

13-0270

**IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA.**

**STATE OF WEST VIRGINIA,**

**COPY**

DECEMBER  
JAN 24 2013

**VS.**

**INDICTMENT NO. 12-F-30-WS**  
**INDICTMENT NO. 11-F-263-WS**

**BYRON BLACKBURN.**

**ORDER**

This matter comes on this day for disposition. There appearing are the State of West Virginia by George V. Sitler, her Assistant Prosecuting Attorney; and the defendant, in person and by counsel, Thomas L. Fuda and Ryan Flanigan.

Whereupon, counsel for defendant renewed their motion to set aside the verdict of the jury and grant unto the defendant a new trial as to Indictment No. 12-F-30-WS. After hearing argument of counsel for the defendant and the State, the Court is of the opinion that the matters and things contained therein are not sufficient in law or fact to set aside the verdict of the jury and grant unto the defendant a trial; the Court notes that the witness admitted shortcomings in initial identification; that there is not a state procedure at issue; that out-of-court identification was because of news report on internet; and based on totality of circumstances, the Court cannot find that the trial was unfair. Therefore, defendant's motion for a new trial is DENIED.

Thereupon, the Court having received the report of the pre-sentence investigation from the Probation Department of this County and Court, and after considering said report and the statements of counsel and the defendant, the Court finds that the defendant is not a fit and proper person for probation because: (1) there is a substantial risk that the defendant will commit another crime during any period of probation or conditional discharge; (2) probation or conditional discharge would

unduly depreciate the seriousness of the defendant's crime; (3) the public good would not be served by placing the defendant on probation, and (4) the public good would be served by the Court imposing a sentence of incarceration.

Whereupon, the Court inquired of the defendant if anything for himself he had or knew to say why the Court here should not now proceed to pronounce judgement against him, and nothing being offered or alleged in delay of judgement, it is the **ORDER** and **DECREE** of this Court that the said Byron Blackburn be and is hereby adjudged guilty of the offenses of "Robbery - First Degree" as the State in its Indictment No. 12-F-30-WS herein hath alleged and by a jury hath found and "Driving Under the Influence of Alcohol - Third Offense" as the State in Count 1 of its Indictment No. 11-F-263-WS herein hath alleged and by his plea he hath admitted; that he be taken from the bar of this Court to the Southern Regional Jail and therein confined until such time as the warden of the penitentiary can conveniently send a guard for him and that he be taken from the Southern Regional Jail to the penitentiary of this State and therein confined for the determinate term of forty (40) years as provided by law for the offense of "Robbery - First Degree" as the State in its Indictment No. 12-F-30-WS herein hath alleged and by a jury hath found and for the indeterminate term of not less than one (1) nor more than three (3) years as provided by law for the offense of "Driving Under the Influence of Alcohol - Third Offense" as the State in Count 1 of its Indictment No. 11-F-263-WS herein hath alleged and by his plea he hath admitted; that these sentences run concurrently with one another; that the defendant be given credit for 158 days for which he has served in jail and 190 days for which he has served under home confinement; and that he be dealt with in accordance with the rules and regulations of that institution and the laws of the State of West Virginia.

Upon motion of the State, it is the **ORDER** and **DECREE** of this Court that the remaining

charges pending against defendant in Indictment No. 11-F-263-WS be dismissed.

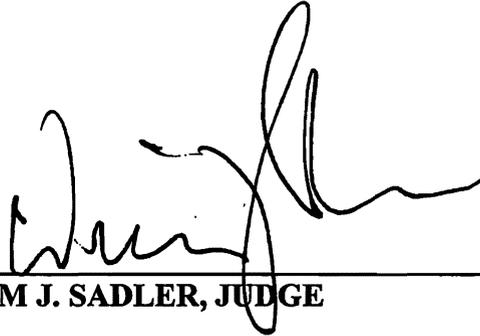
It is the further **ORDER** and **DECREE** of this Court that the defendant be assessed all court costs which shall be paid within one (1) year of his release from the penitentiary, or his driver's license will be subject to suspension.

And the defendant is remanded to the Southern Regional Jail.

The Clerk shall forward a copy of this Order to counsel for the defendant, the probation department, and the Southern Regional Jail.

Dated the 4<sup>th</sup> day of January 2012.

ENTER:

A handwritten signature in black ink, appearing to read 'William J. Sadler', written over a horizontal line.

**WILLIAM J. SADLER, JUDGE**