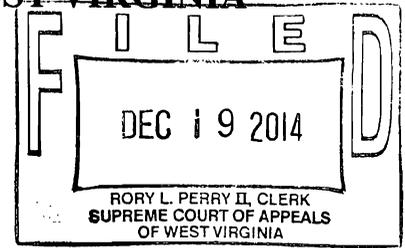


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 14-0868



**STATE OF WEST VIRGINIA,
Plaintiff Below, Petitioner,**

V.)

**Appeal From Order of the Circuit Court of
Wayne County (88-F-026)**

**STEPHEN WESLEY HATFIELD,
Defendant Below, Respondent.**

PETITIONER'S REPLY BRIEF

Counsel for Petitioner, State of West Virginia:

**THOMAS M. PLYMALE (WV Bar No. 2922)
Wayne County Prosecuting Attorney
P. O. Box 758
Wayne, West Virginia 25570
Telephone: 304-272-6395
E-mail: waynepa@hotmail.com**

TABLE OF CONTENTS

Respondent's Assignment of Errors	1
Summary of Argument	1
Statement Regarding Oral Argument and Decision	1
Argument	2
Conclusion	6
Certificate of Service	7

TABLE OF AUTHORITIES

<u>Hinkle v. Black</u> , 164 W. Va. 112, 262 S.E. 2d 744 (1979)	2
<u>McFoy v. Amerigas, Inc.</u> , 170 W. Va. 526, 295 S.E. 2d 16 (1982)	2
<u>State ex rel. Chafin v. Halbritter</u> , 191 W. Va. 741, 448 S.E. 2d 428 (1994)	2
<u>State ex rel. Forbes v. Canady</u> , 197 W. Va. 37, 475 S.E. 2d 37 (1996)	3
<u>State ex rel. Maynard v. Bronson</u> , 167 W. Va. 35, 277 S.E. 2d 718 (1980)	2
<u>State ex rel. Ruson v. Hill</u> , 193 W. Va. 133, 454 S.E. 2d 427 (1994)	3
<u>State ex rel. Smith v. Scott</u> , 167 W. Va. 231, 280 S.E. 2d 811 (1981)	4
<u>State v. Guthrie</u> , 173 W. Va. 290, 315 S.E. 2d 397 (1984)	5
<u>State v. Lewis</u> , 188 W. Va. 85, 422 S.E. 2d 807 (1992)	2, 3
<u>State v. Milum</u> , 163 W. Va. 752, 260 S.E. 2d 295 (1979)	5
<u>State v. Vineyard</u> , 85 W. Va. 293, 101 S.E. 440 (1919)	5
<u>Woodall v. Laurita</u> , 156 W. Va. 707, 195 S.E. 2d 717 (1973)	2
W. Va. Code §58-5-30	2

I. RESPONDENT’S ASSIGNMENT OF ERRORS

- A. Whether this Court has jurisdiction to decide this case where under these facts, the State has no legal right to file an appeal, the State is not entitled to extraordinary relief, and the State failed to comply with the mandatory and jurisdictional deadlines set out in Rules 5(b) and (g) of the Rules of Appellate Procedure and W. Va. Code §58-5-30?
- B. Whether the Trial Court, in carrying out the interests of justice, correctly dismissed the Indictment, with prejudice, in light of the admitted violation of Hatfield’s constitutional rights, which has resulted in over twenty-seven years of illegal incarceration, the death of Hatfield’s critical expert witnesses, and the knowing destruction of virtually all physical evidence?

II. SUMMARY OF ARGUMENT

- A. This Court has jurisdiction to decide this case in that Petitioner perfected its appeal and the Court may hear this matter as a Writ of Prohibition.
- B. The Trial Court’s dismissal of the Indictment against Respondent was improper in that Respondent’s constitutional rights have not been violated, the dismissal exceeded the jurisdiction of the Trial Court by depriving the State of the right to present its case, the dismissal improperly invades the province of the jury, and the Respondent maintains the ability to present a viable defense based on criminal responsibility.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Upon consideration of the issues and arguments presented by Petitioner and Respondent, Petitioner is of the opinion that this is a matter of settled law and that any oral argument to be subject to the provisions of Rule 19.

ARGUMENT

A. The Court has jurisdiction to decide this case.

1. Jurisdiction.

In Syllabus Point 1 of State v. Lewis, 188 W. Va. 85, 422 S.E. 2d 807 (1992), this Court held that “...it will make an independent determination of whether the matters brought before it lie within its jurisdiction”. Respondent argues that the State cannot appeal the Trial Judge’s dismissal of the Indictment herein in that such an appeal is not permitted by Statute, and that the State is otherwise barred from seeking review of said dismissal by prohibition.

The Petitioner does not assert jurisdiction under W. Va. Code §58-5-30, which appears to apply only to bad or insufficient indictments and it would concede that, while this matter was filed as an appeal, it is more appropriate that the Court consider this under a prohibition standard.

In State ex rel. Chafin v. Halbritter, 191 W. Va. 741, 448 S.E. 2d 428 (1994), this Court outlined the procedure:

As this Court has previously recognized, prohibition may be substituted for a writ of error or appeal when the latter alternatives would provide an adequate remedy. See State ex rel. Maynard v. Bronson, 167 W. Va. 35, 41, 277 S.E. 2d 718, 722 (1981); Hinkle v. Black, 164 W. Va. 112, 118, 262 S.E. 2d 744, 748 (1979). Furthermore, we hold that, “[a] definite rule cannot be established to determine in advance whether a remedy by appeal fully meets the requirements of justice in a particular case, and the adequacy of such remedy in any given case is to be determine in light of all the facts and circumstances”. Woodall v. Laurita, 156 W. Va. 707, 712, 195 S.E. 2d 717, 720 (1973). In addition, we recognized that “[o]ur modern practice, is to allow the use of prohibition, based on the particular facts of the case, where a remedy by appeal is unavailable or inadequate, or where irremediable prejudice may result from lack of an adequate interlocutory review. McFoy v. Amerigas, Inc., 170 W. Va. 526, 532, 295 S.E. 2d 16, 22 (1982).

More specifically, this Court has held that prohibition is appropriate “...where the Trial Court has exceeded or acted outside of its jurisdiction. Where the State claims that the

Trial Court abused its legitimate powers, the State must demonstrate that the Court's action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction. In any event, the prohibition proceeding must offend neither the Double Jeopardy Clause nor the Defendant's right to a speedy trial. Furthermore, the application for a Writ of Prohibition must be promptly presented. Lewis at Syl. Pt. 5. If a Trial Court improperly interferes with a State's right to prosecute, the Court, in effect, exceeds its jurisdiction. State ex rel. Forbes v. Canady, 197 W. Va. 37, 475 S.E. 2d 37 (1996). The improper dismissal of an Indictment deprives the State its right to prosecute and is reviewable through a Writ of Prohibition. See State ex rel. Rusen v. Hill, 193 W. Va. 133, 454 S.E. 2d 427 (1994). Forbes and Rusen involved the dismissal of an Indictment by the Trial Judge. In addition, this Court in Lewis converted certified questions on a first-degree murder case to a prohibition hearing.

Here, Petitioner promptly presented its Notice of Intent to Appeal once the Respondent rejected the prior plea agreement. Furthermore, there are no Double Jeopardy considerations herein in that Respondent's guilty plea has been set aside. The parties agree no adequate remedy lies upon appeal.

Therefore, case law clearly establishes this Court's jurisdiction in this matter.

2. Petitioner has perfected its appeal.

This Court entered a Scheduling Order in this case on September 3, 2014. Said Scheduling Order granted Petitioner's Motion for Leave to File the Notice of Appeal Out of Time, thus finding good cause for extending the timeline. The Scheduling Order then specifically set forth that Petitioner's "deadline for perfecting the appeal is extended to

October 17, 2014". Petitioner filed its appeal brief on October 10, 2014, thus perfecting the appeal on that date.

B. The Trial Court Exceeded Its Jurisdiction In Dismissing the Indictment.

As set forth in Petitioner's Appeal Brief, the issue in this case is whether the Respondent was criminally responsible for the murder of Tracy Andrews and the malicious woundings of Roger Cox and Dewey Meyers. While the Respondent raises the issues of destroyed evidence and deceased witnesses, he cannot cite a single item of evidence that would affect his ability to present a defense herein nor how the absence of any witness, other than his experts, Dr. Gallimore and Mr. Watkins would otherwise affect his ability to present his case.

As to Respondent's ability to present a defense regarding criminal responsibility, Special Judge Holliday simply ignored the reports of Dr. D. H. Webb, III, and Dr. Mark N. Casdorff, licensed psychiatrists, who were able to present his defense. Furthermore, the Judge ignored the report of Dr. Ralph Smith, on behalf of the State, who found Respondent to be criminally responsible. (Dr. Smith's February 17, 1989 report does not appear to have been entered in the Court file, but its conclusions as to criminal responsibility are referenced by Dr. Webb in his report of record herein at A.R. 218).

In State ex. Rel. Smith v. Scott, 167 W. Va. 231, 280 S.E. 2d 811 (1981), a Writ of Prohibition was brought by counsel for the Defendant to compel the Circuit Judge to dismiss criminal proceedings because pretrial psychiatric examinations revealed that said Defendant was not criminally responsible at the time the crime was committed. The Circuit Judge was unconvinced by the psychiatric evidence and refused to dismiss the criminal charges. In denying the Writ, this Court held that "[w]hen the issue of sanity has been fully developed at trial and it

conclusively appears that the Defendant was not criminally responsible at the time the crime was committed, the Trial Judge may, and in many instances must, direct the verdict in favor of the Defendant”.

The Court in Smith further stated that “[c]riminal responsibility is a jury question State v. Vineyard, 85 W. Va. 293, 101 S.E. 440 (1919), unless both prosecutor and judge concur that the outcome of the proceedings would be a foregone conclusion”.

In State v. Guthrie, 173 W. Va. 290, 315 S.E. 2d 397 (1984) the Defendant, who submitted lay and expert testimony as his lack of criminal responsibility, argued that the Trial Court should have found him insane, as a matter of law, in light of the testimony of the State’s psychiatrist who Defendant found inadequate. The Guthrie Court held that, even without expert testimony, the jury could find the Defendant sane, and that the State may not need to counter the Defendant’s psychiatric testimony where that testimony is “so demolished by cross examination that State need not counter such testimony with its own expert” quoting State v. Milum, 163 W. Va. 752, 260 S.E. 2d 295 (1979).

The case law clearly establishes that Special Judge Holliday’s dismissal of the Indictment was improper. He is factually incorrect in his conclusion that Respondent cannot properly defend his case and his findings regarding criminal responsibility violate the right of the State to prosecute its case.

Additionally, where conflicting evidence or expert testimony exists regarding a Defendant’s mental state at the time of commission of the crime, the issue should be fully developed at trial and decided by a jury. Judge Holliday’s action invaded the province of the jury. Accordingly, Judge Holliday exceeded his jurisdiction in dismissing the Indictment.

CONCLUSION

The Trial Court exceeded its jurisdiction in dismissing the Indictment herein. This Court should grant Petitioner a Writ of Prohibition and set aside the Trial Court order of April 17, 2014.

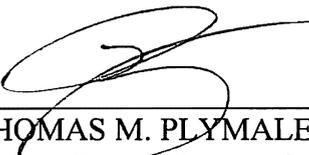


THOMAS M. PLYMALE (WV Bar No. 2922)
Counsel of Record for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of December, 2014, a true and accurate copy of the foregoing Petitioner's Reply Brief was delivered via U.S. Mail, postage prepaid, to counsel for the Respondent as follows:

Lonnie C. Simmons, Esq.
Ditrapano, Barrett, DiPiero, McGinley & Simmons, PLLC
604 Virginia Street East
Charleston, West Virginia 25301



THOMAS M. PLYMALE (WV Bar No. 2922)
Wayne County Prosecuting Attorney
Counsel for the Petitioner