

12-1309

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

Vs.

FELONY CASE NO. 2012-F-47

Chief Judge David W. Hummel, Jr.

JAMES SCOTT YOCUM,

Defendant.

SENTENCING ORDER

FILED
2012 OCT -1 PM 12:05
DAVID R. EALY

On the 27TH day of September, 2012, came the State of West Virginia by Steven T. Taylor, Assistant Prosecuting Attorney for Marshall County, and as well came Brent Clyburn, Esquire, of Clyburn Law Offices, Attorney for the Defendant, and the Defendant, James Scott Yocum, appeared in person.

This defendant was transported to this Honorable Court by the authorities of the Northern Regional Jail and Correctional Facility.

The Court noted that this proceeding convened in the Courtroom of The Honorable Judge Robert Hicks, of the Family Law Division, without objection from Counsel, wherein the Court further noted that this matter is held in an Open Forum, with all interested parties present.

At which time, the Court addressed and heard oral arguments from Mr. Clyburn, as to the *Motion to Dismiss or in the Alternative, Judgment of Acquittal*, as well as the *Defendant's Motion for Post-Conviction Bail*, said Motions were previously filed by Counsel for the defendant.

Upon inquiry by the Court, Mr. Taylor advised that the State received said Motions, wherein the Motions have been reviewed and Mr. Taylor proceeded to provide an oral argument as to the Motions, now before this Honorable Court.

Whereupon, the Court after hearing oral arguments from Counsel as to the outstanding Motions, hereby **DENIES** the *Motion to Dismiss or in the Alternative, Judgment of Acquittal*, together with the *Defendant's Motion for Post-Conviction Bail*.

**OBJECTIONS AND EXCEPTIONS ARE NOTED AND PRESERVED
ON BEHALF OF THE DEFENDANT.**

WHEREUPON, this matter came on for *the Sentencing phase* of this proceeding.

The Court reviewed the status of this proceeding, wherein it was noted by the Court that on September 10, 2012, the defendant was found **Guilty** by a Jury for the Felony offense of "*Threat of Terrorist Act*" in Violation of §61-6-24(3)(iii) as charged in the Indictment, known as Marshall County Felony Case Number 12-F-47.

WHEREUPON, the Court noted the filing of the Pre-Sentence Investigation Report, authored by Brandy Whitlatch, the Adult Probation Officer of this Court.

Further, upon inquiry by the Court, Counsel advised that the Pre-Sentence Investigation Report was received, said information was reviewed by Counsel.

Upon inquiry by the Court, Mr. Taylor, advised that the *Pre-Sentence Investigation* appeared accurate, with no comment from the State.

Upon additional inquiry by the Court, Mr. Clyburn further advised that the no corrections or errors were noted on behalf of the defendant.

THEREFORE, the Court filed the *Pre-Sentence Investigation Report*, without any modification nor amendments, said Report was filed and made a part of the record herein.

Upon inquiry by the Court, the defendant, James Scott Yocum, while represented by Counsel, declined to provide an oral statement to the Court, as to the Sentencing phase of this proceeding.

Upon further inquiry, Mr. Clyburn, as Counsel for the defendant, provided an oral argument before the Court, as to the sentencing of the defendant, in conclusion, Counsel moved for the Court to consider leniency for the defendant. Further, Counsel represented to the Court that the Court consider on alternative sentencing such as Home Incarceration, with a SCRAM alcohol bracelet, as a condition.

Further, upon inquiry by the Court, Mr. Taylor represented to the Court that the penalty for the offense of "Threat of Terrorist Act", pursuant to the statute is not less than one (1) nor more than three (3) years in the West Virginia Penitentiary for Men. In addition, Mr. Taylor reminded the Court that the defendant has an extensive criminal history. Therefore, the State moved for the Court to impose the sentence herein.

Therefore, the Court re-addressed the defendant, wherein the defendant once again declined an oral statement to the Court, as to the Sentencing phase herein.

THEREFORE, the Court after due consideration and after hearing the oral arguments of Counsel, and upon reviewing and examination of the Pre-Sentence Investigation Report.

THEREFORE, it is the **JUDGMENT AND ORDER** of this Court, that the defendant is sentenced to the West Virginia Penitentiary for Men for a period of **not less than one (1) nor more than three (3) years, with credit for time served, including the Ohio County Pre-Trial Release Program, said sentence shall be imposed**, as to Marshall County Felony Case Number 12-F-47.

Further, the Court *did not* impose a fine in this matter upon the defendant, James Scott Yocum.

It is the further **ORDER** of the Court that the Defendant pay the cost of prosecution in this case, including Court Appointed Counsel fees, if any.

Further, the Court advised the defendant as to his right to appeal the sentence in this proceeding, as well as his right to Counsel, including that of Court Appointed Counsel, if he can not afford to retain private Counsel.

In addition, the Court noted that if the defendant desires to appeal the sentence herein and is unable to retain Counsel, the Court will consider the re-appointment of Brent Clyburn.

Further, it is **ORDERED** that, pursuant to *W.Va. Code §§ 62-4-17 and 17B-3-3c*, failure to pay costs, fines, forfeitures, penalties or restitution, when ordered to do so shall result in the suspension of the defendant's license of privilege to operate a motor vehicle in this State and that such suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for yourself or your family.

**OBJECTIONS AND EXCEPTIONS ARE NOTED AND PRESERVED
ON BEHALF OF THE DEFENDANT.**

Further, it is the **ORDER** of this Court that the defendant is **REMANDED** to the authorities of the Northern Regional Jail and Correctional Facility, to be **TRANSFERRED FORTHWITH** and delivered to the Department of Corrections to begin the Court imposed sentence.

The Clerk of this Court is **DIRECTED** to complete the appropriate commitment form as follows and forward the same to the Commissioner of Corrections:

CONVICTION DATE:	9-10-2012
SENTENCE DATE:	9-27-2012
CREDIT FOR TIME SERVED: Northern Regional Jail	32 Days
CREDIT FOR TIME SERVED: Ohio County Pre-Trial Release	42 Days
TOTAL CREDIT FOR TIME SERVED:	74 Days
EFFECTIVE SENTENCE DATE:	7-15-2012

If you are convicted of an offense encompassed by W.Va. 15-2B-6, it is the **ORDER** of this Court that you shall provide a DNA sample to be used for DNA analysis as described in **West Virginia Code Chapter 15, Article 2B**. If you are convicted and placed on Supervised Probation, it is the **ORDER** of this Court that you shall report to the offices of the Sheriff of Marshall County to provide a DNA sample within thirty (30) days of the date of this Sentencing Order and the Sheriff shall ensure that the DNA sample is collected and forwarded to the West Virginia State Police." Further, that the defendant shall pay unto the Court the mandatory fee of \$150.00 in accordance with W.Va. Code 15-2B-15.

It is further **ORDERED** that the Clerk of this Court transmit an attested copy of this Order to Defendant, James Scott Yocum, by and through his Attorney, Brent Clyburn, of Clyburn Law Offices, Marshall County Adult Probation Officer, the Northern Regional Jail and Correctional Facility, the Department of Corrections, the Ohio County Pre-Trial Release Program, and Jeffrey D. Cramer, Prosecuting Attorney.

ENTER:

Dated this 15th day of October, 2012.



DAVID W. HUMMEL, JR., CHIEF JUDGE



IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

PLAINTIFF,

VS.

// CASE NO. 12-F-18; 12-M-144, 145

JAMES SCOTT YOCUM,

DEFENDANT.

2012 JAN 13 AM 10:58

ORDER APPOINTING COUNSEL FOLLOWING
ELIGIBILITY DETERMINATION BY PUBLIC DEFENDER

An affidavit has been filed with this Court reciting that James Scott Yocum, is financially unable to employ counsel for representation in certain proceedings before this Court. After reviewing the eligibility determination made by the Public Defender Corporation pursuant to **West Virginia Code §29-21-16 et seq., amended**, the Court is of the opinion the eligibility requirements of **West Virginia Code §Section 29-21-16 et seq.**, are satisfied. Accordingly, the Court **ORDERS**:

That Brent Clyburn, Esq. is appointed to represent James Scott Yocum in these proceedings.

The Clerk of this Court is directed to make a record of such appointment and to transmit an attested copy of this order to the Defendant; Defendant's counsel, Brent Clyburn, Esq., and to the Prosecuting Attorney of Marshall County, West Virginia.

Dated this 10th day of January, 2012.

copy 100.0.

David R. Ealy, Clerk

By Deborah Ealy Deputy

DAVID W. HUMMEL, JR. CHIEF JUDGE