

# ARGUMENT DOCKET

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 13-1122

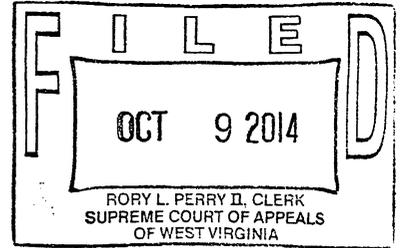
STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

ROBERT FRAZIER,

*Defendant Below, Petitioner.*



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NOTICE OF CONCESSION OF ERROR

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**PATRICK MORRISEY  
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*Counsel for Respondent*

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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v.

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Comes now the Respondent, by and through counsel, and notifies this Court and Petitioner's counsel of the following:

1. In preparation for oral argument, counsel for the Respondent thoroughly reviewed the briefs filed in this matter, including the Petitioner's Reply Brief.
2. Counsel for the Respondent reviewed again, all relevant case law.
3. Counsel for the Respondent engaged in a far-reaching discussion with the Appellate Division's Director and Solicitor General in preparation for oral argument.
4. After this thorough vetting of this issue the Respondent concedes that, pursuant to *State v. Young*, 173 W.Va. 1, 311 S.E.2d 118 (1983), it was error for the Circuit Court of Cabell County to allow the submission of the Interrogatory to the jury at retrial for a finding that Petitioner used a firearm in the commission of the Second Degree Murder, since it was not submitted at the first trial, and the jury's finding resulted in the application of a firearm enhancement that effected Petitioner's parole eligibility

date, which constitutes an impermissible lengthening of the time before Petitioner receives a parole hearing.

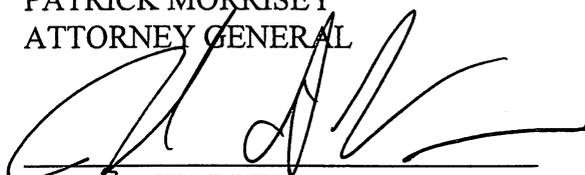
The Respondent agrees with Petitioner, and respectfully proffers that the appropriate remedy for addressing this error would be for this Court to strike the firearm enhancement from the Petitioner's sentence. Ptr's Br. at 14.

Respectfully submitted,

STATE OF WEST VIRGINIA,  
*Respondent,*

By counsel,

PATRICK MORRISEY  
ATTORNEY GENERAL

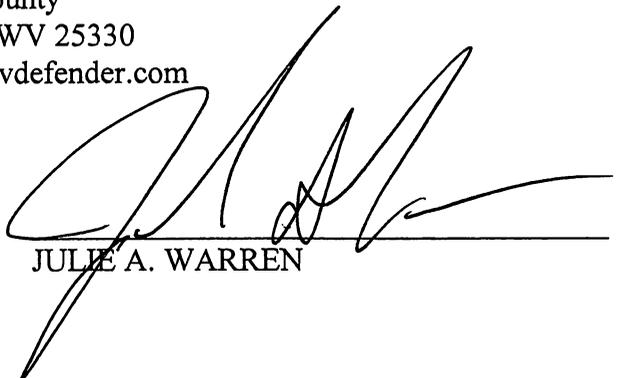


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**CERTIFICATE OF SERVICE**

I, Julie A. Warren, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the above *Notice of Concession of Error* upon counsel for Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, and via the e-mail address below, on this 9<sup>th</sup> day of October, 2014, addressed as follows:

Crystal L. Walden  
Deputy Public Defender  
Office of the Public Defender  
Kanawha County  
Charleston, WV 25330  
cwalden@wvdefender.com



JULIE A. WARREN