

No. 28399 – *State of West Virginia ex rel. Donald R. Farmer, Jr. v. George Trent, Warden*

FILED

RELEASED

Albright, J., concurring in part and dissenting in part: **July 6, 2001**

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

July 9, 2001

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I concur in the judgment of the majority that the denial below of the Appellant's application for a writ of habeas corpus should be affirmed, but not for all the reasons assigned by the opinion of the Court. The refusal of the Appellant to testify or allow his counsel to testify to the underlying circumstances deprived the trial court of any factual basis upon which to act. Moreover, the totality of the circumstances, as revealed by the resulting truncated record and the considerable delay between the time the contested guilty plea was entered and the petition for this writ was filed, persuades me that the majority is correct in affirming the judgment of the lower court on this application.

I respectfully dissent from the conclusion that this Court should alter its position, enunciated forcefully in Rule 11, W. Va. R. Crim. P., that the trial court must independently ascertain that a plea of guilty is both voluntarily and knowingly made simply because the Supreme Court of the United States has now lowered its expectations in that regard. I respectfully suggest that the Constitution of this State mandates faithful adherence of Rule 11, even if the supreme law of the land no longer does.

For like reason, I also dissent from Syllabus Point 2 of the majority's opinion. I believe it invites disregard for the spirit and letter of Rule 11 and the principles of fairness and justice

which underlie both Rule 11 and the substantive provisions of our West Virginia Bill of Rights, the provisions of which mirror the protections intended to be preserved by the hallowed Bill of Rights attached to the Constitution of the United States as a condition of its ratification.

I am authorized to state that Justice Starcher joins in this concurring and dissenting opinion.