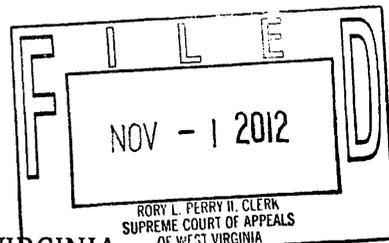


12-1304

12-1304



IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

VS.

INDICTMENT NO. 12-F-73
Judge Alfred E. Ferguson

RORY L. PERRY II, CLERK
 SUPREME COURT OF APPEALS
 OF WEST VIRGINIA

2012 OCT 31 A 11:49

FILED

CHARLES ANTHONY FORD,
Defendant.

ORDER OF CERTIFICATION

This Court conducted a hearing on the 10th day of September, 2012, and, based upon the evidence presented, this Court entered a judgment of not guilty by reason of mental illness to three (3) counts of 3rd Degree Sexual Assault. This ruling was supported mainly by the written report submitted by Dr. Ralph Smith and Rosemary I. Smith, a licensed psychologist. The Court also considered its personal observations of the Defendant during his court appearances. Upon motion of the State of West Virginia, the Court ordered that the remainder of the counts of the Indictment be dismissed.

The Court further ordered that the Defendant be committed to William R. Sharp, Jr. Hospital until such time as the Court's jurisdiction is terminated or this Court authorizes the Defendant's discharge or conditional discharge.

The Circuit Court of Cabell County does hereby CERTIFY to the West Virginia Supreme Court of Appeals, pursuant to W.Va. Code §58-5-2 and in accordance with Rule 17 of the West Virginia Rules of Appellate Procedure the following question:

“Does a person who suffers from a brain injury due to toxic exposure and who has been determined by a qualified forensic evaluator as someone who will never regain competency, have to register as a sex offender pursuant to W.Va. Code §15-12-2(b) and pursuant to his having been found not guilty by reason of mental illness to some sex offenses?”

The Circuit Court of Cabell County answers the question negatively.

Due to the defendant’s history of mental, behavioral, and emotional problems resulting from a brain injury incurred during childhood due to toxic exposure, it was the opinion of this Court, and the examining psychiatrist and psychologist, that he could never be restored to competency and therefore, should not be held criminally responsible for his crimes.

Neuropsychological testing conducted in the past has confirmed that the Defendant has extensive frontal lobe damage and is consistent with the behaviors he presently displays as an adult including poor judgment and planning ability and a requirement that his daily living activities be assisted. Defendant has been gauged to be on second grade reading level and has scored a ten (10) on the Watkins Bender Gestalt Error Score compared to his chronological age of twenty-six (26), which indicates severe visual-perceptual problems.

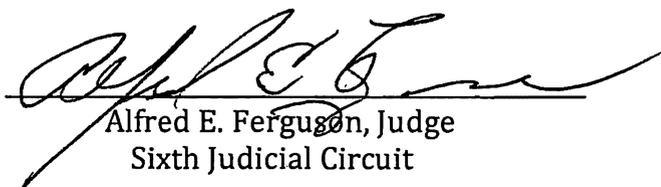
As a result of these findings, this Court concludes that Defendant therefore cannot comply with the requirements of registering as a sex offender under W.Va. Code §15-12-2(b). Furthermore, it is the opinion of this Court that the law regarding

registration under this statute does not contemplate individuals who will never regain competency. If Mr. Ford is required to register as a sex offender, he will likely violate provisions of the statute for the remainder of his life due to his inability to function on an appropriate level. Such continued violations will likely result in the Defendant once again being found not guilty due to mental illness and will require him to be placed in a psychiatric hospital over and over in a never ending cycle, as he fails to comply with registration in perpetuity.

For these reasons, this Court is of the opinion that the Defendant is not required to register as a sex offender under W.Va. Code §15-12-2(b).

The parties to this case are hereby ORDERED to prepare a joint appendix of the record sufficient to permit review of the certified question.

The Circuit Clerk of Cabell County is hereby ORDERED to transit a true copy of this Order of Certification as well as a list of the docket entries in this case to the Office of the Clerk of the Supreme Court of Appeals of West Virginia.


Alfred E. Ferguson, Judge
Sixth Judicial Circuit

Enter this Order this 31 day of October, 2012.

ENTERED Circuit Court Criminal Order Book
No. _____ Page _____ this _____ day of _____

STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, ADELL CHANDLER, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON OCT 31 2012
GIVEN UNDER MY HAND AND SEAL OF SAID COURT
THIS OCT 31 2012
 Adell Chandler, CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA