

No. 27765 - State of West Virginia ex rel. Marjorie Louise Webb v. Honorable Charles E. McCarty, Judge of the Circuit Court of Roane County

**FILED**

Maynard, Chief Justice, dissenting:

**December 5, 2000**  
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OF WEST VIRGINIA

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I dissent because I do not believe that the circuit court abused its discretion by failing to allow the petitioner to obtain a mental examination. To the contrary, the circuit court agreed to have Ms. Webb examined, and it is her own fault that she was not examined prior to her trial date 11 months later.

According to the majority opinion, the failure of the petitioner to receive a mental examination was due to “a comedy of errors, continuances, and missed appointments.” If we read the fine print in footnote 2, however, we see that it was the petitioner’s own errors and missed appointments that created the problem. Specifically, the petitioner missed three appointments to be examined. I am not sure what the majority would have the circuit court do differently under these circumstances. Perhaps the circuit judge should have picked the petitioner up at her home, driven her to the doctor’s office, and waited there to ensure that the examination was completed. Of course, this would greatly burden circuit judges who already have overcrowded dockets. Or maybe the circuit court was supposed to continue delaying the petitioner’s trial *ad infinitum* until the petitioner decided to cooperate. If this is what the majority expects, criminal defendants now have a sure-fire way to avoid ever having to go to trial.

The fact is that the circuit court in this case acted properly by granting the petitioner a mental examination and giving her a year to complete it. From there, it was up to the petitioner and her lawyer to see that she was examined. By granting as moulded the petitioner's writ, the majority has created yet another way for criminal defendants to impede the wheels of justice. Accordingly, I dissen