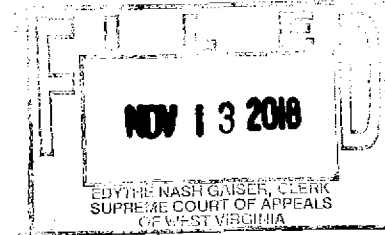


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. David E. Tackett
Petitioner

vs. No. 18-0882

Hon. John A. Hutchison, Judge of the Circuit
Court of Raleigh County,
Respondent



**Reply of John A. Hutchison, Circuit Judge to Petition of David E. Tackett Praying for a
Writ of Mandamus**

On May 8, 2017 and thereafter recorded on May 11, 2017 in the Office of the Clerk of the Circuit Court Raleigh County an indictment was issued against David E. Tackett which charged him in four counts with:

Count 1. Breaking and Entering;

Count 2. First-Degree Sexual Assault with the victim being 10 years of age;

Count 3. First-Degree Sexual Assault with the victim being 10 years of age;

Count 4. Mandatory Sentencing, the defendant was more than 21 years of age and the victim was younger than 12 years of age and that the defendant David Eugene Tackett employed forcible compulsion in committing the crimes set forth in the indictment.

The Petitioner was thereafter arraigned in the Circuit Court of Raleigh County and thereafter a trial date was set. During the course of the pretrial proceedings in this case the defendant demanded new counsel or required that his counsel move to be relieved as counsel on several occasions. Please see docket entries on July 10, 2017, July 11, 2017, July 12, 2017, March 20, 2018 and April 10, 2018. The order entered on April 10, 2018 is of particular interest because that order denied the motion of then defense counsel Brandon Gray to withdraw from

representation and it also ordered that the defendant was to cease filing pro se motions and to cease sending correspondence to the Court particularly when that correspondence requested that the Court not inform his lawyer of the correspondence and/or motions attached to it.

Because of the motion practice employed in this case and because of the demands of the defendant for the assistance of an expert to review the DNA evidence, a number of continuances were granted. This matter was finally set for trial in August 2018. On the eve of the trial the defendant through counsel announced that he intended to enter a plea of guilty to all the charges in the indictment. His counsel also announced that the defendant would admit to an Information, to be filed in this case, which charged that David E. Tackett had been twice before convicted of felony crimes.

On August 7, 2018 the defendant and his counsel appeared for purposes of entering a plea. The State of West Virginia was represented by Raleigh County Prosecuting Attorney Kristin Keller. The order memorializing the entry of the plea by David E Tackett was entered on August 28, 2018.

On August 27, 2018 the defendant, pro se, filed correspondence with the Clerk of the Circuit Court asking that the Clerk forward his attached motion for production of documents to the Court and to the Prosecuting Attorney. The defendant, pro se, demanded production of the following:

1. "Copy of all Court orders entered in the above-mentioned Indictment case number."
2. "Copy of all transcripts of hearings pertaining to the above mentioned Indictment case number."
3. "Copy of all plea agreements and transcripts of plea hearing."

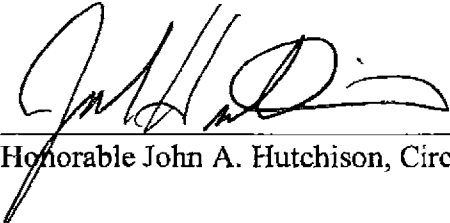
Upon review of the file, the Court determined that the Defendant is not entitled to discovery because there is no pending Habeas Corpus case. The Court has made an inquiry in the records of the Clerk of the Circuit Court of Raleigh County as recently as November 10, 2018 and has discovered no pending proceeding regarding a request for extraordinary relief in this case. A Defendant is not entitled to discovery prior to filing a petition for Writ of Habeas Corpus. See *State ex rel. Wyant v. Brotherton*, 214 W. Va. 434, 589 S.E.2d 812 (2003). Instead, the Court may allow discovery *after* the Defendant files the initial petition pursuant to the Rules Governing Post-Conviction Habeas Corpus Proceedings in West Virginia. In short, the Defendant has no grounds to demand discovery prior to the initiation of a *Habeas Corpus* proceeding.

The Defendant may be entitled to a copy of certain portions of his file which will be provided. These items include a copy of the docket sheet, the indictment, the information and the final order and this Judge will order the Clerk to immediately send these documents to the Petitioner. Based upon the Brotherton case mentioned above, the Petitioner is not entitled to require the state to have transcripts of hearings and other proceedings prepared simply so he can engage in a fishing expedition. As of this time Petitioner has failed to state any grounds which might support his demands for the expensive and time-consuming production of documents.

Therefore, this Judge prays that the Hon. Supreme Court of Appeals of West Virginia will deny the Petition for Writ of Mandamus filed by the Petitioner David E. Tackett.

A copy of this response will be served upon the Petitioner, David E. Tackett at Southern Regional Jail 1200 Airport Rd. Beaver, WV 25813

Entered the ~~20~~ 13 day of November, 2018.



Honorable John A. Hutchison, Circuit Judge