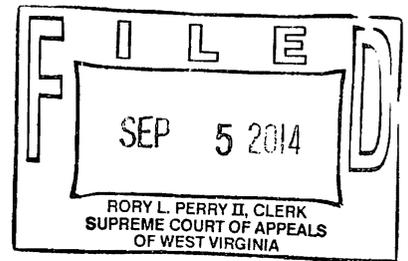


NO. 14-0484
IN THE SUPREME COURT OF APPEALS
OF
WEST VIRGINIA



CHARLESTON, WEST VIRGINIA

STATE OF WEST VIRGINIA
Plaintiff Below, Appellee

(Circuit Court of Mineral County)
(Case No. 09-F-58)

v.

JERRY LEE HEDRICK
Defendant Below, Appellant

PETITIONER'S BRIEF

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PETITION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

I. ASSIGNMENTS OF ERROR

A. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING PETITIONER'S MOTION TO STRIKE TWO HANDWRITTEN TERMS AND CONDITIONS OF EXTENDED SUPERVISED RELEASE CREATED *SUA SPONTE* BY TWO PROBATION OFFICERS AS THE TERMS DO NOT SATISFY THE REASONABLENESS STANDARD AS HELD IN *LOUK V. HAYNES*

B. THE PETITIONER WAS DENIED PROCEDURAL DUE PROCESS WHEN TWO PROBATION OFFICERS *SUA SPONTE* ESTABLISHED TWO HANDWRITTEN TERMS AND CONDITIONS OF EXTENDED SUPERVISED RELEASE THAT EXCEED THE STANDARD BOILERPLATE TERMS WHILE COUNSEL WAS NOT PRESENT

II. KIND OF PROCEEDING AND THE NATURE OF THE RULINGS IN THE LOWER TRIBUNAL

The case *sub judice* arises from the denial of Petitioner's Motion To Strike two (2) handwritten interlineations added to his terms and conditions of extended supervised release *sua sponte* by two probation officers. [March 11, 2014 Transcript, p. 5, paragraph 5]

The first handwritten term and condition prohibits the Petitioner from maintaining employment at Smoke Hole Caverns until January 14, 2039¹, a business that Petitioner and his now estranged wife have owned since 1977. The second handwritten term and condition prohibits the Petitioner from "visitation" at Smoke Hole Caverns, which is also where Petitioner's marital residence is located.

The two (2) handwritten additions were established after the Petitioner was released from parole on January 14, 2014, and go well beyond the regular boilerplate language contained in the Sex Offender Conditions signed by the Petitioner at sentencing on October 21, 2009, the

¹ The Petitioner's date of birth is September 29, 1949. The Petitioner, if still living on January 14, 2039, will be eighty-nine (89) years old when the court ordered injunction is lifted.

boilerplate terms of extended supervised release and the conditions placed upon the Petitioner while on parole. [See Appendix, p. 34, 37] In paragraph 20 of the Sex Offender Conditions the lower court, probation officer or prosecuting attorney had an opportunity to include “other[s] [terms] as appropriate to the case;” but failed to include a single additional term or condition at the October 21, 2009 sentencing hearing. [Appendix, p. 36] The handwritten additions were established *sua sponte* by a probation officer and regional sexual offender probation officer after Petitioner was released from parole in January, 2014, and at the insistence of Petitioner’s family and employees while counsel was not present. [March 11, 2014 Transcript, p. 11, paragraph 7] Petitioner was simply called into the probation office and told he must sign the form over his objection to the handwritten terms.

On February 10, 2014, Mr. Hedrick filed a Motion To Strike the two handwritten terms and conditions, *inter alia*. The matter was heard by the lower court on March 11, 2014. After considering the written motion, proffers and arguments, the lower court denied the Petitioner’s motion by Order² entered on the 5th day of May, 2014. It is from the May 5, 2014 final Order that the Petitioner appeals. Petitioner now prays that this Honorable Court reverse the May 5, 2014 Order of the lower court and remand the matter for entry of a proper order permitting the Petitioner to maintain employment at his business and to freely enter and enjoy the use of his property.

III. STATEMENT OF THE CASE

Mr. Hedrick is the majority owner of Smoke Hole Caverns Resort located in Grant County and has held this ownership position since 1977. [March 11, 2014 Transcript, p. 9, paragraph 14], [Appendix, p. 27, 28] Mr. Hedrick’s now estranged wife is the minority owner.

² The lower court entered a corrected order on the 18th day of August, 2014.

Smoke Hole Caverns is the largest tourist attraction in Grant County. Mr. Hedrick's primary residence is situated on the approximately twenty-seven (27) acre resort property, along with a large maintenance complex that houses Petitioner's farm equipment, tools, industrial equipment and trucks used at both his farm and Smoke Hole Caverns. [March 11, 2014 Transcript, p. 10, paragraph 8]

The issue on appeal specifically addresses the validity of two handwritten terms and conditions of extended supervised release created *sua sponte* by two probation officers. To fully consider the matter a brief recitation of the facts that resulted in Petitioner's underlying conviction and imposition of extended sexual offender release is necessary.

On the 8th day of July, 2008, a Grant County Grand Jury returned a true bill against the Petitioner charging him with two counts of First Degree Sexual Abuse in violation of W.Va. Code § 61-8B-7(a)(1) arising from a single incident that occurred sometime in June or July of 2007 at the Petitioner's residence. [Appendix, p. 1] Count one of the indictment specifically alleged that the Petitioner made sexual contact with the victim by touching her buttocks and count two specifically alleged that Petitioner made sexual contact with the victim by touching her breast. *Id.* According to the police report, the victim in the matter was an adult twenty-five (25) year old female employee of the Petitioner. [Appendix, p. 6]

On May 27, 2009, after a change of venue, the matter proceeded to a jury trial in neighboring Mineral County and the following day the Petitioner was found guilty on both counts of the indictment. [Appendix, p. 12]

On October 21, 2009, the matter came before the lower court for sentencing. The day of the hearing the Petitioner signed the standard sexual offender conditions promulgated by this Court prior to the imposition of sentence. [Appendix, p. 34] Petitioner's counsel at the time,

Stephen Jory, was present when the Petitioner signed the standard boilerplate sex offender terms and conditions. There were no handwritten interlineations. [**Emphasis**] [See Appendix, p. 36] If the lower court, probation officer or prosecuting attorney felt that any additional terms or conditions were necessary they should have included them in paragraph 20 of the Sex Offender Conditions at sentencing on October 21, 2009. Apparently, an employment and “visitation” ban was not of great importance.

At sentencing, the Honorable Phil Jordan imposed the maximum fine of \$20,000.00 and maximum prison sentence of two (2) consecutive indeterminate terms of not less than one (1) nor more than five (5) years in prison. In addition, the Court ordered the Petitioner to twenty-five (25) years of extended sexual offender supervised release pursuant to W.Va. Code § 62-12-26³ to commence upon his release from parole. [Appendix, p. 18]

Mr. Hedrick served over two (2) years in prison without any disciplinary issues, was granted parole his first time eligible and discharged from parole early on January 14, 2014 based upon good behavior. [March 11, 2014 Transcript, p. 4, paragraphs 12-23]; [Appendix, p. 63] On January 21, 2014, Probation Officer Lawrence Wade⁴ contacted the Petitioner and required him to sign and initial a document styled “Rules and Regulations Governing Probationers” that contained nineteen (19) boilerplate terms and one (1) added handwritten term. [Appendix, p. 37] Interestingly, the added handwritten term as reflected in paragraph twenty (20) states the following, *to-wit*; “Employment – Not to be employed at Smoke Hole Resort in any capacity.” [Appendix, p. 38] The form states that probation ends on “1-14-39.” *Id.* The Petitioner was

³ Pursuant to W.Va. Code § 62-12-26, a violation of any term or condition of extended sexual offender release may result in imposition of twenty (25) years in prison. This Honorable Court upheld the validity of the statute in *State v. James*, 710 S.E.2d, 227 W.Va. 407 (2011).

⁴ Officer Wade left his position as a probation officer a few weeks after January 21, 2014.

required to sign the document with no attorney present, without explanation and over his objection. The handwritten condition is paradoxical to paragraph eight (8) of the same document that requires the Petitioner to use his best efforts to remain gainfully employed. [Appendix, p. 37]

On January 23, 2014, Regional Sexual Offender Probation Officer Daniel Smith required Petitioner to sign a form styled “Terms and Conditions of Supervised Release” that contained fifty-five (55) boilerplate terms and one (1) added handwritten term. [Appendix, p. 39] The handwritten term contained in paragraph fifty-five (55) states the following, *to-wit*; “No employment or visitation at Smoke Hole Caverns or Gift Shop property as defined in the general terms.” [Appendix, p. 47] Once again, Counsel was not present when Petitioner was required to sign the additional terms and conditions and the handwritten condition is paradoxical to paragraph twenty-nine (29) of the same document that requires the Petitioner to be employed. [Appendix, p. 43]

Petitioner’s parole officer initially did not allow the Petitioner to enter Smoke Hole Caverns property when he first made parole. [March 11, 2014 Transcript, p. 10, paragraph 15] However, Petitioner’s parole officer eventually lifted said restriction after consulting with the parole legal department. [March 11, 2014 Transcript, p. 10, paragraph 16] Other than a period of time when Petitioner’s estranged wife obtained a domestic violence protective order that barred him from coming within 500 feet of the resort property, Petitioner was eventually permitted on the property. [March 11, 2014 Transcript, p. 10, paragraph 19], [Appendix, p. 65] During this time period Petitioner had no issues.

At the March 11, 2014 hearing, Petitioner confirmed his suspicion that his estranged wife was behind the addition of the handwritten terms. According to the testimony of Officer Smith,

the handwritten terms were included at the insistence of the Petitioner's family and employees.

[**Emphasis**] [March 11, 2014 Transcript, p. 11, paragraph 7] At the March 11, 2014 hearing, Officer Smith specifically testified as follows, *to-wit*;

I just wanted to point out that the basis of this term, when I spoke with Mr. Wade, was it was my understanding and I haven't personally spoken with any employees at the business at Smoke Hole or any family members; but, **it was my understanding from Mr. Wade that it was the family members and the employees request that he not be allowed there ...** [**Emphasis**] [March 11, 2014 Transcript, p. 11, paragraph 7]

IV. STANDARD OF REVIEW

Pursuant to W.Va. Code § 62-12-9, a trial judge may impose any condition of probation which he [or she] may deem advisable, but this discretionary authority must be exercised in a reasonable manner. *Louk v. Haynes*, 159 W.Va. 482, 223 S.E.2d 780 (1976)

V. SUMMARY OF ARGUMENT

Upon a review of the record, appendix and applicable law in this case, it is clear that the trial court abused its discretion by denying the Petitioner's Motion To Strike the two handwritten terms and conditions of extended supervised release that prohibit the Petitioner from maintaining employment at his business, which is also where Petitioner's marital residence is located, and from "visitation" at said property as they are not reasonable.

The Petitioner was further denied procedural due process when the two handwritten terms and conditions of extended supervised release were established *sua sponte* by a probation officer and regional sexual offender probation officer at the insistence of Petitioner's family while Counsel was not present.

VI. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner states that the assignments of error raised in the Petition are proper for consideration by oral argument pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure.

VII. ARGUMENT

A. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING PETITIONER'S MOTION TO STRIKE TWO HANDWRITTEN TERMS AND CONDITIONS OF EXTENDED SUPERVISED RELEASE CREATED *SUA SPONTE* BY TWO PROBATION OFFICERS AS THE TERMS DO NOT SATISFY THE REASONABLENESS STANDARD AS HELD IN *LOUK V. HAYNES*

In *Louk v. Haynes*, this Honorable Court held that any condition of probation which is imposed in the discretion of the trial court must be reasonable. 159 W.Va. 482, 223 S.E.2d 780 (1976) The Supreme Court of Montana follows the same reasonableness standard as West Virginia and has recently helped clarify what is reasonable. In *State v. Leyva*, the Supreme Court of Montana held that a condition meets the standard requiring a restriction or condition to be reasonable if it is related to the objectives of rehabilitation or the protection of the victim and society so long as the condition has a nexus to either the offense for which the offender is being sentenced, or to the offender himself or herself. 365 Mont. 204, 280 P.3d 252 (2012) The *Leyva* Court further held that reversal is necessary when the required nexus is “absent or exceedingly tenuous.” *Id.* Thus, the issue on appeal is whether restricting Petitioner from employment at his Smoke Hole Caverns and Resort business and “visitation” at said property, which is also where Petitioner’s marital residence is located, as a condition of extended supervised release for the next twenty-five (25) years is reasonable as defined in *Leyva* and as held *Louk*.

The lower court attempted to distinguish the case *sub judice* by stating that “he’s not on probation ...” [March 12, 2014 Transcript, p. 6, paragraph 1] Probation Officer Melissa

Roderick clarified the lower court's concern by testifying that the form signed by the Petitioner styled "Rules and Regulations Governing Probationers" are conditions the Petitioner must follow pursuant to his extended supervised release. [March 12, 2014 Transcript, p. 7, paragraph 14]; [Appendix, p. 37] Petitioner submits the difference between probation and extended supervised release is not material to this Court deciding whether the lower court abused its discretion by not striking the two handwritten terms. A violation of probation or extended supervised release results in the same outcome, *to-wit*; incarceration. In addition, upon a cursory review it is apparent that the majority of the terms and conditions of probation overlap with the terms and conditions of extended supervised release. [See Appendix, p. 37 – 48] In fact, as clarified by Probation Officer Roderick, the same boilerplate form styled "Rules and Regulations Governing Probationers" is used for both probation and extended supervised release.

Petitioner submits that the lower court clearly abused its discretion by failing to strike the two handwritten terms and that the restrictions are not reasonable, have no nexus to a legitimate probationary goal and are exceedingly tenuous for several reasons.

First, while on parole there were two time periods Petitioner was prohibited from entering his Smoke Hole Caverns property. Ultimately, however, the Petitioner's parole officer did not find it necessary to indefinitely ban Petitioner from his Smoke Hole Caverns property. Initially, Petitioner was prohibited from entering his property when he was first released from incarceration and placed on parole. [March 12, 2014 Transcript, p. 10, paragraph 15] Petitioner's parole officer eventually lifted the restriction after consulting with the parole legal department. [March 12, 2014 Transcript, p. 10, paragraph 17] The second ban occurred as a result of Petitioner's estranged wife obtaining a domestic violence protective order that included injunctive language that prohibited Petitioner from coming within 500 feet of the resort property

or marital residence. The Petitioner's estranged wife attempted to obtain a second order on September 24, 2013 after the first order expired. However, the second attempt was denied by the Family Court. [Appendix, p. 65] From September 24, 2013, until January 21, 2014, the Petitioner could freely enter and exit Smoke Hole Caverns property. Nothing new occurred that would warrant a change other than Petitioner was discharged from parole early based upon good behavior and came under extended supervised release as set forth in W.Va. Code § 62-12-26 and the sentencing order. [Appendix, p. 18] If Petitioner was not discharged from parole early and was still on parole today he would be permitted on the property. **[Emphasis]**

Second, on January 21, 2014, Probation Officer Lawrence Wade contacted the Petitioner and required him to sign and initial a document styled "Rules and Regulations Governing Probationers" that contained nineteen (19) boilerplate terms and one (1) handwritten term. [Appendix, p. 37] No attorney was present on behalf of the Petitioner and Officer Wade declined to discuss the matter with Petitioner. The handwritten term as reflected in paragraph twenty (20) of the form states the following, *to-wit*; "Employment – Not to be employed at Smoke Hole Resort in any capacity." [Appendix, p. 38] The form states that the terms end on "1-14-39." *Id.*

The terms and conditions in the document signed by the Petitioner on January 21, 2014 styled "Rules and Regulations Governing Probationers" are codified in W.Va. Code § 62-12-9, which sets forth mandatory and discretionary terms. As held in *Louk*, any condition which is imposed in the discretion of the trial court must be reasonable. *Louk* at 494

The handwritten condition is not reasonable. In fact, the handwritten employment ban is paradoxical to paragraph eight (8) of the same document, which requires the Petitioner to use his best efforts to remain gainfully employed. [Appendix, p. 37] Paragraph twenty-nine (29) of

the document styled “Terms and Conditions of Supervised Release” also requires the Petitioner to maintain employment. [Appendix, p. 43]

In *Louk*, the defendant while on probation was required to live and work on a specific farm and to perform tasks he was not qualified to perform. The *Louk* Court held said restriction “is beyond the purview of the trial judge’s authority. The *Louk* Court further reasoned that “to do so permits a trial judge, under the guise of probation, to confine a convicted offender for a period of involuntary servitude.” *Id.* Although in *Louk* the Defendant was ordered to work at a specific place and in the case *sub judice* the Petitioner is barred from working at a specific place, the Court’s rationale is directly on point. To do so permits a trial judge to divest a convicted sexual offender of his or her basic right of property ownership and thus resulting essentially in an unlawful taking of property. *See* U.S. Const. amend XIV, § 1 It must be noted that Petitioner has owned and maintained employment at Smoke Hole Caverns since 1977 and that is all he knows. [March 12, 2014 Transcript, p. 10, paragraph 1]; [March 12, 2014 Transcript, p. 9, paragraph 13] It is not reasonable to expect the Petitioner to find new employment at the age of sixty-five (65).

Third, on January 23, 2014, Regional Sexual Offender Officer Daniel Smith required Petitioner to sign a form styled “Terms and Conditions of Supervised Release” that contained fifty-five (55) boilerplate terms and one (1) handwritten term. [Appendix, p. 39] The single handwritten term contained in paragraph fifty-five (55) states the following, *to-wit*; “No employment or visitation at Smoke Hole Caverns or Gift Shop property as defined in the general terms.” [Appendix, p. 47] Officer Smith’s handwritten term broadened the handwritten employment ban imposed by Officer Wade to now create an injunctive ban against Petitioner from even having “visitation” at Smoke Hole Caverns or Gift Shop. The injunctive handwritten

term is not only unduly restrictive of Petitioner's liberty and autonomy, but is also "exceedingly tenuous" and lacks the required nexus to a legitimate probationer goal as held in *Leyva*. The Petitioner has a significant work history at the resort, stores a large amount of tools and heavy equipment on said property in a maintenance building, is the majority owner of the resort and maintains his actual marital residence on the resort property. [March 12, 2014 Transcript, p. 10, paragraphs 1-12]

There is absolutely no logical probationary goal of imposing a visitation ban at Smoke Hole Caverns other than to appease the Petitioner's estranged wife. Officer Daniel Smith testified at the March 14, 2014 hearing that after speaking with Officer Wade that it was his understanding ... **that it was the family members and the employees request that he [Petitioner] not be allowed there [Smoke Hole Caverns]...** [March 11, 2014 Transcript, p. 11, paragraph 7] Despite the fact that Petitioner's family and employees were the driving force behind the employment and visitation ban according to Officer Smith, they were not a victim in the matter and have no standing. The victim is no longer an employee at the resort.

Since there is no legitimate probationary goal met by prohibiting Petitioner from having "visitation" at the resort, such as protecting the victim, and the Petitioner's liberties are greatly infringed by the ban it is clear that the lower court abused its discretion. In balancing the probationary goal of the ban, which is none, and the infringement on Petitioner's liberties, it is clear that the scales tilt heavily in favor of the Petitioner.

Fourth, the lower court's reasoning in denying Petitioner's Motion To Strike is not logically connected to a legitimate probationary goal. In quickly rejecting Petitioner's Motion To Strike, the lower court held that "I think, it's very clear that his [Petitioner] presence at that business would hurt that business." [**Emphasis**] [March 12, 2014 Transcript, p. 12, paragraph

20] The lower court's reasoning is incongruent. The same court imposed the maximum sentence, maximum fine, admonished the Petitioner at sentencing, ordered Petitioner to twenty-five (25) years of extended supervised release when the minimum time is ten (10) years, but yet holds itself as concerned about the stability of Petitioner's business. In drawing this conclusion, the lower court quoted a sentence from a Motion For Change of Venue filed by Petitioner's former counsel, Stephen Jory, which stated "his client was the most hated man in Grant County." [March 12, 2014 Transcript, p. 12, paragraph 7] The lower court also took judicial notice without citing to specific incidents that "it was sort of common knowledge in the county that Mr. Hedrick was a concern for the young girls that worked there as well as the other women." [March 12, 2014 Transcript, p. 12, paragraph 1] The fact that Petitioner may or may not be liked is completely irrelevant and does not create a nexus to a legitimate probationary goal. It is not the purview or concern of the lower court to speculate whether Petitioner's presence at his private business will have a negative economic effect.

The lower court also briefly reasoned that since the crime occurred on the Smoke Hole Caverns Resort property that it was a reasonable restriction to keep him off of the property. According to the police report and presentence investigative report, the crime occurred at Petitioner's private residence, which just happens to be located on the approximately twenty-seven (27) acre resort property. [Appendix, p. 6, 22] Regardless of this fact, the victim is no longer employed at Petitioner's business. Petitioner can image a situation where a probationer with an underlying conviction for driving under the influence is prohibited from working at a saloon or a probationer with an underlying conviction for unlawfully possessing a firearm is prohibited from working at a gun shop. Petitioner can further understand the reasonableness of an employment or visitation ban at Smoke Hole Caverns if the victim was still an employee or a

member of Petitioner's immediate family. In the case *sub judice*, however, the Court in affirming the employment and visitation restriction simply reasoned that the Petitioner is the most hated person in Grant County and his presence at the resort will hurt the business.

The lower court could very easily expand upon its logic and ban the Petitioner from the town of Petersburg since the crime occurred just a few miles away from said town, or Grant County since the crime occurred in said county or the entire State of West Virginia. If one were to follow the lower court's logic, all probationers could be barred from just about anywhere. *See State v. Khamjoi*, 671 N.W. 2d 531 (2003) (holding geographical restriction stricken as defendant's liberties significantly infringed and probationary goal of maintaining a particular distance not met) There is absolutely no logical reasoning to the lower court's ruling to prohibit the Petitioner from working at Smoke Hole Caverns and it is not a reasonable condition as required in *Louk*.

In summary, the Petitioner has a very strong incentive to conform his conduct to the standards of law, *to-wit*; a twenty-five (25) year period of incarceration. At Petitioner's current age of sixty-five (65) said period of incarceration would be a life sentence. An employment and visitation restriction is not necessary nor reasonable. As a result of the court's ruling, the Petitioner is without employment, is deprived of a lucrative business he has owned since 1977, is forced to reside on a farm in a neighboring county and has been deprived of his property that he has worked very hard the majority of his life to obtain. [March 12, 2014 Transcript, p. 10, paragraphs 3-12] The handwritten term is arbitrary, oppressive, lacks a nexus to a legitimate probationary goal and an abuse of discretion.

B. THE PETITIONER WAS DENIED PROCEDURAL DUE PROCESS WHEN TWO PROBATION OFFICERS *SUA SPONTE* ESTABLISHED TWO HANDWRITTEN TERMS AND CONDITIONS OF EXTENDED SUPERVISED RELEASE THAT EXCEED THE STANDARD BOILERPLATE TERMS WHILE COUNSEL WAS NOT PRESENT

One week after the Petitioner was released from parole, Probation Officer Wade contacted petitioner and required him to sign a boilerplate form on January 21, 2014 styled “Rules and Regulations Governing Probationers” that contained nineteen (19) boilerplate terms and one (1) handwritten term. [Appendix, p. 37] As discussed above, the handwritten term as reflected in paragraph twenty (20) of the form, was created by Officer Wade and prohibits the Petitioner from maintaining employment at his business, *to-wit*; Smoke Hole Caverns Resort. *Id.*

Two days later on January 23, 2014, Regional Sexual Offender Probation Officer Smith required Petitioner to sign a form styled “Terms and Conditions of Supervised Release” that contained fifty-five (55) boilerplate terms and one (1) handwritten term. [Appendix, p. 39] As also previously discussed above, the handwritten term contained in paragraph fifty-five (55) states the following, *to-wit*; “No employment or visitation at Smoke Hole Caverns or Gift Shop property as defined in the general terms.” *Id.*

Counsel was not present when Petitioner was required to sign the terms and conditions by Officer Wade or Officer Smith. In *Louk v. Haynes*, this Honorable Court held that an “accused must be furnished with the assistance of counsel and counsel must be present when the terms of probation are established or modified. 159 W.Va. 482, 223 S.E.2d 780 (1976) This Court reasoned that “[t]he liberty of the accused is no less ‘affected’ because probation is considered an act of grace.” *Id.* at 493 This Court further reasoned that “[e]very condition of probation constitutes a restriction of liberty and violation of any condition may result in imprisonment.” *Id.*

Although *Haynes* was decided in the specific context of probation and the issue in the current case is extended supervised release, the holding in *Haynes* is still applicable for the various reasons previously discussed. *Supra* at 7, 8 Every term of extended supervised release, including the handwritten additions, is a restriction on Petitioner's liberty. Under the extended supervised release statute, regardless of the fact that the Defendant completed his sentence of not less than two (2) nor more than ten (10) years in prison and was released from parole, a violation of any term can result in Petitioner spending twenty-five (25) years in prison. *See* W.Va. Code § 62-12-26 This Court has previously held that W.Va. Code § 62-12-26 is constitutional and does not violate the Double Jeopardy Clause. *State v. James*, 710 S.E.2d, 227 W.Va. 407 (2011)

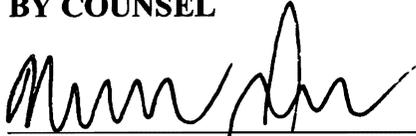
The Petitioner submits that by allowing a probation officer free discretion to arbitrarily establish handwritten terms of extended supervised release at the insistence of Petitioner's family and employees that exceed the standard boilerplate terms while Counsel is not present that may result in twenty-five (25) years of incarceration if violated is a violation of Petitioner's Procedural Due Process.

VIII. CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for all the reasons set forth above, the Petitioner prays for the following relief from this Honorable Court:

- a) A hearing;
- b) That the Court reverse the May 5, 2014 Order of the lower court and remand the matter for entry of a proper Order striking the two (2) handwritten terms of extended supervised release established *sua sponte* by two probation officers that prohibit Petitioner from employment and visitation at his Smoke Hole Caverns property;
- c) That the Court grant any further relief that it deems necessary.

**JERRY LEE HEDRICK
BY COUNSEL**



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **4th day of September, 2014**, I served a copy of the foregoing Petitioner's Brief and Appendix on the following by U.S. Mail, postage prepaid:

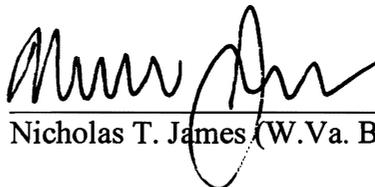
Mary Jane Smith, Reporter
P.O. Box 150
Keyser, West Virginia 26726

Krista Dixon Clerk
Mineral County Circuit Court
P.O. Box 150
Keyser, West Virginia 26726

Rory L. Perry, II (Original and 10 copies of Petition & Original and 5 copies of Appendix)
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