

No. 31261 *Thomas D. Haislop, Michael R. Reed, Thomas E. Johnson, II v. Gary Edgell, Superintendent, WV Department of Public Safety; Ginny Conley, Wood County Prosecuting Attorney; and W. L. Rectenwald, Commander Wood County Detachment WV State Police*

FILED

December 10, 2003

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

Starcher, C.J., concurring:

I join the Court’s unanimous opinion and write separately to highlight a distinct and important point made by the Court in its opinion – that our decision does not address the substantive due process and equal protection aspects of the Sex Offender Registration Act.

My own judgment is that in an appropriate case, substantive due process and equal protection would require that an offender who could clearly demonstrate rehabilitation be able to go before a circuit court and show that they have no risk of re-offending, and request removal of the registration requirement. That is, such an individual might have grounds to challenge provisions of the Act as applied to him or her. *See* majority opinion, ___ W.Va. at ___, ___ S.E.2d at ___, slip op. at 24-25. In such a case, a circuit court in the first instance should take evidence, make a full record, and rule on the substantive due process and equal protection issues. If such a case is ever brought, I hope that it is a case that has compelling equities and merit, so as not to poison the well of justice with “bad facts.”