

11-0459

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS:

INDICTMENT NO. 09-F-162
PAUL M. BLAKE, JR., JUDGE

DAVID L. WELCH
(DOB: 12-24-1964)
Defendant

2010 SEP 10 P 2:35
DAVID L. WELCH
FAYETTE COUNTY
CIRCUIT CLERK

SENTENCING AND COMMITMENT ORDER

On the 9th day of September 2010, came the State of West Virginia by Prosecuting Attorney Carl L. Harris and Assistant Prosecuting Attorney, Larry E. Harrah, II; the defendant appearing in person and by his counsel, James A. Adkins; and the Probation Department of this Court appearing by Jerod White, for the purpose of imposition of sentence and a hearing upon the defendant's application for probation heretofore made, pursuant to the defendant's conviction by trial on April 13, 2010, to the charges of murder in the first degree, without a recommendation of mercy, nine counts of sexual assault in the second degree and three counts of sexual abuse in the first degree as charged in Indictment 09-F-162.

Whereupon, the Court reviewed the presentence report of the Probation Department and addressed the issue of additions or corrections to said report.

The Court, thereupon, offered all parties, including the defendant, an opportunity to address the Court prior to pronouncement of sentence. Counsel for the defendant addressed the Court on the defendant's behalf and the defendant addressed the Court.

The Court, after hearing comments of the parties and after having reviewed the presentence investigation report, makes the following findings:

ENTERED Sept. 10, 2010
Criminal CLK 110 PAGE 723

1. The victim was a 41 year old female who the defendant had known for a year.
2. The victim had a weakness for controlled substances whether drugs or beer.
3. The defendant used the victim's addictions to his advantage.
4. The videos that the defendant had made contained despicable, sickening acts.
5. During the trial the Court watched the defendant as he watched the videos. The defendant watched with great interest and he became excited when watching the video where the victim was comatose and unresponsive in a drugged state. The defendant subjected the victim to unspeakable abuse and assault.
6. The jury found the death of Linda Smith occurred during or as a result of a sexual assault.
7. When the defendant realized what happened he fixed his computer so it would delete his files and if the computer had not malfunctioned, the crimes may never have been detected.
8. The defendant left and went to Virginia; he allegedly went there to commit suicide.
9. The defendant is not stupid he has a high school diploma and earned college credit during his previous incarceration.
10. The defendant was present at the death of Betty Chavez, whose death was under very similar circumstances as Linda Smith's death.
11. The defendant while in prison attended counseling programs to help him overcome his sexual problems.
12. The defendant engaged in a pattern of sexual misbehavior.
13. The defendant's criminal history consists of the following:
2008- DUI

1993- Sexual Assault in the Second Degree
1992- Assault with a Deadly Weapon
1992- Destruction of Property
1992- Trespassing
1985 Sexual Misconduct
1985- Indecent Exposure

14. The defendant alleges that he was sexually abused by his older brother when he was a child.
15. The defendant has a fetish for pantyhose.
16. The defendant took pictures of women who did not know they were being photographed.
17. The defendant liked to use "knock out drugs".
18. The defendant had a Sleeping Beauty fetish. He liked to watch women sleep while he pleased himself.
19. The defendant took advantage of women who were addicted to alcohol or drugs.
20. The defendant wanted to be called a "provert" rather than a "pervert".
21. The defendant's employment history is sporadic.
22. The defendant attended sexual offender counseling but felt that it didn't benefit him because it was more focused on child molesters.
23. The defendant is a member of the church of WICCA although he has not attended for some time.
24. The defendant is a social outcast who doesn't know how to have a normal relationship with women.
25. The Court doesn't believe anyone would consent to the acts that were shown on the video.

26. The defendant is a danger to weak females in society.

Upon consideration of all of which, in regard to the defendant's conviction of the felony offense of murder, as charged in Count One of the Indictment, it is the **ORDER** and **JUDGMENT** of the Court that the defendant is hereby sentenced to the West Virginia State Penitentiary for the remainder of his life.

In regard to the defendant's conviction to the felony offenses of sexual assault in the second degree as charged in Counts Three, Four, Five, Six, Eight, Nine, Eleven, Thirteen and Fourteen of Indictment 09-F-162, it is the **ORDER** and **JUDGMENT** of the Court that the defendant is hereby sentenced to the West Virginia State Penitentiary for an indeterminate period of not less than ten (10) nor more than twenty-five (25) years for each count.

In regard to the defendant's conviction of the felony offenses of sexual abuse in the first degree as charged in Counts Seven, Ten and Twelve of Indictment 09-F-162, it is the **ORDER** and **JUDGMENT** of the Court that the defendant is hereby sentenced to the West Virginia State Penitentiary for an indeterminate period of not less than one (1) nor more than five (5) years for each count.

It is further **ORDERED** that the sentences imposed herein be served consecutively.

The effective date of this sentence shall be September 5, 2008, the defendant being given credit for time already served.

It is further the **ORDER** and **JUDGMENT** of the Court that the defendant shall pay all current court costs, if he is ever released within 24 months of his release. The Court further advised the defendant of his appellate rights with regard to the conviction herein and provided him with written notice thereof.

The Court orally and in writing informed the defendant that he must register as a sex offender

for life. The defendant was given sexual offenders register notice requirements, which was explained to the defendant by the Court, and signed by the defendant and his counsel.

The defendant is hereby remanded to the custody of the Sheriff of Fayette County for execution of the above sentence.

It is further the ORDER and JUDGMENT of this Court that the Clerk of this Court shall complete the Court Disposition Reporting Form, DPS Form 29, and shall send the original of such form to the appropriate agency for recordation.

It is further the ORDER and JUDGMENT of this Court that the Clerk of this Court shall complete the Court Disposition Reporting Form, DPS Form 29, and shall send the original of such form to the appropriate agency for recordation. The Clerk is further directed to forthwith send an attested copy of this Order via facsimile machine to Dianne E. Skiles, Records Manager, West Virginia Division of Corrections, (304) 558-8430 and shall forward certified copies of this Sentencing and Commitment Order to the West Virginia Division of Corrections, 112 California Avenue, Building 4, Room 300, Charleston, West Virginia 25305-0280; Carl L. Harris, 108 E Maple Avenue, Fayetteville, WV 25840; James A. Adkins, counsel for defendant, 102 Fayette Avenue, Fayetteville, WV 25840; Jerry Willoughby, Probation Officer, 100 Court Street, Fayetteville, WV 25840; the Southern Regional Jail, 1200 Airport Road, Beaver, WV 25813 and David Welch c/o the Southern Regional Jail, 1200 Airport Road, Beaver, WV 25813.

ENTERED this 10th day of September 2010.

Attested Copies to:

DES/EX/AMANI 5RT
CUH 1 DW Cosset
JAA 1
JW 1
Date: Sept. 13, 2010
Initials: MS



PAUL M. BLAKE, JR., JUDGE

CERTIFICATE OF SERVICE

I, Gregory L. Ayers, hereby certify that on this 8th day of March, 2011, a copy of the foregoing Petition For Appeal was sent via U.S. Postal Service to Carl L. Harris, Prosecuting Attorney, 108 E. Maple Ave., Fayetteville, WV 25840.



Gregory L. Ayers
Counsel for Petitioner