

12-1487

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS:

UPON INDICTMENT NO. 12-F-87  
PAUL M. BLAKE, JR., JUDGE

THOMAS L. FITZWATER  
DOB: 04-08-1949

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SENTENCING AND COMMITMENT ORDER

This matter came on to be heard this 17<sup>th</sup> day of October, 2012, the State of West Virginia appearing by Larry E. Harrah, II, Assistant Prosecuting Attorney; the defendant, Thomas L. Fitzwater, appearing in person and by his counsel, James A. Adkins; and the Probation Department of this Court appearing by Jerry Willoughby, Probation Officer, for the purpose of imposition of sentence and a hearing upon the defendant's application for probation heretofore made, pursuant to his conviction of guilty on August 29, 2012, to the felony offense of possession with the intent to deliver a Schedule II Narcotic Controlled Substance to wit; oxycodone, as charged in Indictment No. 12-F-87.

Whereupon, the Court reviewed the report prepared by 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 speak in open court prior to pronouncement of sentence. Counsel for the defendant and the State addressed the Court; the defendant addressed the Court on his own behalf.

The Court in acting upon the defendant's application for probation reviewed the presentence

investigation report and makes the following findings.

1. The defendant is sixty-three (63) years old.
2. The defendant has a very limited education.
3. The defendant is a widower with no dependants.
4. The defendant is disabled and receives Social Security Disability in the amount of one thousand two hundred fifty three dollars (\$1,253.00).
5. The defendant's criminal history is not extensive but is significant and consists of the following:
  - a. 06-28-1972 Contempt of Court in Ohio
  - b. 07-22-1994 conspiracy/possession with intent to distribute crack cocaine by the DEA Greensboro
6. The defendant has a valid driver's license.
7. The defendant has two (2) adult children who have no contact with him.
8. The defendant does not own any real estate.
9. The defendant has not accepted responsibility for his crime.
10. The Court believes the defendant is a drug dealer and should have learned something from his prior drug conviction.
11. To place the defendant on probation would unduly depreciate the seriousness of this offense.

Based on the foregoing, the Court finds that the defendant is not a suitable candidate for probation and it is the **ORDER** and **JUDGMENT** of the Court that the defendant's application for probation should be and the same is hereby **DENIED**.

Therefore, it is further the **ORDER** and **JUDGMENT** of this Court that in regard to the defendant's conviction for the felony offense of possession with the intent to deliver a Schedule II Narcotic Controlled Substance to wit: oxycodone, as charged in Indictment No. 12-F-87, the defendant is hereby sentenced to the West Virginia State Penitentiary for a indeterminate period of not less than two (2) years nor more than thirty (30) years, pursuant to West Virginia Code § 60A-4-408. This is an enhanced sentence being pronounced due to such code provision which permits the Court double the normal statutory sentence for this conviction of one (1) year nor more than fifteen (15) years.

The effective date of this sentence shall be October 13, 2012, the defendant being credited with five (5) days time served with the West Virginia Regional Jail Authority while awaiting disposition of this matter.

It is further the **ORDER** and **JUDGMENT** of this Court that the defendant shall be assessed all court costs associated with this matter. It is further the **ORDER** and **JUDGMENT** of this Court that said fine and court costs associated with these proceedings shall be paid within twenty-four (24) months of the defendant's release from custody. The Court advised the defendant that failure to pay the fines and court costs assessed may result in the loss of his West Virginia driver's license.

Whereupon, the Court explained to the defendant his right to appeal the Court's judgment to the Supreme Court of Appeals of West Virginia and gave him written notice of the same.

The defendant is remanded to the custody of the Sheriff of Fayette County for further execution of this 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. The Clerk is further directed to forthwith send an attested copy of this Order via facsimile machine to Diann E. Skiles, Records Manager, West Virginia Division of Corrections, (304) 558-8430 and the Southern Regional Jail, (304) 254-2943 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; Larry E. Harrah, II, Assistant Prosecuting Attorney, 108 East Maple Avenue, Fayetteville, West Virginia 25840; James A. Adkins, counsel for the defendant, 102 Fayette Avenue, Fayetteville, West Virginia 25840; Jerry Willoughby, Probation Officer, 100 Court Street, Fayetteville, West Virginia 25840; Southern Regional Jail, 1200 Airport Road, Beaver, West Virginia 25813 and Thomas R. Fitzwater, Southern Regional Jail, 1200 Airport Road, Beaver, West Virginia 25813.

ENTERED this 29th day of October, 2012.

PAUL M. BLAKE, JR.  
JUDGE

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PAUL M. BLAKE, JR., JUDGE

A TRUE COPY of an order entered  
October 29, 2012  
Teste: Daniel E. Wright  
Circuit Clerk Fayette County, WV