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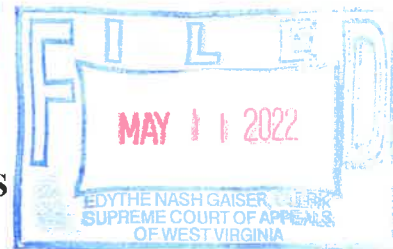
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NO. 22-0023

IN THE SUPREME COURT OF APPEALS

OF

WEST VIRGINIA



CHARLESTON, WEST VIRGINIA

STATE OF WEST VIRGINIA
Plaintiff Below, Respondent

v.

(Circuit Court of Wayne County)
(Case No.: 21-F-137)

CHARLES LEE FINLEY
Defendant Below, Petitioner

PETITIONER'S REPLY BRIEF

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REPLY ARGUMENT

I. The Legislative Intent Behind the West Virginia Code §60A-10-1 et seq., Also Known as the Methamphetamine Laboratory Eradication Act (“the Act”), is Clear and thus There is No Reason to Look to Another Statute to Determine the Legislative Intent of the Act.

In the Respondent’s Brief, the State argues that “the Petitioner’s argument is belied by the plain meaning and legislative intent of West Virginia Code §§ 60A-10-1 to 60A-10-9 and West Virginia Code §§ 60A-4-401 to 60A-4-417 which must be read together” Resp. Brief at p. 5. The State then attempts to argue that the legislative intent of the Act can only be determined by looking at a different Article of the West Virginia Code (§60A-4-401 *et seq.*). Thus, the State first concedes that the Act has a plain language and a plain legislative intent, which the Petitioner agrees, but then the State argues that another statute is needed to determine the legislative intent of the Act. This does not make sense. You cannot claim that there is clear legislative intent within the Act and then claim to need to bring in another statute to determine what the legislative intent of the Act is.

Furthermore, it is longstanding law in West Virginia that “[t]he primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. Pt. 1, *Smith v. State Workmen’s Comp. Comm’r*, 159 W.Va. 108, 219 S.E.2d 361 (1975). The Court has further held that “[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.” Syl. Pt. 2, *State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951).

The Legislature was very detailed and very unambiguous in its drafting of the intent of the Act as outline in West Virginia Code § 60A-10-2. More specifically, the Act indicates that the “Legislature finds that restricting access to over-the-counter drugs used to facilitate production of methamphetamine is necessary to protect the public safety of all West Virginians.” *Id.* The Act then states that “it is further in the best interests of every West Virginians to create impediments to

the manufacture of methamphetamine by requiring persons purchasing chemicals necessary to the process to provide identification.” *Id.* Additionally, the heading of the specific subsection of the Act, West Virginia Code §60A-10-4, clearly indicates that the Act applies to the possession of substances to be used as precursor to manufacture of methamphetamine (emphasis added). The Act clearly, then, applies to substances used in the production of methamphetamine, not the final form of methamphetamine itself.

In this case, there is no reason to look to additional statutes in this state to determine the legislative intent behind the Act. The Act is clear and unambiguous, specifically in the language in the heading of West Virginia Code §60A-10-4, as well as the plain language of the statute. Furthermore, the Purpose section which lays out the intent of the Act plainly shows that the purpose is to restrict access to over-the-counter drugs and chemicals, *i.e.* precursors, used to facilitate production of methamphetamine, not the final form of methamphetamine itself. Under the long held standards as set forth in *Smith* and *Epperly*, because the statute is clear and unambiguous and because the legislative intent is clear, this Court has to apply the statute as it is plainly written. And because the Act only applies to possession of altered precursors used in the manufacture of methamphetamine, not the final form of methamphetamine itself, the lower court’s decision must be reversed.

2. A Double Jeopardy Violation Exists for Possession of Altered Pseudoephedrine and Simple Possession.

In the Respondent’s brief, the State argues that Mr. Finley is contending that convictions on the Counts of Possession of a Controlled Substance with the Intent to Deliver and Possession of Pseudoephedrine in an Altered State violate double jeopardy. *See Resp. Brief at p. 16.* The State then argues that there is no double jeopardy violation under these two separate statutes. *Id.* Mr.

Finley agrees. As stated in the Petitioner's Brief, Mr. Finley concedes that these are two separate statutes with different elements. *See Pet. Brief at p. 4 and App. P. 13.*

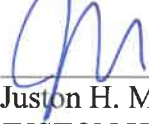
The Petitioner instead argues that there is no difference in the elements required for a conviction of Possession of Pseudoephedrine in an Altered State, as applied in the lower court, and Simple Possession, which is a lesser-included offense of Possession with Intent to Deliver and which would be a potential conviction if the jury did not believe that Mr. Finley had the intent to deliver the methamphetamine that he possessed. As applied in the lower court, for both possession of altered pseudoephedrine and simple possession, the State would just have to prove that Mr. Finley possessed methamphetamine in Wayne County, West Virginia. This is because the lower court ruled that the possession of altered pseudoephedrine applies to the final form of methamphetamine, despite the plain language and the clear legislative intent of the statute.

The State in its response brief clearly agrees with the State in the lower court that methamphetamine and altered pseudoephedrine are the same thing. *See Resp. Brief at p. 14.* It is clear, then, that as applied in the lower court the State would not have to prove any different elements in the two statutes, and Mr. Finley would have a felony conviction under the Act and a misdemeanor conviction under West Virginia Code §60A-4-401(c) if he had proceeded to trial and admitted to possessing the final form of methamphetamine. This is a violation of Mr. Finley's double jeopardy rights as provided to him under the United States and West Virginia Constitutions. For these reasons, the lower court's decision must be reversed.

WHEREFORE, for all the reasons set forth above, the Petitioner prays that this Honorable Court reverse the lower court's decision; to remand this matter back to the lower court for proceedings consistent with that decision; and to grant any and all further relief that it deems necessary.

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CERTIFICATE OF SERVICE

I, Juston H. Moore, Esq., hereby certify that on the 10th day of May, 2022, I served a true and correct copy of the Petitioner's Reply Brief on the following:

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