

FILED

July 2, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

July 3, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, Justice, concurring:

There is a single point I wish to make in this case.

According to the briefs, the defendant in this case was released from prison on parole in August of 1999. Two months later he was committing the robberies that led to the ninety-year prison sentence that is at issue in the instant case. This defendant is apparently a “poster child” for how our correctional system is failing us.

The defendant’s official “record” begins with a conviction of grand larceny in 1972, apparently followed by a substantial stretch in prison. The prosecution says the defendant has spent his entire adult life at “crime,” and he will likely continue in that path. The circuit judge saw the case the same way, and imposed what is probably a life sentence for this forty-five-year-old defendant.

I concur in the Court’s judgment, because I think there is a fair possibility that as a circuit judge, I would have read this defendant as a truly dangerous person who needs to be restrained for a very long time to protect the public. Even so, I would have probably imposed about a twenty-five-year sentence, on the grounds that in ten or twelve years there is a fair chance this defendant’s tendency to crime and violence would have abated enough to let the parole board take a look at him. Ninety years seems too long for a crime with no weapon.

But the judge looked hard at this defendant and made a judgment that in this case I do not choose to second-guess.