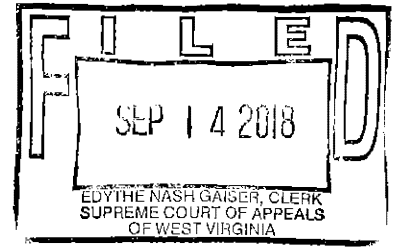




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18-0502

IN THE  
SUPREME COURT OF APPEALS  
OF  
WEST VIRGINIA

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CHARLESTON

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State of West Virginia vs Edwin Mack Taylor  
Underlying Proceeding  
Case No. 17-F-14  
Randolph County Circuit Court

**BRIEF**

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**POINTS AND AUTHORITIES**

**CASE AUTHORITY**

*Syllabus Point 1, State v Head, 198 W.Va. 298, 480 S.E. 2d 507 (1996)*.....

*Syl. Pt. 1. State v. Georgius, 225 W.Va. 716, 696 S.E. 2d 18 (2010)*.....

*State v Wears, 222 W.Va. 439, 665 S.E. 2d 273 (2008)*.....

**3. ASSIGNMENTS OF ERROR AND THE MANNER IN WHICH THEY WERE DECIDED**

**A. THE CIRCUIT COURT OF RANDOLPH COUNTY WEST VIRGINIA IMPROPERLY DENIED THE DEFENDANT FOR CREDIT FOR TIME SERVED FOR CHARGES THAT WERE DISMISSED AS A PART OF A UNIVERSAL PLEA AGREEMENT.**

**THE CIRCUIT COURT DENIED THE DEFENDANT CREDIT FOR TIME SERVED ON THE CASES THAT WERE DISMISSED PART OF THE UNIVERSAL PLEA AGREEMENT.**

**4. STATEMENT OF THE CASE**

The Defendant was arrested on the 16<sup>th</sup> day of September, 2016 for the offense of Person Prohibited from Possessing a Firearms (prior felony conviction), a felony by Trooper S.W. Shahan of the Elkins Detachment of the West Virginia State Police. The Defendant was arraigned on September 17, 2016 and bond was sent in the amount of Twenty-Five Thousand (\$25,000) Dollars cash only. The Defendant waived his preliminary hearing and was bound over to the Randolph County Grand Jury on the 28<sup>th</sup> September, 2016. The bond was also modified at that

hearing so the Defendant would be placed on a Twenty-Five Thousand (\$25,000) Dollar personal recognizance bond with the added condition the Defendant be hooked upon on home confinement with electronic monitoring (See Appendix pg. 15).

The Defendant was unable to be hooked up on home confinement, a *capias* was issued and the Defendant was arrested. A Grand Jury Indictment was returned on the 27<sup>th</sup> day of February, 2017. The Defendant was indicted for the felony offense of prohibited person possession of a firearm a felony, prohibited person possession of a firearm, a misdemeanor and a misdemeanor offense of possession of a controlled substance (See Appendix pg.3). The Defendant was charged with various other criminal offenses in the Magistrate Court of Randolph County while this matter was pending (See Appendix pg.6 ). The Defendant entered his Plea on August 17, 2017 and a Pre-Sentence Investigative Report was ordered (See Appendix pg. 39). A Pre-Sentence Investigative Report was prepared showing that the Defendant was entitled to credit for 208 days time served as of September 21, 2017 ( See Appendix pg. 15). The Defendant was sentenced on the 10<sup>th</sup> day of October, 2017. The sentencing Order provided that the Defendant would get credit for twelve (12) days time served which would be attributable to the offense in which he pled but not giving the Defendant credit for the charges that were dismissed as part of the Plea Agreement (See Appendix pg.6). The Defendant filed a Motion to Address the Credit for Time Served issue (See Appendix pg. 47). A hearing was held on the 30<sup>th</sup> day of April, 2018 regarding the same and the Circuit Court denied the Defendant's Motion (See Appendix pg.49 ) and the Credit for Time Served Motion Hearing Order (See Appendix pg.49).

## STANDARD OF REVIEW

*“ [I]n reviewing the findings of fact and conclusions of law of a circuit court concerning an order on a motion made under Rule 35 of the West Virginia Rules of Criminal Procedure, we apply a three-pronged standard of review. We review the decision on the Rule 35 motion under an abuse of discretion standard; the underlying facts are reviewed under a clearly erroneous standard; and questions of law and interpretations of statutes and rules are subject to a de novo review.” Syllabus Point 1, State v Head, 198 W.Va. 298, 480 S.E. 2d 507 (1996).*

*Syl. Pt. 1. State v. Georgius, 225 W.Va. 716, 696 S.E. 2d 18 (2010).*

### 5. STATEMENT REGARDING ORAL ARGUMENT

Defendant does not request Oral Argument in this matter.

### 6. SUMMARY OF ARGUMENT

The Defendant asserts that he was improperly denied credit for time served in this matter. A global plea resulted in various other charges being dismissed for which the Defendant was incarcerated while this matter was pending. The Defendant was required to pay restitution in this dismissed charges but was not given credit for time served. Accordingly, the Defendant should be given credit for all time served as part of the global plea.

### 7. ARGUMENT

**I. The Circuit Court of Randolph County West Virginia improperly denied the Defendant for credit for time served for charges that were dismissed as a part of a universal plea agreement.**

The Defendant asserts that he was improperly denied credit for time served in this matter for charges that were dismissed as part of global plea agreement. The plea agreement of the

parties stated that the State of West Virginia in paragraph 2b, the State of West Virginia will “move to dismiss the remaining charges contained in the above styled case with prejudice and further shall dismiss Circuit Court Case No. 17-B-86 and Magistrate Court Case 17-M42F-254 and 17-M42M-566. The Defendant shall however be required to make restitution in 17-B-86 in the amount of One Thousand One Hundred Sixty-Nine Dollars and Eighty-One Cents (Appendix pg. 6). As a result of this language the Defendant entered into a global agreement to resolve various pending matters and the Defendant should be granted credit for time served for the cases that were contained within the plea agreement. As set forth above the language in the plea required the Defendant to pay restitution in a case that was being dismissed however; the Circuit Judge improperly denied credit for time served in the same case. This Court has held a criminal Defendant is not entitled to have credit for time served applied to all overlapping unrelated charges if credit was properly applied to at least one of those charges. See *State v Wears*, 222 *W.Va.* 439, 665 *S.E. 2d* 273 (2008). Pursuant to the pre-sentence report the Defendant was entitled to 208 days credit for time served for all of the offenses involved in the global plea agreement (Appendix pg.15). The sentencing order in this matter only gave the Defendant credit for 12 days credit for time served (Appendix pg. 44 ). At the Motion Hearing on April 30, 2018 the Defendant presented documentation from the Department of Corrections showing that the Defendant did not receive credit for 208 days pursuant to the global plea agreement ( Appendix pg.52 ) (Transcript pg. 4 & 5). Further, at the Motion Hearing held on April 30, 2018 the Prosecuting Attorney acknowledged and agreed that there was a “universal resolution from multiple offenses” and the Prosecuting Attorney stated that he believed that the Assistant Prosecutor that was handling the case looked at the Regional Jail time records and inadvertently reviewed only one of the case numbers for placing the credit for time served amount in the sentencing order (See Transcript pg.

6, 7). Further, the Prosecuting Attorney again stated that there was an universal plea agreement and that the Defendant should have been granted credit for time served from March 23, 2017 until October 11, 2017 (Transcript pg. 7). Accordingly, based upon this matter being a global/universal plea the Defendant should be entitled to the additional credit for time served in this matter.

**8. CONCLUSION**

The Defendant prays that the Circuit Court reverse the Circuit Court of Randolph County, West Virginia and grant him credit for all time served in this matter.

Edwin Mack Taylor, Defendant  
By Counsel



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