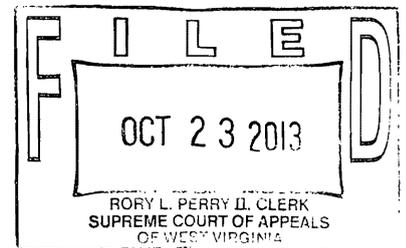


**IN THE  
SUPREME COURT OF APPEALS  
OF  
WEST VIRGINIA**



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**In Re: Carlos Angle      Number 13-0575**

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**PETITIONER'S REPLY BRIEF**

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff/Respondent,

Marion County Circuit Court,  
Case No.: 11-F-171

vs.

CARLOS ANGLE,

Supreme Court Case No.:13-0575

Defendant/Petitioner.

**STATEMENT OF THE CASE**

Respondent asserts in its brief that the Order continuing the case entered on August 27, 2012 contained

“an attached document signed by the Petitioner stating that the Petitioner waived both his right to have the case tried in the present term as well as the right to be present at the hearing on the motion to continue.”

In fact, the document attached to the Order contains no case numbers and makes no specific reference to the recidivist case. The Petitioner has contended all along that his consent to a continuance was limited only to Case No. 09-F-83, a case wholly unrelated to the recidivist proceeding. It is only the handwritten entry on the Order which makes it supposedly apply to the Recidivist case. Petitioner did not prepare the Order or sign it. He has consistently maintained he never saw or consented to the addition of the handwritten entry.

**ARGUMENT**

1. **THE LOWER COURT ERRED BY FAILING TO INSTRUCT THE JURY THAT THE PETITIONER HAD TO HAVE COMMITTED AND BEEN CONVICTED AND**

SENTENCED ON EACH PRIOR CRIME BEFORE THE NEXT CRIME WAS COMMITTED IN ORDER TO USE IT AS A SEPARATE PREDICATE OFFENSE.

The Respondent argues that this Court should not apply the holding in State v. McMannis, 161 W.Va. 437, 242 S.E. 2d 571 (1978) to the instant case because the McMannis Court held:

“Because no such showing was made in the instant habitual criminal proceeding, and because the jury rendered no verdict as to this issue, the trial court was without jurisdiction to impose any additional sentence in excess of the sentence of imprisonment provided by statute for the principal offense.”

The issues in McMannis were whether or not the State had made a showing that each of the prior offenses were committed after the preceding offense and sentencing thereon and whether or not the jury had rendered a verdict on that issue.

The Respondent argues that because the State made a showing of the order of prior offenses and sentences in this case that McMannis should not apply. Petitioner contends that Respondent’s argument fails for two reasons.

First, whether or not the State made such a showing here is a matter to be decided by this Court.

Second, the jury still did not render a verdict in this case on the issue of the order of previous convictions and sentences.

Just because there were two grounds for reversal in McMannis does not mean that either ground, standing alone, would not merit reversal in this case. In fact, Petitioner contends that it would since McMannis makes it clear that both are necessary to confer jurisdiction on the Court to impose a recidivist sentence.

It cannot be presumed from the record that the jury was even aware of this issue. It was never mentioned to them by anybody.

Finally, Respondent contends that Petitioner did not argue the elements of plain error in his brief. Petitioner disagrees.

Petitioner argued lack of jurisdiction in his brief, a substantial right of the petitioner. He further argued that a lower court lacking jurisdiction should not impose

a life sentence on a Defendant in a recidivist proceeding. Doing so affects the fairness, integrity or public reputation of a judicial proceeding.

2. THE RECIDIVIST INFORMATION FILED HEREIN WAS INSUFFICIENT ON ITS FACE AS IT FAILED TO ALLEGE THE DATES OF FORMER CONVICTIONS AND SENTENCES AS REQUIRED BY W. VA. CODE §61-11-19.

Respondent acknowledges this Court's ruling in State ex rel Yokum v. Adams, 145 W.Va. 450, 114 S.E. 2d 892 (1960), that:

"In the absence of a written information filed with the Court, setting forth the previous conviction and sentence, or convictions and sentences, an additional sentence imposed, under the provisions of Code, 61-11-18,...is void."

Respondent then attempts to differentiate Yokum on the grounds that no written information was filed in that case. However, this does not change five very important issues:

1. W.Va. Code §61-11-19 specifically requires that the sentences be set forth in the Information,
2. The McMannis Court specifically noted that the Information did not set out the sentences of imprisonment while reversing on other grounds,
3. Habitual criminal statutes require a strict construction in favor of the prisoner. State v. Jones, 420 S.E. 2d 736 (W.Va. 1992),
4. The provisions of the habitual criminal statute are mandatory and must be complied with fully before an enhanced sentence for recidivism may be imposed. State v. Cavallaro, 210 W.Va. 237, 557 S.E. 2d 291 (2001).
5. Yokum still requires the Information to set forth the sentences.

Respondent next relies on State v. Masters, 179 W.Va. 752, 373 S.E. 2d 173 (1988). However, Masters involved a recidivist information which merely contained

an inaccurate criminal docket number of one of the prior felony convictions. This Court stated:

“...The erroneous criminal docket number did not adversely affect any substantial right of the defendant and must be disregarded as harmless error under Rule 52 (a) of the West Virginia Rules of Criminal Procedure.”

The same is not true here. The Information filed herein lacks the record of sentences as specifically required by W.Va. Code §61-11-19 which adversely affects the Petitioner’s substantial rights previously recognized by this Court to insist on a strict construction of said statute and to have its provisions fully complied with before a life sentence is imposed. See Jones and Cavallaro, supra.

Respondent then relies on State v. Loy, 146 W.Va. 308, 119 S.E. 2d 826 (1961) to argue that

“An indictment alleging a prior conviction for the purpose of augmenting the sentence to be imposed, is sufficient, as to such prior conviction, if it avers the former conviction with such particularity as to reasonably indicate the nature and character of the former offense...”

However, Loy, is not a recidivist case. It is a second offense DUI case. As such, there is no specific statutory requirement that prior sentences be set forth in the Indictment such as there is in W.Va. Code §61-11-19, which clearly and unequivocally requires that the sentences must be set forth. Loy has no bearing on this issue.

Respondent next cites State v. Miller, 197 W.Va. 588, 476 S.E. 2d 535 (1996), wherein this Court held:

“while a challenge to a defective indictment is never waived, this Court literally will construe an indictment in favor of validity where a defendant fails timely to challenge its sufficiency. Without objection, the indictment should be upheld unless it is so defective that it does not, by any reasonable construction, charge an offense under West Virginia law for which the Defendant was convicted.”

This is not an indictment, it is a Recidivist Information. Moreover, there is nothing to construe. W.Va. Code §61-11-19 is unambiguous in its requirement that sentences be included in the Information. Finally, application of the Miller rule would not make sense since the information herein is not trying to "charge an offense under West Virginia Law."

The Respondent not only acknowledges this fact on pages 17 of 18 of its brief relating to speedy trial, it relies upon it as follows:

"Likewise, a recidivist proceeding is based on criminal offenses for which a defendant has already been tried and convicted, and it does not accuse an individual in the sense of initiating a prosecution for a crime or misdemeanor in which Article III, Section 14 of the W.Va. Constitution denotes. Accordingly, even though other constitutional dimensions have been attached to recidivist proceedings, it does not follow that the right to a speedy trial should as well."

The Respondent should not be allowed to have it both ways. They ask this Court to apply rules regarding indictments when it is convenient to their case, but to treat it as Recidivist Information when it is not.

Most importantly, this is a jurisdictional matter. Without full compliance with and a strict construction of the recidivist statute, the lower court lacked jurisdiction to impose a life sentence on the Petitioner.

3. THE LOWER COURT ERRED BY DENYING THE PETITIONER'S MOTION TO DISALLOW THE USE OF HIS 1990 EXTORTION CONVICTION AS A SEPARATE AND FIRST PREDICATE OFFENSE PRECEDING HIS LATER CONVICTIONS.

Respondent correctly argues that petitioner contends that his 1990 conviction for Extortion was not final until his probation was revoked on January 6, 1992, but goes on to say:

"For purposes of applying W.Va. Code §61-11-18, accepting the Petitioner's argument would effectively mean that convictions on which probation was granted to defendants would never qualify as a prior conviction under the recidivism statute if

the defendant's probation period expires without it being revoked."

This is not the logical or necessary outcome of Petitioner's argument. The expiration of the probation period would signal the finality of the conviction and sentence for enhancement purposes as well as the end of the Court's ability to alter the sentence.

As Petitioner previously stated:

"in criminal cases where the judgment has been satisfied in whole or in part, the rule is limited to those cases in which the trial court reduces the penalty imposed..." State ex rel Myers v. Frazier, 173 W.Va. 658, 319 S.E. 2d 782 (1984).

Since Petitioner did not serve anytime on his 1990 conviction, his sentence was subject to change under Myers and, therefore, should not be considered final.

The lower court obviously acknowledged its continuing authority to alter the Petitioner's 1990 sentence by running it concurrent with his sentences in Case No. 91-F-162.

In addition, once probation has been satisfied, the Defendant would then have felt "the complete impact of his past offenses" and the "total, stark consequences." Moore v. Coiner, 303 F Supp. 185 (N.D.W.Va. 1969).

In Moore, the Defendant pled guilty on August 12, 1959, to second degree murder and was sentenced to 5-18 years in the West Virginia Penitentiary plus five years for a prior felony under the West Virginia habitual criminal statute.

In August, 1958, the Defendant committed a Breaking and Entering in Fayette County. He was indicted on January 20, 1959 and pled guilty and was sentenced on April 20, 1959. His sentence was suspended and he was placed on probation.

The murder occurred in March, 1959, prior to sentencing for the Breaking and Entering. The Defendant pled guilty to 2<sup>nd</sup> degree murder on August 12, 1959. At that time the prosecution sought and received a five-year enhancement on the murder

charge due to the Breaking and Entering conviction, even though said conviction occurred after the murder.

Ultimately, the District Court overturned Defendant's five-year enhancement, stating:

"The West Virginia Supreme Court of Appeals has stated that the public policy underlying the recidivist or habitual criminal statute is an attempt to deter the commission of offenses in the future. Therefore, offenses committed simultaneously, or approximately s, with the principal offense, Stat ex rel. Yokum v. Adams, 145 W.Va. 450, 114 S. E. 2d 892 (1960), or subsequent to the commission of the principal offense, State ex rel. Medley v. Skeen, 138 W.Va. 409, 76 S.E. 2d 146 (1953); State ex rel. Stover v Rifle, 128 W.Va. 70, 35 S.E. 2d 689 (1945), clearly cannot be relied upon for the purpose of treating a defendant as a recidivist, even though the convictions for concurrent or subsequent offenses may have been obtained prior to the conviction for the principal offense. Such an application of the recidivist statute would not serve the deterrent purpose of the state. Convictions found on the same day of court, regardless of when the offenses were committed, must be considered as a single offense for the purpose of applying the recidivist statute. State ex rel. Hill v. Boles 149 W.Va. 779, 143 S.E. 2d 467 (1965); Dye v. Skeen, 135 W.Va. 90, 62 S.E. 2d 681, 24A.L.R. 2d 1234 (1950)."

The lower court re-sentenced the Petitioner on the 1990 extortion charge on the same day on which he sentenced the Petitioner in Case No. 91-F-162. Moreover, he reduced that sentence to run it concurrently to those in Case No. 91-F-162. Therefore, the Extortion conviction could not have been final in 1990 since it was changed in 1992 and the extortion conviction and sentence, and the convictions and sentences in Case No. 91-F-162, should be considered as a single offenses for the purposes of applying the recidivist statute.

The Moore Court went on to state:

"In addition, the West Virginia Supreme Court Appeals has observed that prior convictions must precede the commission of the principal offense before they can be taken into account for recidivist purposes. The reason usually given for the establishment of the rule is that the legislature, in enacting a habitual criminal statute, intended it to serve as a warning to

first offenders and to afford a convict an opportunity to reform. (Citations omitted.) Dye v. Skeen, 135 W.Va. 90, 103, 62 S.E. 2d 681, 24 A.L.R. 2d 1234 (1950)."

The offenses giving rise to the charges in Case Nos. 91-F-161 and 91-F-162 all occurred prior to the conviction and sentencing in either case and before the extortion sentence was finalized and reduced in January, 1992. Accordingly, all prior offenses should be regarded as a single offense for recidivist purposes.

Finally, the Moore Court further suggests that the imposition of probation should not be considered a final conviction until it has been completed because the Defendant doesn't feel the full impact thereof until he has fully endured it.

"However, an analysis of the cases dealing with the problems of applying the recidivist statute seems to demonstrate that the major concern of the West Virginia courts is to justify the imposition of additional penalties only when the deterrent purpose of the statute is clearly served.

It would seem that, notwithstanding the definitional confusion surrounding the use of the word "conviction" in the West Virginia recidivist statute and in the case law, one is not judicially deterred from future offenses until he has felt the complete impact of his past offenses. One must perhaps not only witness the determination of his guilt through a guilty plea or jury verdict, but must also experience the punitive consequences of his offense. It is obviously the experience of the cold steel doors of the penitentiary slamming behind him or the inexorable conditions of probation, restricting his movements and actions that effectively demonstrates the futility of crime. Apparently, only when a man has faced the ultimate consequences of an offense should he be additionally penalized later on the basis of that offense. Apparently it is only when he has faced the total, stark consequences that he should have learned his lesson.

It is the opinion of this Court that the application of the recidivist statute in the instant case does not satisfy the policy of the recidivist statute as expressed by the West Virginia Supreme Court of Appeals. Because the deterrent purpose of the statute is not served, the additional penalty of five years imposed upon Petitioner by the Circuit Court of Greenbrier County in reliance upon the prior conviction in the Circuit Court of Fayette County is void."

Prior to his revocation or completion of probation and the "cold steel doors of the penitentiary slamming behind him", Petitioner did not face "the ultimate consequences of an offense should he be additionally penalized later on the basis of that offense." Accordingly, the deterrent effect of the statute was not served by the imposition of a life sentence on Petitioner.

Regarding Petitioners Equal Protection argument, Respondent states:

"This Court has consistently held that the matter of probation is written the sound discretion of the trial court."

While this is true, it fails to respond to Petitioner's argument. The issue raised by petitioner is that lower courts also have discretion to impose and suspend the sentence or suspend the very imposition of sentence. If a court suspends the imposition of sentence, then a conviction would not be final and available for recidivist enhancement until probation is completed or a final sentence is imposed. On the other hand, if the life sentence imposed herein is allowed to stand, then a sentence imposed but suspended is immediately available for recidivist enhancement. This exposes two Defendants who might otherwise be in identical circumstances to disparate treatment under the same laws regarding the fundamental, constitutional right of liberty. That is the essence of an Equal Protection violation.

Finally, Respondent argues that in Oyler v. Boles, 368 U.S. 448, 82 S.Ct. 501 (1962), the Supreme Court upheld the constitutionality of W.Va. Code §61-11-18. However, the issue in that case was the selective enforcement of the Habitual Offender Act by prosecutors, not whether W.Va. Code §62-12-3, read in para materia with W.Va. Code §61-11-18 and 19; endorse arbitrary and disparate treatment for members of the same class which involve "a fundamentally constitutional right," such as liberty. See Lewis v. Canaan Valley Resorts, Inc, 408 S.E. 2d 634 (W.Va. 1991).

4. THE LOWER COURT AND THE STATE OF WEST VIRGINIA VIOLATED THE PETITIONER'S RIGHT TO TRIAL IN A REASONABLE TIME BY WAITING SIXTEEN (16) MONTHS FROM THE FILING OF THE INFORMATION TO HOLD A TRIAL THEREON. THE PETITIONER FURTHER ASSERTS THAT HE IS

PROTECTED BY THE SPEEDY TRIAL PROVISIONS OF ARTICLE III, SECTION 6  
OF THE WEST VIRGINIA CONSTITUTION AND, AS SUCH, HIS  
CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL WAS VIOLATED.

Respondent argues that Petitioner consented to the continuance granted on August 27, 2012, and, in support thereof, states:

“Attached to the Order was another document signed by the Petitioner in which he specifically waived his right to have the case tried in the present term and his right to be present at the hearing on the motion to continue.”

Oddly enough, the Respondent is denying that Petitioner had a right to be tried in that term of court. This serves only to illustrate that the attachment is couched in speedy trial terms which are generally associated with proceedings on indictments, not Recidivist Information. It further illustrates Petitioner’s contention that he never intended that attachment to apply to the recidivist proceeding. Finally, nothing written in the attachment refers to the recidivist proceeding.

5. THE LOWER COURT ERRED BY GRANTING A CONTINUANCE OUTSIDE THE PRESENCE OF THE PETITIONER ON OR ABOUT AUGUST 27, 2012. THE PETITIONER WAS NEVER PRESENT FOR A HEARING ON THIS CONTINUANCE WHICH IS A CRITICAL STAGE OF THE PROCEEDING, AND THE PETITIONER DID NOT CONSENT TO IT.

Respondent argues:

“In effect, the petitioner argues that the lower court erred because it did not hold a hearing, with the petitioner present before entering the Agreed Order continuing the trial until the next term of court. The Respondent is aware of no such requirement regarding motions to continue. See United States v. Bowe, 221 F. 3d 1183, 1189 (11<sup>th</sup> Cir. 2000).

Petitioner is aware of such a requirement.

“Because of the impact on the right to a speedy trial, matters surrounding a continuance should require the presence of the Defendant.” State v. Boyd, 160 W.Va. 234, 233 S.E. 2d 710 (1977).

“If the State is to avoid the consequences of the rule requiring the presence of the accused at all critical stages of the criminal proceeding upon the doctrine of harmless error, it must take the responsibility of preserving a record of such critical stage, in order that it can be shown beyond a reasonable doubt the harmlessness of the defendant’s absence.” State v. Boyd, Id.

The record herein does not show a knowing and intelligent waiver by the Petitioner. It is essentially silent on that point. This kind of disputed record is one of the very evils sought to be avoided by requiring the presence of the Defendant on a motion to continue.

6. THE PETITIONER’S SIXTH AMENDMENT RIGHT TO COUNSEL WAS VIOLATED WHEN THE PETITIONER’S PROBATION OFFICER INTERVIEWED HIM AFTER HIS SEXUAL ABUSE CONVICTION, OBTAINED A STATEMENT FROM HIM ADMITTING HE HAD BEEN CONVICTED OF THREE (3) PRIOR FELONIES AND THEN TESTIFIED TO HIS ADMISSIONS AT TRIAL.

Inexplicably, Respondent relies on State v. Williams, 226 W.Va. 630, 704 S.E. 2d at 422 (2010), for the proposition that “incriminating statements pertaining to pending charges are inadmissible at the trial of those charges...”

From that, the Respondent concludes

“...as such the statements pertaining to the Petitioner’s prior criminal history cannot be said to have been pertaining to pending charges of which the Sixth Amendment right to counsel would have attached. Therefore, the lower court did not err as the Petitioner’s statements made to the probation officer were

properly admitted as the charge of recidivism would have still been in the investigative stages.”

This is not an accurate statement of the Law. Recidivism is not a charge. It is not a criminal offense. It was a part of the sentencing proceeding for Petitioner’s underlying conviction in Case No. 09-F-83, a charge to which the Sixth Amendment right to counsel had already attached.

Respondent makes the bold assertion that “the charge of recidivism would still have been in the investigative stages.” How does Respondent know that? The record does not establish that fact one way or the other.

**7. THE LOWER COURT ERRED BY ADMITTING CERTAIN HEARSAY DOCUMENTS WHICH WERE USED TO ESTABLISH IDENTITY AND, WITHOUT WHICH, THE STATE HAD INSUFFICIENT PROOF TO ESTABLISH IDENTITY BEYOND A REASONABLE DOUBT.**

Respondent cites United States v. Weiland, 420 F. 3d 1062, 1075 (9<sup>th</sup> Cir. 2005) for the proposition that:

“Fingerprinting and photographing a suspect, and cataloging a judgment and sentence are the types of routine and unambiguous matters to which the public records hearsay exception in Rule 803 (8)(B) is designed to apply.”

For reasons set forth below, however, Weiland would only justify the use of the records from the WV Division of Corrections which were State’s Exhibit 7.

Respondent fails to note, however, that Weiland also required that the documents be properly authenticated and that they would not be admissible under Rule 803 (6) as a business records.

In this case, State’s Exhibits One (1) and Six (6) (CIB reports which compared Petitioner’s fingerprints with all previous conviction) were not authenticated and no objection was made.

The records from the Interstate Identification Index were likewise not properly authenticated. These records were used to establish Petitioner’s criminal history.

The CIB reports and "Triple I" records were critical as they were used to compare fingerprints and to establish Petitioner's criminal history. These issues go to the heart of a recidivist trial.

State's Exhibit 7 was not used to compare fingerprints. It was used to compare the petitioner with the photographs in said Exhibit and match case numbers and social security numbers.

8. THE LOWER COURT ERRED BY HOLDING BENCH CONFERENCES OFF THE RECORD ON AT LEAST FOUR (4) SEPARATE OCCASIONS DURING PETITIONER'S TRIAL. THE RECORD FAILS TO ESTABLISH THAT THE PETITIONER WAS PRESENT FOR AT LEAST ONE OF THESE CONFERENCES.

"Omissions from a trial transcript warrant a new trial only if the missing portion of the transcript specifically prejudices a defendant's appeal. State v. Graham, 208 W.Va. 463, 541 S.E. 2d 341 (2000).

Respondent contends that Petitioner has failed to show that the off the record bench conferences prejudiced his appeal. However, Respondent then maintains that:

"Since, as the Petitioner concedes, the record does not show that trial counsel objected, the Petitioner has waived any argument here related to the replacement of the original juror with an alternate."

The record doesn't show trial counsel's possible objection because there is no record. Whatever the reason for the dismissal of the juror, Petitioner cannot specifically argue that point since there is no record. However, he should not be deemed to have waived it because the lower court violated the rule that all proceedings be reported.

Respondent's argument also assumes that petitioner's counsel is the one who may have needed to object. It is entirely possible the juror was removed on the motion of the State for reasons which this Court might not condone. Under those

circumstances, Petitioner's appeal is specifically prejudiced because there is no record to appeal from.

9. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AS HIS COUNSEL'S PERFORMANCES WAS DEFECTIVE IN THE FOLLOWING RESPECTS:

Respondent argues that this Court should not consider this claim on direct appeal absent a fully developed record.

Petitioner notes, however, that Respondent's brief is replete with references to trial counsel's failure to object to the matters raised in Petitioner's brief. Moreover, Respondent argues that many appeal points have been waived or a less stringent standard of review should be applied as a result of trial counsel's omissions. Specifically, Respondent notes said omissions with regard to:

- 1) Sufficiency of the Information,
- 2) Failure to object to trial exhibits,
- 3) Failure to object to verdict form,
- 4) Failure to object to instructions,
- 5) Failure to object to Petitioner's absence from a bench conference,
- 6) Alleged failure to object to dismissal of juror.

By its own brief, Respondent has acknowledged the extent to which the record is developed to establish a claim of ineffective assistance of counsel.

Moreover, Petitioner's original brief details many of the similarities between this case and State Ex rel Myers v. Painter, 213 W.Va. 32, 576 S.E. 2d 277 (2002), in which this Court upheld a claim of ineffective assistance of counsel for similar errors.

Finally, Petitioner reiterates that none of these omissions could reasonably be regarded as trial strategy. In each and every instance, the Petitioner would have been no worse off if the objection was overruled than he was in the absence of an

objection. On the other hand, Petitioner may have been substantially better off if the objections were sustained. The Petitioner's appeal is also compromised by counsel's omissions.

CONCLUSION

For the reasons set forth above, the Petitioner prays for the following relief:

- a. Reversal of his recidivist sentence.
- b. Dismissal of the Recidivist Information, and
- c. Remand to the Circuit Court of Marion County for proper sentencing under Case No: 09-F-83, or, in the alternative,
- d. Reversal of his recidivist sentence and remand to the Circuit Court of Marion County for a new trial in Case No: 11-F-171.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the facts alleged herein are faithfully represented and that they are accurately presented to the best of Counsel's ability.



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CARLOS ANGLE  
By Counsel

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff/Respondent,

Marion County Circuit Court,  
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vs.

CARLOS ANGLE,

Defendant/Petitioner.

Supreme Court Case No.:13-0575

**CERTIFICATE OF SERVICE**

I, Eric K. Powell, hereby certify that on the 22<sup>nd</sup> of October, 2013, I have caused to be served upon the parties hereto listed below, a true and accurate copy of the attached ***PETITIONER'S STATEMENT OF THE CASE*** by sending the same by U.S. Postal Service on same date to all the parties listed below with actual filing of same with the Clerk of the Circuit Court on October 22, 2013.

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