justice Davis did address the issue, concluding that although in some circumstances a defendant might be ordered to repay these costs to the State pursuant to the West Virginia Public Defender Services Act, W. Va. Code § 29-21-16(g), they were not properly part of a restitution order to the victim pursuant to the Victim Protection Act of 1984. *State v. Cummings, supra*, 214 W. Va. at 323-24, 589 S.E.2d at 54-55.

With respect to the lost wages, the Court first noted that “[w]here the statutory scheme makes no allowance for such restitution, however, courts have not been inclined to expand the scope of statutorily-defined restitution.” *Id.*, 214 W. Va. at 322, 589 S.E.2d at 53. Concluding that the Victim Protection Act of 1984 does not include loss of wages incurred by the victim while attending court proceedings, the Court reversed the lower court’s order of restitution for lost wages. *Id.*

There are two conclusions to be reached from *Lucas* and *Cummings* that are relevant to the instant case: first, that only *direct* victims of criminal activity are “victims” under the Act; and second, that only statutorily defined restitution is available under the act even to direct victims. Here, where law enforcement personnel were not direct victims of the Petitioner’s criminal activity, and where the costs of apprehending the Petitioner are not included in the statutory recitation of available restitution, the court below erred in imposing those costs under the Victim Protection Act of 1984.

VI.

CONCLUSION

For all of the reasons set forth in this Brief and apparent on the face of the record, the Petitioner’s conviction on his plea of guilty to the offense of Escape from Custody, W. Va. Code § 61-5-10, should be affirmed; but the imposition of restitution to law enforcement authorities made

pursuant to the Victim Protection of Act of 1984, W. Va. Code §§ 61-11A-1 *et seq.*, should be reversed.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,

By counsel

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ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Barbara H. Allen", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Barbara H. Allen, counsel for Respondent, State of West Virginia, do hereby certify that I have served true copies of the foregoing Brief of the Respondent, State of West Virginia upon the following individuals by depositing said copies in the United States mail, with first-class postage prepaid, on this 5th day of August, 2011, addressed as follows:

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A handwritten signature in cursive script, reading "Barbara H. Allen", written in black ink. The signature is fluid and elegant, with a large initial 'B' and a long, sweeping tail.

BARBARA H. ALLEN