

FILED

June 17, 2003

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

Albright, Justice, concurring:

I concur with the majority decision to remand this case for resentencing. I am content to leave to the discretion of the new sentencing judge the determination of an appropriate sentence after suitable review of the nature and circumstances of the crime, the victims' statements, the presentencing report information, and any elocution by the defendant or any other information properly submitted on his behalf.

In my view, members of this Court should not state their opinion on a proper sentence in this or any other case, absent having reason to consider all of the factors bearing on an appropriate sentence as outlined above. We are, after all, an appellate court, not a trial court assigned to make sentencing decisions.

Finally, I would note that the members of this Court do not have before them any specific information from which we could gauge this defendant's likelihood of committing additional offenses. With respect to the specific offenses of which this defendant has been found guilty, I believe this Court lacks any information other than anecdotal, stereotypical conclusion upon which to reach a conclusion regarding possible recidivist

conduct. Clearly, in the first instance the examination of that issue is for the trial court, based upon at least reasonably reliable information.

Accordingly, I concur in the judgment reached but disassociate myself from any comments which might be seen as suggesting to the sentencing judge how he might exercise his discretion. I am authorized to state that Chief Justice Starcher joins in this concurring opinion.