

Maynard, J., Dissenting Opinion, Case No.23565 State of West Virginia v. Alan L. Stone

No. 23565 -- State of West Virginia v. Alan L. Stone

Maynard, Justice, dissenting:

I respectfully dissent because the trial judge's failure to inform the defendant that he would not have the right to withdraw his plea if the court rejected the recommended sentence is error. However, the error is clearly harmless under Rule 11(h) of the West Virginia Rules of Criminal Procedure because the trial judge did tell the defendant the court was not bound to accept the sentencing recommendation. I believe that is sufficient and is substantial compliance with Rule 11; therefore, I would let the sentence stand.

I have an additional concern. I am concerned that defendants and defense attorneys might attempt to use the majority opinion to assert that defendants have the right to compel specific performance of a recommended sentence as part of a plea bargain. Any such rule would improperly interfere with the discretion of trial judges to impose sentencing. My position will always be that this discretion should rest solely with trial judges.