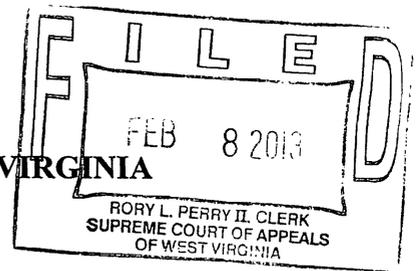


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**STATE OF WEST VIRGINIA, Plaintiff Below,
Petitioner,**

Vs.

**No. 12-1304
(Cabell County No. 12-F-73)**

**CHARLES ANTHONY FORD, Defendant Below,
Respondent.**

**PETITIONER'S BRIEF IN ANSWER TO THE QUESTION
CERTIFIED TO THE COURT**

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Counsel for Petitioner**

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Now comes the State of West Virginia, by Christopher D. Chiles, Prosecuting Attorney of Cabell County, West Virginia, and respectfully submits the following:

I.

CERTIFIED QUESTION

This matter comes before this Honorable Court upon an Order of Certification to the West Virginia Supreme Court of Appeals from the Circuit Court of Cabell County. By scheduling order dated November 5, 2012, this Honorable Court placed the matter upon its docket. The question certified by the Circuit Court is:

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 West Virginia Code Section 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 answered this question in the negative.

This brief on behalf of the State of West Virginia is filed in opposition to the decision of the Circuit Court in answering this certified question in the negative.

II.

STATEMENT OF THE CASE

The defendant, a twenty-five year old male, was indicted in February, 2012, for eight separate counts of Third Degree Sexual Assault on the same fifteen year old female victim, all allegedly occurring between January 17, 2011 and September 17, 2011. Thereafter, defense counsel moved for a competency evaluation of the defendant, which the State did not oppose, and an order was entered June 7, 2012, ordering the competency evaluation, which the order reflects was already scheduled for June 18, 2012 with Dr. Ralph Smith, Charleston Psychiatric Group, Inc. The defendant was examined on June 18, 2012, by Dr. Smith and found to be not competent to stand trial, as set forth in Dr. Smith's report dated July 30, 2012. Thereafter, on September 10, 2012, the trial court entered an order finding the defendant not guilty by reason of mental illness on Counts I, II, and III of the indictment and, upon motion of the State, dismissed the remaining counts of the indictment. The Court also committed the defendant to the William R. Sharp, Jr. Hospital.

On June 10, 2012, there was also a hearing on the issue of whether or not the defendant would be required to register as a sexual offender upon his release from Sharpe Hospital. The trial court agreed with the defense attorney that he should not be required to register and agreed to certify that question to this Court for a determination of this issue.

III.

SUMMARY OF THE ARGUMENT

It is clear from the statutory wording of West Virginia Code Section 15-12-2(b) that anyone who has been charged with one of the enumerated sex offenses set forth in that code section, which includes Third Degree Sexual Assault, who is later found not guilty by reason of mental illness, mental retardation or addiction must nonetheless register as a sex offender.

Therefore, the decision of the Circuit Court answering this question in the negative should be reversed.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes this issue will be adequately addressed in the briefs and record on appeal and that oral argument in this matter is not necessary.

V.

ARGUMENT

West Virginia Code Section 15-12-2(b) is very specific and clear in its wording that anyone who has been convicted of one of the enumerated sex offenses set forth in the W.Va. Code, or an attempted commission of one of those offenses, or has been found not guilty by reason of mental illness, mental retardation or addiction of one of those offenses must register as a sex offender. Third Degree Sexual Assault, as set forth in West Virginia Code Section 61-8B-5, is clearly one of the enumerated sex offenses referenced in West Virginia Code Section 15-12-2(b)(2). By the clear and unambiguous wording of this part of the statute, it is very clear that the intent of the legislature was that all persons who commit one of these offenses, including those found not guilty by reason of insanity, still be required to register.

The reasons for requiring registration of everyone, including those found not guilty by reason of insanity, are obvious. It makes law enforcement aware of who these offenders are and

where they are living in the community. Moreover, the public is able to access this sex offender registration information and be aware of any sex offenders living near them, including those with Respondents' illness, to better protect their family, especially children, from any inappropriate contact.

Under the provisions of Chapter 27-6A-3 of the West Virginia Code, one who has been found not guilty by reason of insanity or mental illness for a crime of violence is to be committed to a mental health facility that the DHHR determines to be the least restrictive environment to manage the defendant and protect the public. If the defendant is determined to no longer be a danger to himself or others, he may be released to a further less restrictive environment or back into society, as determined by a Court after a subsequent hearing. Further, if at the expiration of his maximum period of confinement, a defendant is still considered to be a danger to himself or others, his release date is stayed for ten (10) days in order to permit the institution of a civil commitment proceeding.

The requirements for compliance with the Sex Offender Registration Act are triggered by the defendant's release from the mental health facility. They are not unduly rigid or involved. To the extent one with a mental illness is able to live in society as opposed to having to be kept confined in a mental institution, requiring such registration and compliance with the terms thereof does not appear to be unduly onerous. Clearly, the legislature did not find it to be.

CONCLUSION

For the foregoing reasons, Petitioner respectfully moves that this Honorable Court reverse the judgment of the Circuit Court of Cabell County answering this certified question in the negative and affirm the wording of W.Va. Code Section 15-12-2(b) by ruling that even those

who have been found not guilty by reason of mental illness regarding one of the enumerated sex offenses are required to register as a sex offender.

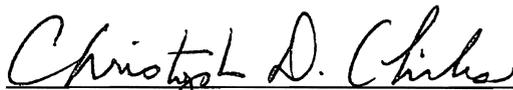
STATE OF WEST VIRGINIA,
By Counsel,

A handwritten signature in black ink that reads "Christopher D. Chiles". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I, Christopher D. Chiles, Prosecuting Attorney, Cabell County, West Virginia, certify that I caused the foregoing Petitioners Brief In Answer To The Question Certified To The Court to be served on Brent W. Walters by personal service at his office located at 320 Ninth Street Huntington, West Virginia 25701 on this the 30th day of January, 2013.



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