

No. 30904 – *State of West Virginia ex rel. Roger Wyant v. Keith Brotherton, Clerk, Circuit Court of Jackson County*

and

No. 30907 – *State of West Virginia ex rel. Lorenzo D. Valentine v. The Honorable John R. Frazier, Judge, Circuit Court of Mercer County*

**FILED**

Albright, Justice, concurring in part, dissenting in part:

**December 5, 2003**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

Although I agree that an incarcerated person has no *entitlement* under our case law or post-conviction habeas corpus rules to obtain court or other public records in order to perfect a habeas corpus petition, I must dissent to the majority’s unfounded conclusion that incarcerated persons may not employ the provisions of the Freedom of Information Act (hereinafter referred to as “FOIA”) to obtain court records for such purposes.

The express purpose of FOIA is to enable persons<sup>1</sup> to access public records held by governmental agencies, which obviously includes courts. W.Va. Code §§ 29B-1-1, 29B-1-3. Had the convicted persons in this matter, like any other person, supplied or guaranteed payment for the requested information and otherwise met the statutory

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<sup>1</sup>The term “person” is defined within FOIA to include “any natural person, corporation, partnership, firm or association.” W.Va. Code § 29B-1-2 (1977) (Repl. Vol. 2002). The Legislature has also provided in its rules for construing statutes that “[t]he word ‘convict’ means a *person* confined in the penitentiary of this or any other state, or of the United States.” W.Va. Code § 2-2-10(o) (1998) (Repl. Vol. 2002) (emphasis added).

requirements, I see no basis in the provisions of FOIA for denying the request. Thus the majority clearly has overstepped judicial bounds by engrafting a new prerequisite for obtaining public information under FOIA. As a practical matter, the judicially created exception to FOIA may be readily circumvented by the incarcerated requestor either not stating an intended use for the information, which the statute does not require, or having a relative or friend request the information for them.

Since I find no sound basis in law or reason in the majority's clear implication that FOIA cannot be used by a person merely because he or she has been convicted of a crime, I have no choice but to respectfully dissent in this regard.