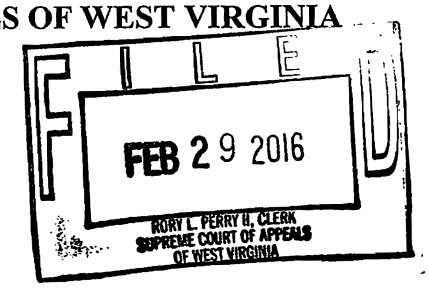
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA,

Plaintiff below, Respondent,

v.

Docket No. ~~15-0924~~ 15-0958

PATRICK SHAWN COLLINS,

Defendant Below, Petitioner.

REPLY BRIEF

ASSIGNMENTS OF ERROR

Did the Circuit Court of Gilmer County, West Virginia commit fundamental error, make erroneous factual findings, misapply the law and/or abuse its discretion when it denied the Petitioner's Rule 35 (b) motion for reconsideration of sentence?

STATEMENT OF THE CASE

1. The petitioner was convicted on July 15, 2006 of third degree sexual abuse in Lewis County Circuit Court and sentenced to a term of ninety days in the regional jail. (App. P2)
2. In 2007 and 2008, the Petitioner was convicted of failure to register and sentenced to two terms of one to five years with the sentences probated with an assignment to the Anthony Correctional Center for Youth. (App. P6-P12)
3. Upon completion of the Anthony Center program the Petitioner was placed on probation for a period of five years. (App. P6-P12)
4. The Petitioner was sentenced in Gilmer County Circuit Court on June 1, 2012 to a

term of ten to twenty-five years for failure to register as a sex offender. (App. P3)

5. On September 25, 2012 the Petitioner had his probation revoked in Gilmer County and the two one to five year sentences were ordered to be served consecutively to one another and concurrently to the term in Gilmer County described in (4.) above) (App. P6-P12)
6. On July 1, 2015, the court below granted habeas relief to the Petitioner in the form of allowing him to file Rule 35 (b) motion for reconsideration.
7. On August 25, 2015, the Petitioner filed a Rule 35 (b) motion for reconsideration (App. P17) that was denied by the court below on September 9, 2015. (P1)

SUMMARY OF THE ARGUMENT

The Petitioner will argue that the court below, disallowing the dictates of *State v. Arbaugh*, 215 W. Va. 132; 595 S.E.2d 289 (2004), abused its discretion when it denied the Petitioner's motion for correction of sentence as the petitioner was (a) only twenty years old when he was convicted of misdemeanor third degree sexual abuse, (b) has not committed a sexual offense since, (c) has a viable plan of action if released and (d) there is no proof whatsoever that the Petitioner is a threat to commit a new sexual offense if probation was granted.

REPLY

The Respondent makes much ado concerning the fact that the Petitioner's brief is predicated upon the "dictates of *State v. Arbaugh*, 215 W. Va. 132; 595 S.E. 2d 289 (2004)." (Response, pg. 5) and that this court has said that *Arbaugh* "was confined to very specific facts

of that case" and is not to be applied broadly and "did not create any new standards, guidelines, or requirements to be followed by the circuit courts of this State [.]" (See *State v. Georgius*, 225 W.Va. 716, 696 S.E. 2d 18 (2010) and *State v. Williams*, (No. 11-0939 Memorandum Decision WVSCA (2012)

First, the Petitioner apologizes to this Court for not pointing out the *Georgius* and *Williams* case law (as cited above) concerning *Arbaugh*. But, he is proceeding *pro se* and *in forma pauperis* in this appeal and the inmate assistant that he is relying on to help him prepare his documents missed the citations.

Next, the Petitioner would assert that although this court ruled that *Arbaugh* was not to be applied broadly that does not mean that it can never be applied to a subsequent case as the Respondent infers. Especially so, in a case such as the Petitioner's in which there are similarities to *Arbaugh* are several.

In his appeal brief the Petitioner points out both the similarities and dissimilarities to *Arbaugh* which are: (1) he, the Petitioner, had been to the Anthony Center, completed it and had his probation revoked for actions that were not sexually motivated, (2) he had a viable release plan that was goal oriented and sustainable, (3) he was not a sexual threat to the community and there is no danger to reoffend sexually or to be a menace in the future, (4) he has a drinking problem that needs to be addressed, and (5) a court below that threw in the towel on the Petitioner despite evidence that the Petitioner has some redeemable qualities and is not a threat to society. (Pet. Br. Pg. 4-5, paragraphs 1-5)

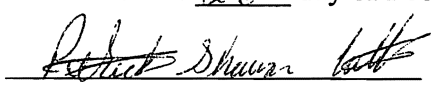
In the end, the term imposed, and unaltered by the court below, sentences a man to ten to twenty-five years for a regulatory crime. As the Petitioner pointed out in his brief, he committed a crime at a very young age, served his sentence and then committed crimes that did not involve

moral turpitude or evil intent.(Pet. Br. Pg. 5) He deserves a chance just as *Arbaugh* did and only this Court can give him that chance. Please, let it be remembered that the Petitioner started out with a simple misdemeanor charge that has ballooned into a ten to twenty-five year sentence for a regulatory crime.

Therefore, the Petitioner asks this Honorable Court to remand this case back to the court below for relief with instructions to grant the Petitioner's motion for reconsideration and release the Petitioner on probation with stipulations that the Petitioner address his alcohol problem and attend college and/or any relief this Court deems just and necessary.

The Petitioner submits that any argument put forth in his appeal brief that is not addressed herein is still applicable and not waived.

Respectfully submitted this 26 day of February, 2016.



Patrick Shawn Collins

This is to certify that the Petitioner has served, by first class mail on February 26, 2016, a true copy of the Petitioner's Brief upon the Respondent at the following address:

West Virginia Attorney General's Office
Appellate Division
812 Quarrier Street, Sixth Floor
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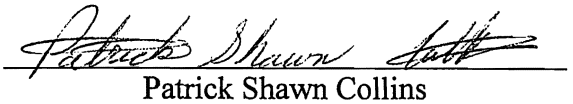

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