

DiTRAPANO, BARRETT, DiPIERO,  
McGINLEY & SIMMONS, PLLC

ATTORNEYS AT LAW  
P.O. Box 1631

CHARLESTON, WEST VIRGINIA 25326-1631

TELEPHONE 304-342-0133

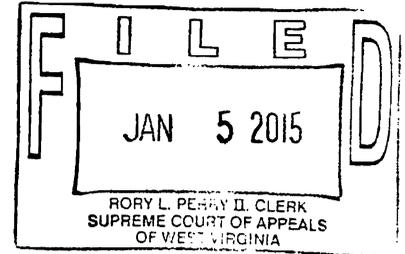
FACSIMILE 304-342-4605

www.dbdlawfirm.com

lonnie.simmons@dbdlawfirm.com

RUDOLPH L. Di TRAPANO  
JOSHUA I. BARRETT †  
J. TIMOTHY DiPIERO  
LONNIE C. SIMMONS  
SEAN P. McGINLEY  
ROBERT M. BASTRESS III

†Of Counsel



January 2, 2015

Rory Perry, Clerk  
West Virginia Supreme Court Clerk's Office  
1900 Kanawha Boulevard, East-Room E-317  
Charleston, West Virginia 25305-0831

*Re: State of West Virginia v. Stephen W. Hatfield,*  
**No. 14-0868**

Dear Rory:

Under Rule 10(i) of the West Virginia Rules of Appellate Procedure, after a reply brief has been filed, a party has the right to send a letter to the Court to address additional authorities or other intervening matters that could not have been briefed originally. Respondent Stephen W. Hatfield files this letter pursuant to this rule.

In this case, on or about December 22, 2014, Petitioner State of West Virginia acknowledged **for the first time** in its reply brief that this Court does not have jurisdiction over the appeal it filed. Specifically, the State asserts, "while this matter was filed as an appeal, it is more appropriate that this Court consider this under a prohibition standard." **PETITIONER'S REPLY BRIEF** at 2. Thus, more than **EIGHT MONTHS** after the final order was entered on April 17, 2014, the State decided in its final brief to ask this Court to convert its belatedly filed appeal, over which this Court lacks jurisdiction, into a petition for a writ of prohibition.

Procedurally, the State's latest argument raises the question as to whether or not the State can file an appeal, without first filing a timely notice of appeal required by Rule 5(b), without perfecting the appeal within four months of the final order, as required by Rule 5(g), and on issues that are not appealable, in violation of W.Va.Code §58-5-30, and then seek to salvage its challenge to the final order by now claiming the jurisdictionally barred appeal should be treated as a petition for writ of prohibition? As noted in Respondent's brief, the untimely filing of the appeal by the State also violates this Court's holding in Syllabus Point 5 of *State v. Lewis*, 188 W.Va. 85, 422 S.E.2d 807

Rory Perry, Clerk  
January 2, 2015  
Page 2

(1992), which recognized the State can file for extraordinary relief, but such filing must be “promptly presented.” There is no indication in any of the decisions cited by the State that this Court has ever authorized the conversion of an appeal filed by the State into a petition for a writ of prohibition where the appeal was filed late and this Court had no jurisdiction.

Respondent respectfully submits the untimeliness of the State’s appeal and now its last second attempt to have its jurisdictionally barred appeal converted into a petition for a writ of prohibition clearly fails to meet this prompt presentment requirement. For the Court now to convert the State’s belatedly filed and jurisdictionally barred appeal into a request for extraordinary relief would violate all of the applicable rules and decisions issued by this Court. Once again, Respondent respectfully moves the Court to dismiss this case because the Court lacks jurisdiction, regardless of whether or not the State’ filings are treated as an appeal or somehow is converted by the Court into a request for extraordinary relief.

Substantively, in the event the Court somehow ignores its lack of jurisdiction in this case, then Respondent respectfully submits the State cannot possibly meet the standard of proving Special Judge James O. Holliday’s alleged abuse of his legitimate powers “was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction.” Syllabus Point 5, in part, *Lewis*. In the April 17, 2014 order, Special Judge Holliday made a very careful review of the facts, detailed the applicable law, and concluded this indictment had to be dismissed with prejudice. The State’s suggestion is that Special Judge Holliday had jurisdiction **to deny** Respondent’s motion, but any ruling granting the motion somehow was in excess of his jurisdiction and constitutes a flagrant abuse of his legitimate powers. How could that assertion possibly have any merit when Special Judge Holliday so clearly had the jurisdiction in this case to resolve this motion to dismiss?

Finally, on a factual note, the State makes reference (**PETITIONER’S REPLY BRIEF** at 4) to an alleged February 17, 1989 report from Dr. Ralph Smith. If such a report exists, clearly it was not included in the **JOINT APPENDIX**, was not in the record before this Court in connection with *Hatfield III*, and was not in the record before the Honorable United States District Court Judge Robert Chambers. Counsel for Respondent can represent to the Court, as the person who made the effort to gather up all of the hospital, psychiatric, and other health care records relevant to this case, counsel has never seen any written report from Dr. Smith other than his January 23, 1989 letter, upon which the trial court incorrectly and in violation of Respondent’s federal and state constitutional rights based its decision regarding Respondent’s mental competency. (JA at 129). If, in fact, there is any other written report issued by Dr. Smith, the State is obligated to provide a copy of it.

Rory Perry, Clerk  
January 2, 2015  
Page 3

Respondent respectfully submits it is unfair for the State to wait until **PETITIONER'S REPLY BRIEF** to change the procedural posture of this case from an appeal to a request for extraordinary relief. The State does not make it clear how Special Judge Holliday acted outside of his jurisdiction. Simply because the State may not agree with the April 17, 2014 order does not mean Special Judge Holliday acted outside of his jurisdiction. In the event the Court, instead of dismissing this case for lack of jurisdiction, decides to go forward as if this case involves a request by the State for extraordinary relief, then Respondent respectfully moves the Court to consider, under Rule 10(i), whether additional briefing on the State's attempt to alter the controlling procedure in this case should be required.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lonnie C. Simmons".

Lonnie C. Simmons

cc: Wayne County Prosecuting Attorney Thomas M. Plymale  
Stephen W. Hatfield