

12-1389

Prezioso

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
DIVISION II

STATE OF WEST VIRGINIA

VS.

CRIMINAL ACTION NO 11-F-67

JUDGE WILKES

Antonio Prophet

POST TRIAL MOTIONS ORDER AND SENTENCING ORDER

This matter came on for hearing this 10<sup>th</sup> day of September, 2012, upon the papers and pleadings had herein, upon the appearance of the defendant, in person, and by counsel, B. Craig Manford, and Christopher Prezioso, and upon the appearance of the State of West Virginia by Pamela Jean Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

Whereupon this matter comes on for argument of post trial motions and for sentencing following a jury trial wherein the defendant was convicted of two counts of murder in the first degree without a recommendation of mercy and one count of arson in the first degree.

The Court heard the argument of concerning the defense's post trial motions.

Concerning the argument that the State improperly commented on the defendant's right to remain silent. The Court will DENY the motion finding that the argument of the State was not improper because this defendant testified that he was a victim in this case and is in a different posture than a defendant for the purposes of the argument. The State used this argument in reference to his flight from the area following the crime wherein he claimed to be a victim.

As to the argument that the evidence was insufficient, the Court will DENY the motion because the jury heard the evidence and did appear to give

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the said evidence the appropriate weight.

As to the argument concerning the Court's allowing to use the defendant's work of fiction in cross examination, the Court can find no legal authority for the argument beyond the balancing test. Based on the totality of the argument and the circumstances at trial, the Court does DENY the motion. Admissibility is a question for the Court, what weight an item of evidence is to be given is a question for the jury.

As to the argument that the Court failed to give the jury instruction that other individuals may have had an opportunity to commit the crime, the Court does DENY the motion. The jury had to find that this defendant did each of the acts that he is accused of doing in arriving at the verdict.

The Court does incorporate by reference all of the arguments made upon the record and the findings of the Court. The objection and exception of the defendant is noted for the record.

WHEREUPON the Defendant's counsel advised they and the defendant had reviewed the pre sentence report and had no objection.

Thereafter the Court did inquire of the Defendant and his counsel if either had any just or legal cause why sentence should not now be pronounced and no just or legal cause to the contrary being shown the Court proceeded to sentencing.

The Court then heard the statement of the defendant which he read from a written document that he refused to have placed in the Court file. The Court heard the statements from Mr. And Mrs. S D , Jackie Shepherd, A W Sr., Vjima Tyson, Phillip Pugh.

The Court then heard the arguments of counsel.

Accordingly, it is ORDERED that the defendant, Antonio Prophet, having been found guilty by a jury of the offense of murder in the first degree under Count I of the indictment, without a recommendation of

mercy, shall be sentenced to the penitentiary house of this state for the remainder of his natural life without the possibility of parole, there to be dealt with according to law.

It is ORDERED that the defendant, Antonio Prophet, having been found guilty by a jury of the offense of murder in the first degree under Count II of the indictment, without a recommendation of mercy, shall be sentenced to the penitentiary house of this state for the remainder of his natural life without the possibility of parole, there to be dealt with according to law.

It is ORDERED that the defendant, Antonio Prophet, having been found guilty by a jury of the offense of arson in the first degree, under Count III of the indictment, shall be sentenced to the penitentiary house of this state for a determinate period of twenty years, there to be dealt with according to law.

It is ORDERED that these sentences shall run consecutively.

It is ORDERED that the defendant shall pay restitution to the West Virginia Crime Victim's Fund in the amount of \$11, 220.61 through the Clerk of this Court.

It is further ORDERED that the West Virginia Department of Corrections shall pay restitution from the inmate accounts of this defendant as permitted by law.

CONVICTION DATE: July 16, 2012

SENTENCING DATE: September 10, 2012

EFFECTIVE SENTENCING DATE: June 18, 2010

The defendant was notified of his right to appeal his conviction. The Court does APPOINT B. Craig Manford and Christopher Prezioso as counsel for appellate purposes.

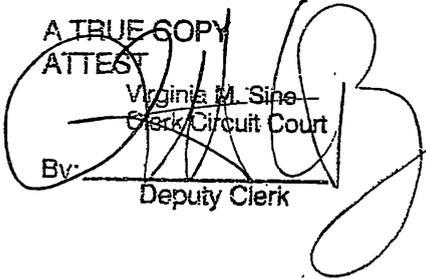
The Court notes the exception and objection to the defendant of all adverse rulings.

The defendant is remanded to the Regional Jail Authority until an agent or representative of the West Virginia Division of Corrections does appear to transport the defendant to a Department of Corrections Facility.

The Clerk shall enter this order as of this date and shall forward copies to all counsel of record, probation office, Regional Jail Authority, West Virginia Department of Corrections, West Virginia Probation and Parole

JUDGE OF THE CIRCUIT COURT OF BERKELEY  
COUNTY, WEST VIRGINIA

PREPARED BY:  
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A TRUE COPY  
ATTEST  
Virginia M. Sino  
Clerk/Circuit Court  
By:   
Deputy Clerk