

**FILED**

**December 10, 2003**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Starcher, C. J., concurring:

This case involved a man who stole some very valuable hunting dogs and radio equipment, and for this crime he was sentenced to a year in jail. It was a rotten crime, although the offender apparently had no previous criminal record and it was not a crime of violence. I concur in the Court's judgment and opinion because the sentence of incarceration was within the sentencing judge's discretion.

However, I write separately because the sentence of incarceration in this case – although legally permissible – vividly illustrates the most important issue facing West Virginia's criminal justice system: our failure to use economical, non-incarceration, community-based sanctions for criminal misconduct.

West Virginia taxpayers are being required to spend large amounts of money on putting people in prisons and jails, at a time when our State's budget is said to be in crisis. At the same time, new technology like electronic bracelets (even with satellite tracking) will allow us to monitor offenders and protect society at a fraction of the cost of incarceration. And instead of sitting in a \$20,000-a-year cell at the taxpayers' expense, we can get our offenders out *working*, to clean our streets and parks; and paying restitution to their victims.

The wasteful, unnecessary use of imprisonment is not limited to West Virginia.

It is a national problem. In 1974, there were 1,819,000 U.S. adults who had at some time been incarcerated in a state or federal prison; that was 1.3% of our nation's population. Twenty-seven years later, in 2001, that number had *more than doubled* – to 5,618,000, or 2.7%.

In 1974, 8.7% of black Americans had ever been in prison. In 2001, the number is 16.6%. If current incarceration rates remain unchanged, Bureau of Justice statistics predict that *one in three black males*, one in six Hispanic males, and one in seventeen white males will go to prison sometime during their lives.

Put another way, at current rates, an astonishing *6.6% of all persons born in the United States in 2001 will go to state or federal prison during their lifetime*; this is up from 5.2% in 1991, and from *1.9% in 1974*.

Are we a safer society than we were in 1974? I don't think so.

These numbers are horrifying. They reflect our society's utterly failed reliance on imprisonment to try to deal with the problem of hard drugs, and politicians who are playing the knee-jerk politics of fear and vengeance.

We who have worked daily in the criminal justice system know what we need to deal with offenders effectively and economically, and it sure isn't more incarceration.

We need more treatment programs for drug addicts, and more day reporting centers and community corrections centers.

We need high-tech home confinement and offender monitoring systems, and

we need a limited amount of secure imprisonment, with good in-house rehabilitation services, for the violent people who pose a true danger.

We need to get rid of mandatory minimum sentences, because they clog our jails and prisons with offenders who don't need that level of security.

The sentence in this case of a year in jail for a dog-stealer means that tens of thousands of dollars of taxpayer money will go to feed, clothe, house and give medical care to a person who should be outside, on supervised probation, *working*, to pay his debt to society and to his victim.

Multiply this offender's incarceration sentence by hundreds of other similar cases, and we can see why West Virginia is spending money that we need – for teachers and nurses and doctors and roads and bridges and schools – on wasteful, unnecessary imprisonment.