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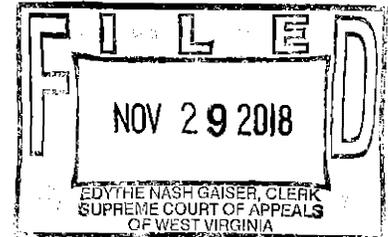
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IN THE SUPREME COURT OF APPEALS

CHARLESTON

KRISTAFFER AVERY BLECK

Defendant Below, Petitioner



v.

SUPREME COURT NO. 18-0481

STATE OF WEST

Plaintiff Below - Respondent.

**APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY,
WEST VIRGINIA**

PETITIONER'S REPLY BRIEF

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ARGUMENT

The State properly directed the Court's attention to State v. Jones, 216 W.Va. 666, 610 S.E. 2d 1(2004) (per curiam) but misdirects to *syllabus point 6*.

In fact Syl. Pt 1 is more helpful {in that syllabus point the court refers to State v. Lucas, 201 W.Va. 271, 496 S.E. 2d 221 (1997) wherein the court commands a review where the . . . "order violates statutory constitutional command."

To allow the Court in this case to base its denial of even the ability to consider probation on the previously expunged charge would make a mockery out of *West Virginia Code § 61-11-25*.

West Virginia Code § 61-11-25 specifically states that "upon expungement, the proceedings in the matter shall be deemed never to have occurred." (Emphasis added).

If it never occurred, by law, then how can a sentencing court rely on it or even use it in the sentencing decision?

Counsel for the State suggest that prosecutors may ask to unseal the records if the "use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction." *West Virginia Code § 61-11-25(f)*. In this case the investigation and prosecution is over, done.

Counsel argues that the issue of the expunged charge is material to the sentencing process.

If that were so why would the legislature use the "never to have occurred

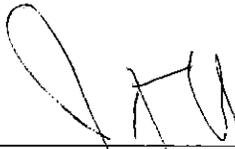
language?” § 61-11-25(e).

A careful review of the court’s language at the sentencing hearing shows that the impermissible review of the expungement charge provided the sole reason for the denial of probation. Its use in the sentencing decision “. . . violates statutory or constitutional commands.” *Syl. Pt. 1, State v. Lucas, supra.*

CONCLUSION

Wherefore your Petitioner prays that the Court grant the Petitioner's Appeal and reverse the Order of the Circuit Court of Jefferson County.

**Krastafer Avery Bleck,
Defendant - Petitioner**



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