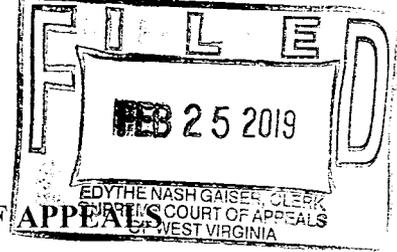


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**BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS**



**State of West Virginia,  
Plaintiff Below, Respondent,**

**vs.) No. 18-1043**

**(Lower Court Case No. 17- F-74)**

**Kevin Woodrum,  
Defendant Below, Petitioner**

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**PETITIONER'S BRIEF**

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**FROM THE CIRCUIT COURT OF  
BOONE COUNTY, WEST VIRGINIA**

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

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**ASSIGNMENTS OF ERROR**

1. THE CIRCUIT COURT ERRED WHEN IT PERMITTED THE JURY TO CONVICT THE PETITIONER OF KIDNAPPING WITHOUT REQUIRING PROOF THAT THE VICTIM WAS TRANSPORTED
  
2. THE COURT COMMITTED ERROR BY GIVING PETITIONER MULTIPLE PUNISHMENTS FOR THE SAME CRIME

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## STATEMENT OF THE CASE

The Defendant, Kevin Woodrum, hereinafter referred to as "Petitioner," and the victim, Jessica Woodrum, were previously husband and wife and were living together as husband and wife during the events that transpired on the night of December 9, 2016 and the morning of December 10, 2016. The Petitioner's wife was the victim and will hereinafter be referred to as his "wife," as the events that transpired on December 9, 2016 and December 10, 2016, did involve them as husband and wife although they are now divorced.

On the evening of December 9, 2016, your Petitioner worked the evening shift as an underground coal miner at Gate Way Mining Company. The wife advised the Petitioner she would be going with her friend, Danielle Nunnery, to a location in Charleston known as Uncork and Create. The Petitioner suggested the locale. According to the wife, it was a place to bring your bottle and paint. The Petitioner reported to work and came from underground around 10:30 o'clock p.m. and attempted to contact his wife to inform her that he was above ground with no answer which was a routine that would let the wife know the Petitioner was okay. He then attempted to call Drew Nunnery, the husband of Danielle Nunnery. Petitioner continued to call his wife's cell phone until he finally reached her at approximately 11:40 o'clock p.m. When he reached his wife, she indicated that she was too drunk to drive the car home and did not know where the vehicle was located. Consequently, the Petitioner offered to drive to Charleston to pick his wife up. However, a compromise was reached wherein Danielle Nunnery would drive Petitioner's wife to Magic Mart, located in Danville, West Virginia, at which time the Petitioner could take his wife on home. Petitioner, his wife and Danielle

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Nunnery, met at Magic Mart in Danville, West Virginia. The Petitioner got in the vehicle driven by Danielle Nunnery (which was his vehicle) and, along with his wife, drove to the Moose Club and dropped off Danielle Nunnery. The Petitioner and his wife then proceeded to their home.

According to the Petitioner, the Petitioner kept asking if she wanted a divorce wherein the wife said no. Once they got home and as the testimony will indicate, there was apparently a fight between the Petitioner and his wife. It should be noted that the Petitioner was confronted with a wife disclosing an affair with D.F. and that there were text messages, which were admitted in trial, that indicated there was a sexual relationship between D.F. and Petitioner's wife.

According to the Petitioner, on the morning of December 10, 2016, Petitioner left the home and traveled to his mother's which is a rather short distance from his residence. It should be noted that while Petitioner was out of the home, his wife was able to call who she chose. However, the wife remained at their home until the Petitioner returned home after approximately an hour later.

Once the Petitioner returned home, both Petitioner and his wife remained home until the police arrived. There was testimony that family members may have called the police.

Although multiple photographs of the wife's injuries were admitted at trial, it is interesting to note that subsequent medical care was sporadic and it appears to be questionable whether wife's physical injuries were serious enough to require hospitalization or whether the injuries were permanent. The wife testified she suffered three fractured ribs which were substantiated by a medical

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record from Boone Memorial Hospital on December 19, 2016, (nine days after the event) which state acute non-displaced rib fractures at distal portion of ribs 7, 8 and 9.

### **SUMMARY OF ARGUMENT**

Your Petitioner was convicted before the Circuit Court of Boone County, West Virginia, of three (3) felony charges, which include kidnapping, malicious assault, assault during the commission of a felony and battery 2<sup>nd</sup> offense. The Circuit Court erred when the Court allowed the jury to consider the elements of kidnapping without requiring the jury to consider the element of transport.

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Your Petitioner, Kevin Woodrum, does not believe oral argument is necessary as this matter concerns very concise issues on whether Petitioner's conviction for kidnapping and assault during the commission of a felony and should be vacated and the other convictions remain in force.

### **STANDARD OF REVIEW**

According to precedent from this Court, “[i]n reviewing challenges to findings and rulings made by the Circuit Court, the Court applies a two-pronged deferential standard of review. The rulings of the Circuit Court concerning a new trial and its conclusion as to the existence of reversible error under an abuse of discretion standard, and the Circuit Court’s underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.” Syl. Pt. 3, State v. Vance, 207 W.Va. 640, 535 S.E. 2nd 484 (2000). “Where the issue on an appeal from the Circuit Court is clearly a

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question of law or involving an interpretation of a statute, the court applies a *de novo* standard of review.” Syl. Pt. 1, Chrystal R.M. v. Charlie A.L., 194 W.Va. 138, 459 S.E. 2d 415 (1995). Furthermore, “ambiguous penal statutes must be strictly construed against the State and in favor of the defendant.” Syl. Pt. 1, Myers v. Murensky, 162 W.Va. 5, 245 S.E. 2d 920 (1978).

As a general rule, the sentence imposed by a Trial Court is not subject to appellate review. However, in cases as the one now pending in which it is alleged that a sentencing Court has imposed a penalty beyond the statutory limits or for impermissible reasons, appellate review is warranted. Syl. Pt. 4, State v. Goodnight, 169 W.Va. 366, 287 S.E. 2d 504 (1982). Furthermore, “[a] double jeopardy claim [is] reviewed *de novo*.” Syl. Pt. 1, in part, State v. Sears, 196 W.Va. 71, 468 S.E. 2d 324 (1996).

### **PROCEDURAL HISTORY**

The Petitioner was indicted by the Grand Jury setting for Boone County, West Virginia, on the charges of kidnapping, sexual assault in the 2<sup>nd</sup> degree, malicious assault, assault during the commission of a felony, domestic battery (2<sup>nd</sup> offense) and strangulation. The Petitioner was arrested and a bail hearing was heard shortly thereafter at which time the Court refused bail. Consequently, the Petitioner has been incarcerated since December 10, 2016.

As this matter progressed, the Petitioner was able to share medical records with the Prosecuting Attorney which indicated the injuries the wife sustained may not be permanent although the wife went to several hospitals after said

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event. Furthermore, as the Petitioner remained in jail, the wife instituted divorce proceedings and the divorce was granted before the trial in this matter.

In the spring in 2018, a trial was attempted in the Boone County Circuit Court and extensive individual Voir Dire was permitted by the Court. However, it became clear to the Court that a jury could not be picked in Boone County, West Virginia as there was too much publicity and too many jurors that had knowledge of this case. Consequently, the case was transferred to Lincoln County, West Virginia, as Lincoln County and Boone County are both within the 25<sup>th</sup> Judicial Circuit.

A jury was selected in this matter and trial began on August 28, 2018 and lasted four (4) days. During Petitioner's testimony on direct, he agreed that he had slapped his wife several times on the night of December 9, 2016, and, therefore, admitted he committed malicious assault. At the conclusion of the trial, the Petitioner was found guilty of kidnapping with mercy, malicious assault, assault during the commission of a felony, and battery. The Petitioner was acquitted of sexual assault in the 2<sup>nd</sup> degree and strangulation. Thereafter, a Motion for New Trial was filed and Petitioner's Sentencing Hearing were both heard on October 10, 2018. The Petitioner was sentenced by the Honorable William S. Thompson to serve a minimum of ten (10) years for kidnapping pursuant to the mercy allocation of the jury, two (2) to ten (10) years on the assault during the commission of a felony, two (2) to ten (10) years on the malicious assault and one (1) year on the battery 2<sup>nd</sup> degree. Consequently, the Petitioner must serve a minimum of fifteen (15) years in prison before eligibility

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for parole. The Judge Ordered the sentences to run consecutively. The Court also heard the Motion for New Trial on October 10, 2018. The Motion for New Trial was primarily based upon the issues of whether transport was an element of kidnapping and double jeopardy principles on the conviction of an assault during the commission of a felony. The Motion for New Trial was denied by an Order entered October 15, 2018. This appeal is taken from said Order Denying Motion for New Trial.

## ARGUMENT

### Statutory Construction Regarding Kidnapping

The Defendant was convicted of Kidnapping in this matter with the recommendation of mercy. Under §62-12-13 of the West Virginia Code, on a guilty verdict of Kidnapping, the Defendant is eligible for parole after serving ten (10) years. However, the Court erred in this matter by permitting the jury to consider evidence on §61-2-14(a) (2016) without requiring the element of transport. The applicable statute reads as follows:

- (a) Any person who unlawfully restrains another person with the intent:
  - (1) To hold another person for ransom, reward, or concession;
  - (2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or
  - (3) To use another person as a shield or hostage, shall be guilty of a felony and, upon conviction, shall be punished by confinement by the division of corrections for life, and, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be eligible for parole.
- (b) The following exceptions shall apply to the penalty contained in subsection (a):

- (1) A jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve;
- (2) If such person pleads guilty, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy;
- (3) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom, money or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than twenty nor more than fifty; or
- (4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than ten nor more than thirty.
- (c) For purposes of this section: "To use another as a hostage" means to seize or detain and threaten to kill or injure another in order to compel, a third person or a governmental organization to do or abstain from doing any legal act as an explicit or implicit condition for the release of the person detained.
- (d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a minor abducted or held hostage and he or she is not motivated by monetary purposes, but rather intends to conceal, take remove the child or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do so, he or she shall be guilty of a felony and, upon conviction thereof, be confined in a correctional facility for not less than one or more than five years or fined not more than one thousand dollars, or both.

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- (e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the state police and each agency so notified, shall cooperate in the investigation forthwith.
- (f) It shall be a defense to a violation of subsection (d) of this section, that the accused's action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law-enforcement or Child Protective Services division of the Department of Health and Human Resources.

The Judge permitted the jury to hear subsection (2) of the above referenced Code which states, "To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person;" The verb transport following the preposition to requires the word transport to be used throughout the sentence which ends in a semi-colon after the word person. More specifically, a review of the instruction in this matter allows the jury to convict with only the intent to terrorize the victim or another person without transporting the victim. The word [to] is defined "as a function word to indicate movement or an action or condition suggestive of movement toward a place, person, or thing reached." Consequently, the Judge incorrectly permitted the instruction, which did not require transport as a material element of the offense, to be read and later found by the jury.

"The Legislature has power to create and define crimes and fix their punishment[.]" Syl. Pt. 2, in part, State v. Woodward, 68 W.Va. 66, 69 S.E. 385 (1910). "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 2,

State v. Elder, 152 W.Va. 571, 165 S.E.2d 108 (1968).” Syl. Pt. 2, King v. West Virginia’s Choice. Inc., 234 W.Va. 440, 766 S.E.2d 387 (2014). “Undefined words and terms used in a legislative enactment will be given their common, ordinary and accepted meaning.” Syl. Pt. 6, in part, State ex rel. Cohen v. Manchin, 175 W.Va. 525, 336 S.E.2d 171 (1984). “However, the West Virginia Supreme Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation.” Syl. Pt. 2, in part, Huffman v. Goals Coal Co., 223 W.Va. 724, 679 S.E.2d 323 (2009). Lastly, “it is not for this Court arbitrarily to read into a statute that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted.” Syl. Pt. 11, in part, Brooke B. v. Ray, 230 W.Va. 355, 738 S.E.2d 21 (2013).

The Petitioner refers to the above cases on Statutory Construction to demonstrate that West Virginia Code §61-2-14(a) (2016) is at the very least ambiguous and here is why:

West Virginia Code §61-2-14(a) is the section and subsection (a) that states: “Any person who unlawfully restrains another person with the intent.” Subdivision (1) states “to hold another person for ransom, reward, or concession.” That intent is immaterial on this case as an element of the offense. Subdivision (2) states: “to transport another person with the intent to inflict bodily injury or to terrorize the victim or another person.” Subdivision (2) is the subdivision which the Petitioner was convicted. However, the State argued and the court agreed that the State only had to prove beyond a reasonable doubt that while being unlawfully restrained, the Petitioner had the intent to terrorize the victim. The Court permitted the State to prove their case without requiring the element of transport.

The Petitioner is simply stating that how do you have kidnapping without a transport while being unlawfully restrained? The indictment in this case charged the Petitioner with kidnapping and alleged in Count I, "that and between the 9<sup>th</sup> day of December, 2016, and the 10<sup>th</sup> day of December, 2016, in Boone County, West Virginia, KEVIN WOODRUM, committed the offense of "Kidnapping" by unlawfully and feloniously restraining another person with the intent to terrorize such other person, to wit: by restraining Jessica Woodrum against her will to coerce her with violence, against the peace and dignity of the State." Subdivision (2) requires a Defendant "to transport another person with the intent to inflict bodily injury or to terrorize the victim or another person." The State argued that the word or relieves the State from proving transport and they only had to prove to terrorize the victim. The word transport is the verb that appears as the second word in the subdivision and, therefore, is an element of the second described offenses in subdivision (2) which are to transport another person with the intent to inflict bodily injury and to transport another person with intent to terrorize the victim.

We are discussing a penal statute that involves a potential life sentence. Ambiguity should bode in the Petitioner's favor. Consequently, the kidnapping portion of this case was not proved beyond a reasonable doubt and therefore, should be dismissed.

Consider the following: I own a glass factory and I instruct my employee to transport glassware to Logan or Williamson. My worker returns the next day and says he transported glassware to Logan but since I said "or" he didn't have to

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transport glassware to Williamson because you said “or” so I went to Williamson but I didn’t transport the glassware. Subdivision (2) is ambiguous.

A statute is ambiguous if it “can be read by reasonable person to have different meanings...” Lawson v. County Comm’n of Mercer County, 199 W.Va. 77, 81, 483 S.E.2d 77, 81 (1996) (*per curiam*). However, simply because “the parties disagree as to the meaning or the applicability of [a statutory] provision does not of itself render [the] provision ambiguous or of doubtful, uncertain or unsure meaning.” “A statute must be subjected to analysis under traditional rules of statutory construction to determine if a statute is ambiguous for [r]ules of interpretation are resorted to for the purpose of resolving an ambiguity....” Habursky v. Recht, 180 W.Va. At 132, 375 S.E.2nd at 764 (1988) (quoting Crockett v. Andrews, 153 W.Va. 714, 719, 172 S.E.2d 384, 387 (1970)). It is only after all other avenues of statutory analysis are exhausted that this Court should resort to liberally construing the statute. United States v. Shabani, 513 U.S. 10, 17, 115 S. Ct. 382, 386, 130 L. Ed. 2d 225, 231 (1994) (noting the rule that ambiguous statutes are to be read with lenity in favor of a defendant “applies only when, after consulting traditional canons of statutory construction, the Court is left with an ambiguous statute.”

“In the construction of statutes, where general words follow the enumeration of particular classes of person or things, the general words, under the rule of construction known as *ejusdem generis*, will be construed as applicable only to persons or things of the same general nature or class as those enumerated, unless an intention to the contrary is clearly shown” Point 2, Syllabus, Parkins v. Londeree.

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Mayor, 146 W.Va. 1051 [124 S.E.2d 471 (1962)].” Syl. Pt. 2, The Vector Co., Inc. v. Board of Zoning Appeals of the City of Martinsburg, 155 W. Va. 362, 184 S.E.2d 301 (1971).

The case at hand is distinguished from State v. Lewis, S. Ct. No.: 15-0931 (2017). More specifically, the Court addressed the issue of kidnapping under the same Code in State v. Lewis, supra, as in the case at hand. The Court held that in interpreting and applying a generally worded kidnapping statute, such as W.Va. Code, 61-2-14(a), in a situation where another offense was committed, some reasonable limitations on the broad scope of kidnapping must be developed. The general rule is that a kidnapping has not been committed when it is incidental to another crime. Courts examine the length of time the victim was held or moved, the distance the victim was forced to move, the location and environment of the place the victim was detained, and the exposure of the victim to an increased risk of harm.

The case at hand is distinguishable from Lewis based upon the following:

1. The injuries in this case were significantly less severe as demonstrated from the introduction of medical records and there was some question as to whether the victim was ever admitted and if she was admitted, it was for a short period; and
2. This case is further distinguishable because the circumstances surrounding this event included the fact that it all occurred in the martial home where both the Petitioner and wife had driven from Danville, West Virginia to their home located at or near Gordon, West Virginia; and
3. In State v. Lewis there was the use of a knife. The victim in Lewis was hospitalized for several days.

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There is little doubt that Petitioner maliciously assaulted his wife at their martial residence where both of them resided. However, unlike Lewis, the Petitioner and his wife drove from Magic Mart in Danville, West Virginia, to their home in Gordon, West Virginia. Be it remembered the wife had been drinking at Bar 101 in Charleston, West Virginia, and, therefore, her friend drove the wife in the wife's car to Magic Mart located in Danville, West Virginia, to meet the Petitioner. Thereafter, a fight ensued between Petitioner and his wife once they arrived home. The alleged kidnapping charge is incidental to the malicious assault. Be it remembered the Petitioner admitted in his testimony that he assaulted his wife.

There is a long history in West Virginia of the charge of kidnapping being over broad. Here, the statute at hand requires an unlawful restraint and to transport the victim with an intent to terrorize the victim. The indictment in this matter further states: by restraining Jessica Woodrum (victim) against her will to coerce her with violence, against the peace and dignity of the State. Not only did the State fail to prove that a victim was transported, the State further failed to prove that beyond a reasonable doubt that the alleged kidnapping was not incidental to the charge of malicious assault, assault during the commission of a felony and battery. See State v. Fortner, 387 S.E.2d 812 (1989).

### **Double Jeopardy**

Petitioner received multiple punishment for the same offense, and sentenced consecutively for, both malicious assault and assault during the commission of a felony.

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The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution consists of three (3) separate constitutional protections. It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense. “The Double Jeopardy Clause in Article III, Section 5 of the West Virginia Constitution, provides immunity from further prosecution where a court having jurisdiction has acquitted the accused. It protects against a second prosecution for the same offense after conviction. It also prohibits multiple punishment for the same offense.” Syllabus Point 1, Conner v. Griffith, 160 W.Va. 680, 238 S.E.2d 529 (1977). In Benton v. Maryland, 395 U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969), the United States Supreme Court held that the Fifth Amendment constitutional guarantee against double jeopardy was binding on the states through the Fourteenth Amendment to the United States Constitution. “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L.Ed. 306 (1932). The test of Blockburger v. United States, is a rule of statutory construction. The rule is not controlling where there is a clear indication of contrary legislative intent. “Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.” Syllabus Point 8, State v. Zaccagnini, 172 W.Va.

491, 308 S.E.2d 131 (1983) indicated West Virginia is in line with United States Supreme Court. A claim that double jeopardy has been violated based on multiple punishments imposed after a single trial is resolved by determining the legislative intent as to punishment. In ascertaining legislative intent, a court should look initially at the language of the involved statutes and if necessary, legislative history to determine if the legislature has made a clear expression of its intention to aggregate sentences for related crimes. If no such clear legislative intent can be discerned, then the court should analyze the statutes under the test set for in Blockburger, supra to determine whether each offense requires an element of proof the other does not. If there is an element of proof that is different, then the presumption is that the legislature intended to create separate offenses.

It is axiomatic that the prohibition against Double Jeopardy prohibits punishing a person twice for a single offense. Blockburger, supra. See also State v. Zaccagnini, 172 W.Va. 491, 308 S.E. 131, 142 (1983) (adopting Blockburger test under the West Virginia Constitution). This Court later modified its adoption of the Blockburger test, deeming it not controlling where there is a clear indication of contrary legislative intent. Syllabus Point 5, State v. Gill, 187 W.Va. 136, 141, 416 S.E.2d 253 (1992).

It should be clear that double jeopardy principles prevent the Petitioner from being convicted of malicious assault and assault during the commission of a felony both which carry a sentence of not less than two years nor more than ten years. Consequently, the Petitioner was sentenced to both malicious assault and

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assault during the commission of a felony both counts to run consecutively. Simply put, double jeopardy prevents this type of behavior by the State.

This case involves the third component of the Double Jeopardy Clause, which protects against multiple punishments for the same offense. In Missouri v. Hunter, 495 U.S. 359, 103 S. Ct. 673, 74 L. Ed. 2d 535 (1983), the Supreme Court gave this summary: "With respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended."

The Petitioner was convicted of a Malicious Assault which carries a two (2) to ten (10) sentence. The Petitioner received a two (2) to ten (10) sentence from the Court. Malicious Assault is defined in West Virginia Code §61-2-9 as follows:

If any person maliciously shoots, stabs, cuts or wounds any person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by confinement in a state correctional facility not less than two nor more than ten years.

Assault during the commission of a felony is defined in West Virginia Code §61-2-10 as follows:

If any person in the commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person, he shall be guilty of a felony and, upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than two nor more than ten years, or be confined in jail not exceeding one year and be fined not exceeding \$1,000.

The Petitioner in this matter was sentenced to not less than two (2) years nor more than ten (10) years by the Court for his conviction of assault during the commission of a felony.

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It seems logical that Double Jeopardy principles were violated as the Assault during the commission of a felony and the offense of Malicious Assault were punished separately.

In retrospect your Petitioner was confronted with a wife who admitted to him that she had been cheating. He had just worked the evening shift at a local underground coal mine and was probably extremely tired. He comes to Court and admits that he has committed a felony by beating her up and also admitted that he had committed battery.

Petitioner now is under a sentence by the Circuit Court which requires that he serve a minimum of fifteen years in prison before he is even eligible for parole. This is the same sentence that you would receive for first degree murder with mercy. It does seem to be a miscarriage of justice as the wife in this case (victim) suffered three non-displaced fractured ribs. In a non-displaced fracture, the bone cracks either part or all of the way through but does move and maintain its proper alignment. Furthermore, there were little if any permanent scars or contusions to the wife during trial testimony. Yes, Petitioner understands that the issues in this case are the argument that kidnapping did not occur and that he was double sentenced for assault during the commission of a felony and malicious assault. Consequently, Petitioner simply reminds this Court that is it fair and or just to serve such a sentence when the wife (victim) walked away from the scene, went to give a statement to the State Police before she went to the hospital at Women's and Children's Hospital in Charleston, West Virginia, never received any real hospital confinement as

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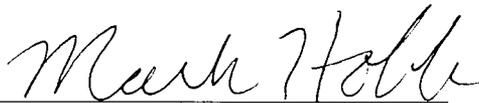
contained in the Appendix and last but not least, Petitioner, as a correctional officer at Mt. Olive and as a former police officer, will suffer more than other inmates as he will probably be segregated.

**CONCLUSION**

In conclusion, your Petitioner, Kevin Woodrum, submits that the conviction for kidnapping required the proof of transporting a victim; that a punishment for assault during the commission of a felony and malicious assault violates double jeopardy; that the charges of kidnapping and assault during the commission of a felony be vacated; that the remaining convictions and sentence stand firm.

Kevin Woodrum,

By Counsel



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