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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

EDWARD JESSE DREYFUSE

In Re: Application to Present Complaint to Grand Jury

Supreme Court No.: 18-0271

OCT 25 2019

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**PETITIONER'S SUPPLEMENTAL BRIEF**

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**Constitutional**

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## QUESTION PRESENTED

- I. Whether the “any person” language outlined by this Court in *State ex rel. Miller v. Smith* includes incarcerated persons.

## STATEMENT OF THE CASE

Petitioner applied to the Cabell County Circuit Court to present complaints to the Cabell County grand jury for indictment.<sup>1</sup> The Cabell County Circuit Court denied Petitioner’s application without explanation.<sup>2</sup> The Cabell County Circuit Court’s denial violates Article III, § 17 of the West Virginia Constitution because that court prevented Petitioner from exercising his constitutional right to present felony complaints to the grand jury. Only a grand jury can determine probable cause to indict for a felony offense, and any circuit court that supplants the grand jury’s position in the indictment process is violating both the Fifth Amendment of the United States Constitution and Article III, § 4 of the West Virginia Constitution.

Petitioner concedes that he is currently incarcerated; however, Petitioner’s incarceration status has no bearing on this Court’s decision. Petitioner’s allegations arise from grand jury testimony provided by Ryan Bentley in response to questions posted by then Cabell County Prosecutor Christopher Chiles.<sup>3</sup> While testifying before the grand jury Mr. Bentley stated that Petitioner struck the decedent multiple times, causing the following injuries: “a broken leg, a broken arm, four broken ribs, three broken fingers, facial fractures, and a major skull fracture.”<sup>4</sup> Petitioner’s sole contention with Mr. Bentley’s testimony is that the broken ribs, facial fractures and major skull fracture are *all* absent from the decedent’s medical records.<sup>5</sup> The non-existence of these injuries was known on April 09, 2012.<sup>6</sup> Mr. Bailey’s grand jury testimony occurred on

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<sup>1</sup> Resp. App. 11-14.

<sup>2</sup> Resp. App. 16-17.

<sup>3</sup> Pet. App. Exhibit A.

<sup>4</sup> Resp. App. 22.

<sup>5</sup> Resp. Notice of App. Exhibit B.

<sup>6</sup> *Id.*

June 19, 2012.<sup>7</sup> The grand jury indicted Petitioner for four charges, based solely on the testimony of Mr. Bentley.

Petitioner applied to the Cabell County Circuit Court to present complaints to the grand jury seeking a perjury indictment against Mr. Bentley, and a subornation of perjury indictment against current-Judge Chiles.<sup>8</sup> Petitioner's complaint alleged that Mr. Bentley falsely testified about material matters, the decedent's injuries, before the grand jury.<sup>9</sup> Petitioner's complaint further alleged that Judge Chiles induced that false grand jury testimony, thereby suborning perjury.<sup>10</sup> Petitioner's proposed indictment also specifically referenced the elements of each offense, the event leading to the allegations, and specifically referenced the West Virginia Code section for each offense.<sup>11</sup> The Cabell County Circuit Court denied Petitioner's application without explanation.<sup>12</sup> Petitioner appealed that denial to this Court.

### **SUMMARY OF ARGUMENT**

Petitioner seeks to exercise his right as a person by presenting complaints to the grand jury of Cabell County. The West Virginia Constitution affords Petitioner this right. The facts are plain in this case: Mr. Bentley told a Cabell County grand jury that Petitioner caused several major fractures that are non-existent, and that Mr. Bentley should have known those injuries did not exist when he testified before the grand jury that indicted Petitioner. Petitioner applied to the Cabell County Circuit Court to present his complaints to the grand jury. The Cabell County Circuit Court denied that application without explanation. That denial is unconstitutional, because the court's function is to "insure" that any person may go to the grand jury to present a complaint.

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<sup>7</sup> Resp. App. 18.

<sup>8</sup> Resp. App. 11-14.

<sup>9</sup> Pet. App. R-1 - R-3.

<sup>10</sup> Pet. App. C-1 - C-3.

<sup>11</sup> Pet. App. R-B-1 (Bentley Indictment); C-B-1 (Chiles Indictment).

<sup>12</sup> Resp. App. 16-17.

Further, there is no manner by which a court can determine the merit of a person's felony complaint, because both the United States Constitution and the West Virginia Constitution grant that power to the grand jury alone. This Court's rulings are uniform in that a circuit court cannot supplant the grand jury's role in probable cause determination.

### STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This Court issued an order in this matter on June 07, 2019, directing Petitioner to file a supplemental brief on or before October 25, 2019. That order instructed that a W. Va. R. App. P. 20 argument will occur in the January 2020 term of this Court.

### ARGUMENT

#### **I. Petitioner has the right to present criminal complaints to the grand jury, and only the grand jury can determine the merit of Petitioner's allegations.**

Petitioner seeks to exercise his constitutional right to present complaints to the grand jury. Petitioner applied to the Cabell County Circuit Court for presentment to the grand jury.<sup>13</sup> That court denied Petitioner's application without explanation.<sup>14</sup> The action by the Cabell County Circuit Court violates two tenets of constitutional law: 1) the right of the people to access the grand jury; and 2) only the grand jury can determine if probable cause exists to indict. For these reasons, this Court should reverse the Cabell County Circuit Court's denial and order that court to grant Petitioner access to the grand jury.

This Court's review of a circuit court's interpretation of the West Virginia Constitution is *de novo*.<sup>15</sup>

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<sup>13</sup> Resp. App. 11-14.

<sup>14</sup> Resp. App. 16-17.

<sup>15</sup> Syl. Pt. 1, *Phillip Leon M. v. Greenbrier Cty. Bd. of Educ.*, 199 W. Va. 400, 484 S.E.2d 909 (1996) (modified on other grounds by *Cathe A. v. Doddridge Cty. Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340 (1997)).

**A. Article III § 17 of the West Virginia Constitution provides “any person” the right to present to a grand jury.**

Petitioner appeals the Cabell County Circuit Court’s denial of his application to present complaints to the grand jury. This Court’s rulings hold that “any person may go to [the] grand jury to present a complaint to it,”<sup>16</sup> because Article III § 17 of the West Virginia Constitution provides that “every person, for an injury done to him . . . shall have remedy by due course of law [.]”<sup>17</sup> Petitioner’s incarceration status does not forfeit his right to present a complaint to the grand jury.

Article III § 17 of the West Virginia Constitution provides that “[t]he courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.”<sup>18</sup> This Court has long interpreted this language to mean that “any person may go to the grand jury to present a complaint to it.”<sup>19</sup> The circuit court’s sole role is to “insure access to the grand jury” upon a person’s application.<sup>20</sup> The “open courts” right outlined in Article III § 17 also applies to incarcerated persons. “[P]ersons who are imprisoned do not lose their constitutional right to use the courts to . . . obtain justice.”<sup>21</sup> However, this right is “subject to reasonable limitations imposed to protect courts from abuse.”<sup>22</sup>

This Court has defined the reasonable limitations for indictment. “An indictment for a statutory offense is sufficient if, in charging the offense, it substantially follows the language of the statute, fully informs the accused of the particular offense with which he is charged and enables the court to determine the statute on which the charge is based.”<sup>23</sup>

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<sup>16</sup> Syl. Pt. 1, *State ex rel. R.L. v. Bedell*, 192 W.Va. 435, 452 S.E.2d 893 (1994) (internal citations omitted); Syl. Pt. 2, *Harman v. Frye*, 188 W.Va. 611, 425 S.E.2d 566 (1992) (internal citations omitted); Syl. Pt. 1, *State ex re. Miller v. Smith*, 168 W. Va. 745, 285 S.E.2d 500 (1981).

<sup>17</sup> W. Va. Const. art. III, § 17.

<sup>18</sup> *Id.*

<sup>19</sup> *E.g.*, Syl. Pt. 1, *State ex re. Miller v. Smith*, 168 W. Va. 745, 285 S.E.2d 500 (1981).

<sup>20</sup> *Id.*

<sup>21</sup> *Ward v. Cliver*, 212 W.Va. 653, 656, 575 S.E.2d 263, 266 (2002).

<sup>22</sup> Syl. Pt. 2, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006).

<sup>23</sup> Syl. Pt. 1, *State v. Nester*, 175 W. Va. 539, 336 S.E.2d 187 (1985) (internal citations omitted).



Petitioner's incarceration status is immaterial, as access to the grand jury applies to every person in West Virginia. Petitioner applied to the Cabell County Circuit Court, intending to present a complaint to the grand jury<sup>24</sup>; however, that court denied Petitioner's application without explanation.<sup>25</sup> Petitioner's proffered indictments outline the elements of both perjury and subornation of perjury.<sup>26</sup> The proffered indictments also put the proposed defendants on fair notice of the event that led to the potential indictment. That event is the grand jury proceedings leading to Petitioner's own indictment.<sup>27</sup> Petitioner's proffered indictments also list the West Virginia Code section defining both perjury and subornation of perjury.<sup>28</sup> Petitioner followed the necessary rule to present to the Cabell County grand jury by applying to the Cabell County Circuit Court for access. Petitioner also met the necessary level of sufficiency to present an indictment. The circuit court's singular duty once Petitioner has applied and presented a sufficient indictment is to grant access to the grand jury. The circuit court acted beyond that scope here by denying Petitioner access to the only body that can determine the existence of probable cause to indict. For this reason, this Court should reverse the Cabell County Circuit Court's denial and order that court to grant Petitioner access to the grand jury.

**B. Courts cannot determine the sufficiency of complaints, because only the grand jury has the power to determine the existence of probable cause to indict.**

Petitioner seeks to present complaints to the grand jury, as is his right. Petitioner applied to the Cabell County Circuit Court for access to the grand jury,<sup>29</sup> but that court denied Petitioner's application without explanation.<sup>30</sup> That court's duty is to insure access to the grand jury and allowing it to determine the merit of an applicant's claim would make the grand jury system moot. For this reason, this Court should order the Cabell County Circuit Court to grant

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<sup>24</sup> Resp. App. 11-14.

<sup>25</sup> Resp. App. 16-17.

<sup>26</sup> Pet. App. R-B-1 (Bentley Indictment); C-B-1 (Chiles Indictment).

<sup>27</sup> Pet. App. Exhibit A.

<sup>28</sup> Pet. App. R-B-1 (Bentley Indictment); C-B-1 (Chiles Indictment). *See* W. Va. Code § 61-5-1 (West 2019).

<sup>29</sup> Resp. App. 11-14.

<sup>30</sup> Resp. App. 16-17.

Petitioner access to the Cabell County grand jury, as only the grand jury can determine the existence of probable cause.

“No person shall be held to answer for treason, felony or other crime, not cognizable by a justice, unless on presentment or indictment of a grand jury.”<sup>31</sup> The grand jury’s function “is not to determine the truth of the charges against the defendant, but to determine whether there is sufficient probable cause to require the defendant to stand trial.”<sup>32</sup> Further, this function is dual, because the grand jury “is intended to operate both as a sword, investigating cases to bring to trial persons accused on just grounds, and as a shield, protecting citizens against unfounded malicious or frivolous prosecutions.”<sup>33</sup> Additionally, “no court can make an indictment in the first instance[.]”<sup>34</sup>

It is true that “a circuit court has supervisory powers over grand jury proceedings to preserve the integrity of the grand jury process and to ensure the proper administration of justice.”<sup>35</sup> “The primary means by which a [circuit] court fulfills its responsibility ... in grand jury proceedings is through its instructions to grand jurors on their purpose, function, and the procedures to be followed governing their deliberations and determinations.”<sup>36</sup> Even with these supervisory powers, a circuit court “may not prohibit grand jury consideration of offenses within any particular class of crimes.”<sup>37</sup> After the circuit court swears the grand jury in, and issues instructions “[t]he grand jurors . . . shall then be sent to their room.”<sup>38</sup>

The circuit court’s role continues to be supervisory following indictment, because “[e]xcept for willful, intentional fraud[,] the law of this State does not permit the court to go

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<sup>31</sup> W. Va. Const. art. III, § 4.

<sup>32</sup> *State ex rel. Pinson v. Maynard*, 181 W. Va. 662, 665, 383 S.E.2d 844, 847 (1989) (internal citations omitted).

<sup>33</sup> *State ex rel. State v. Wilson*, 239 W. Va. 802, 808, 806 S.E.2d 458, 464 (2017) (citing *State ex rel. Miller v. Smith*, 168 W. Va. 745, 751, 285 S.E.2d 500, 504 (1981)).

<sup>34</sup> Syl. Pt. 5, *State v. McGraw*, 140 W. Va. 547, 85 S.E.2d 849 (1955) (modified on other grounds by *State v. Adams*, 193 W. Va. 277, 456 S.E.2d 4 (1995)).

<sup>35</sup> Syl. Pt. 2, *State ex rel. Hamstead v. Dostert*, 173 W. Va. 133, 313 S.E.2d 409 (1984).

<sup>36</sup> *State ex rel. Hamstead v. Dostert*, 173 W. Va. 133, 140, 313 S.E.2d 409, 416-17 (1984).

<sup>37</sup> Syl. Pt. 2, *State ex rel. Hamstead v. Dostert*, 173 W. Va. 133, 313 S.E.2d 409 (1984).

<sup>38</sup> W. Va. Code Ann. § 52-2-6 (West, 2019).



behind an indictment to inquire into the evidence considered by the grand jury, either to determine its legality or its sufficiency.”<sup>39</sup> Further, “[d]ismissal of [an] indictment is appropriate only ‘if it is established that [a] violation substantially influenced the grand jury’s decision to indict’ or if there is ‘grave doubt’ that the decision to indict was free from substantial influence of ... violations.”<sup>40</sup> Finally, this Court has historically reversed any circuit court action that supplants the grand jury’s determination.<sup>41</sup>

Petitioner seeks to present complaints to the Cabell County grand jury for the offenses of perjury and subornation of perjury.<sup>42</sup> Both offenses are felonies, which generally require grand jury indictment before prosecution can occur.<sup>43</sup> Petitioner applied to the Cabell County Circuit Court for access to the grand jury.<sup>44</sup> The Cabell County Circuit Court denied Petitioner access to the grand jury without explanation.<sup>45</sup> There is no manner by which the Cabell County Circuit Court can determine the merit of Petitioner’s argument, because to do so would effectively place that court in the grand jury’s position. Such an action would be unconstitutional and require invalidation. For this reason, Petitioner requests this Court to reverse the Cabell County Circuit Court’s denial and order that court to grant Petitioner access to the grand jury for a probable cause determination.

## CONCLUSION

The language of Article III, § 17 the West Virginia Constitution is explicit, and this Court’s historical interpretation of that constitutional section is all encompassing. Every person

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<sup>39</sup> Syl. Pt. 2, *State v. Back*, 241 W. Va. 209, 214, 820 S.E.2d 916, 921 (2018) (quoting Syl., *Barker v. Fox*, 160 W. Va. 749, S.E.2d 235 (1977)).

<sup>40</sup> Syl. Pt. 6, *State ex rel. Pinson v. Maynard*, 181 W. Va. 662, 383 S.E.2d 884 (1989) (internal citations omitted).

<sup>41</sup> See e.g., *State ex rel. State v. Wilson*, 239 W. Va. 802, 806 S.E.2d 458 (2017) (writ of prohibition issued because circuit court supplanted grand jury); *State ex rel. Hamstead v. Dostert*, 173 W. Va. 133, 313 S.E.2d 409 (1984) (writ of prohibition issued because circuit court restricted grand jury from considering lesser included offenses).

<sup>42</sup> Resp. App. 11-14.

<sup>43</sup> W. Va. R. Crim. P. 7(a).

<sup>44</sup> Resp. App. 11-14.

<sup>45</sup> Resp. App. 16-17.

shall have a remedy, and any person may present a complaint to the grand jury. Petitioner's incarceration status does not remove him from personhood. His right to seek remedy for injury remains intact. Further, Petitioner's complaints allege felony offenses were committed. The only body that can determine whether probable cause exists to indict for a felony is the grand jury. That right exists under both the United States and West Virginia Constitutions. The courts exist to protect that right from encroachment. Any action that requires an initial factual determination by the courts prior to granting access to the grand jury cannot pass constitutional examination. The right Petitioner seeks to exert has existed since this state's inception, at least. This Court's first ruling that explicitly mandated grand jury access was in 1981, and in the thirty-eight (38) years since that decision the grand jury process has not suffered by granting access to any person seeking it.

For these reasons, Petitioner's case is not novel, but a request to reaffirm the rights afforded by the West Virginia Constitution and recognized in prior decisions by this Court. Petitioner requests this Court to reverse the Cabell County Circuit Court's denial and order that court to grant Petitioner access to the grand jury for a probable cause determination.

Respectfully submitted,

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