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12-0833

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

State of West Virginia

vs.

\\

Case No. 07-F-76

Judge Lawrance S. Miller, Jr.

Robert Lee Lester,  
Defendant.

**ORDER MODIFYING SUPERVISED RELEASE AND COMMITTING  
DEFENDANT TO THE CUSTODY OF THE DIVISION OF CORRECTIONS**

On the 23<sup>rd</sup> day of May 2012, came the State of West Virginia by Senior Assistant Prosecuting Attorney William Means, and came the Defendant, Robert Lee Lester, in person and by his counsel, Randy R. Goodrich, for a final hearing of the *State's 2<sup>nd</sup> Petition to Modify or Revoke Supervised Release*, filed in this case on the 23<sup>rd</sup> day of March 2012.

WMM  
RLG

Previously, following a jury trial on April 8 and 9, 2008, the Defendant was found guilty of the felony offense of Third Degree Sexual Assault, as charged in Count 1 of the Indictment, and the misdemeanor offense of Third Degree Sexual Abuse, a lesser included offense within the charge set forth in Count 2 of the Indictment. On April 28, 2009, the Court received and filed the report of a sixty-day diagnostic evaluation and classification which had been conducted in aid of sentencing. Then, at the sentencing hearing conducted on May 22, 2009, the Defendant was committed to the Anthony Center for Youthful Offenders. Pursuant to W.Va. Code §62-12-26, the Court further ordered a ten year period of sex offender supervision. On August 10, 2010, the Defendant was returned as unfit for the Anthony Center program. Thereupon, on September 9, 2010, the Defendant was committed to the state penitentiary to serve the balance of the sentences previously imposed, namely one to five years for the offense of Third Degree Sexual Assault and a consecutive ninety days for the offense of Third Degree Sexual Abuse. The Defendant discharged said sentences, whereupon the extended supervision pursuant to W.Va. Code §62-12-26 commenced.

Thereafter, on February 9, 2012, in response to the State's first *Petition to Modify or Revoke Supervised Release* alleging substance abuse issues, the terms of the Defendant's supervised release were modified to require substance abuse treatment. The *State's 2<sup>nd</sup> Petition to Modify or Revoke Supervised Release* was filed on March 23, 2012, alleging *inter alia* that, contrary to Sex Offender

Condition No. 20, the Defendant had had contact with the victim in the underlying case.

On April 19, 2012, the Court conducted a preliminary hearing of the instant motion in accordance with Rule 32.1 of the West Virginia Rules of Criminal Procedure. During that preliminary hearing, and again at the outset of the final hearing on May 23, 2012, the Court engaged in a colloquy with the Defendant on the record regarding his understanding of his constitutional, statutory and procedural rights in this matter, and found that the Defendant understands the same and has conferred with his attorney regarding said rights and any available defenses and that he is satisfied with the representation of his counsel. The Court further concluded that any admission by the Defendant is freely and voluntarily made.

Thereupon, the Defendant admitted on the record that, during the month of March 2012, he had had contact, including sexual intercourse, with the victim in the underlying case in knowing violation of Sex Offender Condition No. 20. Thereupon, the State withdrew the remaining allegations in the instant motion which allege violations of the West Virginia Sex Offender Registration Act. The State, however, reserved the right to proceed with a separate case based upon these allegations if the evidence adduced during an ongoing investigation supports a grand jury presentment.

The Court accepted the Defendant's admissions and finds by clear and convincing evidence that the Defendant has substantially violated the terms and conditions of supervised release. Accordingly, it is hereby ORDERED that the *State's 2<sup>nd</sup> Petition to Modify or Revoke Supervised Release* is GRANTED.

For the foregoing reasons, and after due consideration of the arguments and proffers of counsel, it is hereby ORDERED that the Defendant's supervision pursuant to W.Va. Code §62-12-26 is modified as follows:

1. The Defendant is committed to the custody of the West Virginia Division of Corrections for a period of two (2) years, with credit for time served since his detention on March 15, 2012; and
2. Thereafter, the Defendant shall be under the supervision of the Sex Offender Intensive Supervision Office for the balance of the ten-year period previously imposed.

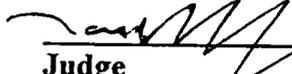
The Court explained to the Defendant his right to appeal and continues the Public Defender Corporation as his counsel for purposes of any such appeal.

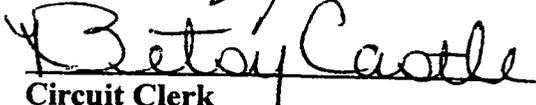
The Defendant is saved his objections and exceptions to the ruling of the Court, including but not necessarily limited to his challenge to the constitutionality of incarceration pursuant to W.Va. Code §62-12-26.

It is further **ORDERED** that a copy of this Order be provided to Randy R. Goodrich, counsel for the Defendant; to this Court's Probation Office; to the Division of Corrections, ATTN: Diann Skiles, facsimile no. 304/558-8430; and to the Office of the Prosecuting Attorney.

Enter: JUNE 5, 2012.

Entered: JUNE 5, 2012.

  
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Judge

  
\_\_\_\_\_  
Betsy Castle  
Circuit Clerk

by:   
deputy

3 Copies  
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1 COPY  
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A TRUE COPY:

ATTEST: S/BETSY CASTLE  
CLERK OF THE CIRCUIT COURT

By: 