

307-304 ✓

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

//Case No. 17-F-42

Honorable Steven L. Shaffer

DAVID HIRAM WALKER, JR.,

Defendant.

**ORDER DENYING DEFENDANT’S RULE 35(a)
MOTION TO CORRECT ILLEGAL SENTENCE**

On August 16, 2019, came the State of West Virginia by Assistant Prosecuting Attorney Megan Allender, and came the Defendant, not in person but by counsel Samuel Hess, for a previously scheduled hearing on the Defendant’s August 1, 2019 “*Rule 35(a) Motion to Correct Illegal Sentence.*” Counsel for Defendant proffered to the Court that the Defendant had contacted him and explained that he did not wish to appear for the hearing unless it was required. Pursuant to *State v. Tex B.S.*, 236 W. Va. 261, 778 S.E.2d 710 (2015), the Court found that the Defendant’s presence was not required, and proceeded to hear the arguments of the parties.

The Court finds that the dispute in this matter regards the amount of time Defendant should be credited for time spent on home confinement as a condition of probation, which probation was ultimately revoked by this Court on June 19, 2019. Defendant was sentenced to the underlying one to ten year penitentiary sentence following his conviction for Grand Larceny by False Pretenses.

Counsel for Defendant proffered to the Court that Defendant should be entitled to 297 days of credit, 76 of which included actual incarceration (16 days pretrial and 60 days following a 60-day “shocker” ordered by the Court following the State’s second motion to revoke or modify his probation). Additionally, counsel for Defendant contended that pursuant to West Virginia Code §

62-11B-9(b), Defendant was entitled to credit for 237 days he had spent on home confinement from August 27, 2018, to June 19, 2019, minus the 60 days he had spent as actual incarceration in the Regional Jail.¹

The State of West Virginia, by its Assistant Prosecuting Attorney, argued that Defendant should not be credited for the time spent on home confinement because Defendant had not been compliant, ^{with his Home Confinement} which ultimately led to his revocation.

After considering the arguments of the parties, and for the reasons explained more fully on the record, the Court found that West Virginia Code § 62-11B-9(b)'s requirement that defendants receive credit for time served on home incarceration only applies when a defendant is ordered to serve the sentence on home incarceration as an alternative sentence to another form of incarceration, and that defendants are not entitled to credit for time served on home incarceration if the home incarceration is a condition of probation. Accordingly, the Court

ORDERED that Defendant David Hiram Walker, Jr., is only entitled to the 76 days he spent in the Regional Jail, and he is not entitled to the 237 days he spent on home incarceration as a condition of probation. It is further

ORDERED that Defendant's August 1, 2019 "*Rule 35(a) Motion to Correct Illegal Sentence*" is denied.

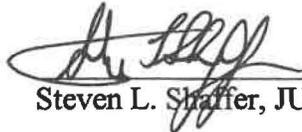
This is a final order. All parties are saved their exceptions and objections to the rulings of the Court. It is further

ORDERED that the Clerk of the Court deliver a certified copy of this Order to Assistant Prosecuting Attorney Megan Allender; and to Samuel Hess, counsel for Defendant.

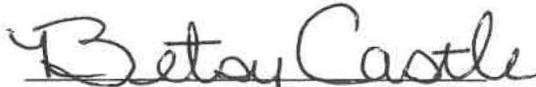
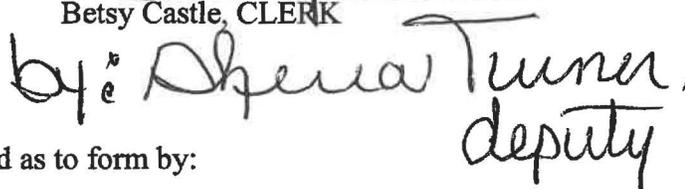
¹ Counsel for Defendant noted during his argument to the Court that he had erred in the motion by accidentally excluding the 60 days spent in the Regional Jail in computing the time spent on home confinement. Counsel explained that he was not seeking to have Mr. Walker credited for time spent on home incarceration while he was in the Regional Jail.

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SID
8/2/19

ENTER this 21st day of August, 2019.


Steven L. Shaffer, JUDGE

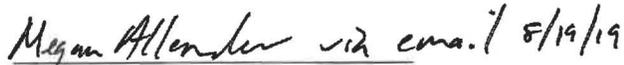
ENTERED this 21 day of August, 2019.


Betsy Castle, CLERK
by: 
deputy

Prepared by and approved as to form by:

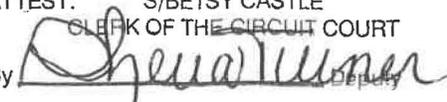

Samuel Hess
Counsel for Defendant

Approved by:


Megan Allender
Assistant Prosecuting Attorney
of Preston County

A TRUE COPY:

ATTEST: S/BETSY CASTLE
CLERK OF THE CIRCUIT COURT

By 
Deputy

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

vs.

\\ Case No: 17-F-48 42
JUDGE STEVEN L. SHAFFER

DAVID HIRAM WALKER, JR.,
Defendant.

SENTENCING ORDER

ON THE 27th day of July, 2018, came the State of West Virginia by its Assistant Prosecuting Attorney, Megan Allender, the Defendant, David Hiram Walker, Jr., in person and by his Counsel, Claire L. Niehaus, Probation Officer, Todd Schell, for a Sentencing Hearing in the above-styled matter. WHEREUPON, the Court recalled that on February 22, 2018, the Defendant entered a Deferred Adjudication plea to "Grand Larceny by False Pretenses" that the Court at that time accepted. In a hearing earlier this day, the Court revoked the Deferred Adjudication Agreement and the parties agreed to proceed to sentencing in this matter.

The Court also noted its receipt of the Pre-Sentence Investigation Report (PSI) and Amended PSI along with the Victim Impact Statement and inquired of the parties as to whether they have received a copy of the PSI and Amended PSI and reviewed them and whether there were any additions, corrections, deletions, or other modifications to either the PSI or Amended PSI. The State and the Defendant's counsel informed the Court that they had received a copy of each PSI and had no additions, corrections, or deletions to either report. The Defendant informed the Court he had not received a copy, but, through counsel informed the Court that he has reviewed the reports and has no changes to make to either of them. The Court accepted the PSI and the Amended PSI as presented as its findings of fact for purposes of this sentencing hearing.

Then the Court proceeded to sentence the Defendant in this matter.

WHEREUPON the Court after considering the request of the Defendant, the Defendant's PSI reports, and Victim Impact Statement, **ORDERED** that the Defendant be sentenced to One to Ten Years in a state correctional facility for his conviction for "Grand

Larceny by False Pretenses" as charged in Count One of the Indictment. The Court **ORDERED** that the Defendant is entitled to all credit for any time served.

The Court further **ORDERED** that the Defendant's sentence be suspended and that the Defendant be placed on probation for a period of three years and shall report two times a month. The Court **ORDERED** that the first year of his probation shall be served on Home Confinement. The Court **ORDERED** that the Defendant shall comply with the Rules and Regulations of his Probation Officer. The Court **ORDERED** that in addition to complying with the terms and conditions as set forth by his probation officer, the Defendant shall submit to an evaluation for mental health and substance abuse and that he shall follow any and all recommendations that flow from the evaluation. The Court **ORDERED** that the Defendant shall sign a release of medical information for his probation officer so that his probation officer can obtain the evaluation and any other relevant medical information.

The Court further **ORDERED** that the Defendant shall seek prior permission from his probation officer before leaving the state of West Virginia for any purpose.

The Court further **ORDERED** that the Defendant shall provide to his probation officer and the home confinement officer his address and contact information.

The Court further **ORDERED** that the Defendant shall cooperate with his probation officer and his home confinement officer; the Defendant shall not be belligerent or difficult with his probation officer or his home confinement officer.

The Court advised the Defendant that if he violated any of the terms and conditions of his probation that the State may file a motion to revoke his Probation; and that if the Court found that the Defendant had substantially violated any of the terms and conditions of his probation, then the Court may revoke the Defendant's probation and order the Defendant to serve the remainder of his sentence. The Court also informed the Defendant that if the Defendant does violate his probation that the Court will remember the promises the Defendant made this day to the Court.

The Court explained to the Defendant his right to appeal, the necessity of filing a Notice of Appeal within thirty (30) days, his right to a free transcript, his right to have the Court appoint him an attorney if he cannot afford one, and his right to file a motion for reduction of sentence within 120 days as provided in Rule 35 of the West Virginia Rules of Criminal Procedure.

It is further **ORDERED** that a certified copy of this order be delivered or mailed by first class mail to Megan Allender; Claire L. Niehaus; David Hiram Walker at 1008 Beaver Hollow Road, Bruceton Mills, WV 26525.

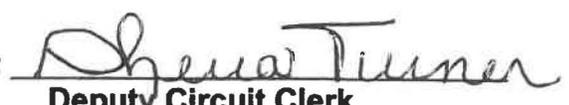
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MMA
CLW
DEF
Prob.
R. BOH
SID
7/31/18

ENTER this the 31 day of July, 2018

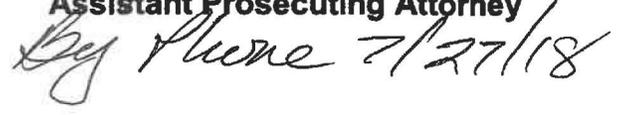

Steven L. Shaffer - Judge

ENTERED this the 31 day of July, 2018


Betsy Castle - Circuit Clerk

By: 
Deputy Circuit Clerk


Claire L. Niehaus


Assistant Prosecuting Attorney
By  7/27/18

A TRUE COPY:
ATTEST: S/BETSY CASTLE
CLERK OF THE CIRCUIT COURT
By 