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ORIGINAL

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Respondent,

v.

DAVID L. INGRAM,

Petitioner.



Case No.: 19-0016

Circuit Court No.: 18-F-28 & 163

Fayette County, West Virginia

PETITIONER'S BRIEF

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ASSIGNMENT OF ERROR

The circuit court applied an incorrect legal standard to judge Petitioner's life recidivist sentence and erroneously concluded that his prior convictions showed sufficient violence to satisfy the Proportionality Clause of the West Virginia Constitution.

STATEMENT OF THE CASE

A Fayette County jury convicted Petitioner for delivering two Schedule II controlled substances, cocaine and methamphetamine,¹ based on controlled buys conducted by police and a confidential informant.² A recidivist jury then found that Petitioner had, in 1997, pleaded guilty to non-aggravated robbery and, in 2015, to attempted third offense shoplifting.³

Petitioner appeals his recidivist sentence because the circuit court used an incorrect standard to determine that the life prison term satisfied the Proportionality Clause of the West Virginia Constitution.⁴ Petitioner asks this Court to apply the correct standard from *State v. Lane*⁵ and vacate his sentence as disproportionate.

1. A jury found that a CI made two controlled drug buys from Petitioner.

A drug addict agreed to cooperate with the police as a confidential informant and named Petitioner as an acquaintance who would sell her drugs.⁶ They set up a controlled buy in which the CI would purchase drugs from Petitioner at his home.⁷ She entered Petitioner's trailer with fifty dollars, and a short time later she left with cocaine.⁸

¹ A.R. 215-16.

² See A.R. 98.

³ A.R. 342-43.

⁴ W. Va. Const. Art. III, § 5.

⁵ *State v. Lane*, 241 W. Va. 532, 826 S.E.2d 657 (2019).

⁶ A.R. 105-107.

⁷ A.R. 107.

⁸ A.R. 107-08.

A few days later, the CI agreed to buy drugs from Petitioner's car parked outside a Dollar Tree; she entered the car with sixty dollars and left with methamphetamine.⁹

In total, the street value of the cocaine and meth was \$110.¹⁰ An officer testified these were small quantities, consistent with the CIs past purchases for personal consumption.¹¹ For both occasions, police followed the CI and monitored the situation.¹² The CI did not wear a camera inside Petitioner's home,¹³ but her visit was "short"¹⁴ and unremarkable.¹⁵ In the car, she wore a camera that recorded a short, amicable transaction.¹⁶

2. The State used the conviction to trigger a third offense recidivist information.

The jury convicted Petitioner of both delivery counts.¹⁷ The State then used the convictions to trigger a third offense recidivist information.¹⁸ For predicates, the State relied upon a 1997 non-aggravated robbery guilty plea for an offense that occurred when Petitioner was eighteen years old.¹⁹ It also charged that in 2015, he pleaded guilty to attempted third offense shoplifting.²⁰

Per statute, Petitioner remained silent to hold the State to its burden of proof.²¹ The recidivist jury found Petitioner was the same individual previously convicted as charged in the information.²² The circuit court then ordered a pre-sentence investigation and set a hearing for final disposition.²³

⁹ A.R. 110–11.

¹⁰ A.R. 107, 110.

¹¹ A.R. 113–14.

¹² A.R. 108, 111.

¹³ See A.R. 378A.

¹⁴ A.R. 108.

¹⁵ See A.R. 120.

¹⁶ See A.R. 378A; see also A.R. 130.

¹⁷ A.R. 215–16.

¹⁸ A.R. 379–84.

¹⁹ Compare A.R. 281 with A.R. 382.

²⁰ A.R. 383.

²¹ See W. Va. Code § 61-11-19; A.R. 228.

²² A.R. 342–43.

²³ A.R. 345–46.

3. The circuit court denied Petitioner's motion to declare the life recidivist sentence unconstitutionally disproportionate to the charged priors.

Before sentencing, Petitioner filed a motion arguing that, based on the triggering and predicate felonies charged in the information, a life recidivist sentence would violate the Proportionality Clause of the West Virginia Constitution.²⁴

For the most recent triggering offense, Petitioner argued that neither controlled buy involved actual or threatened violence.²⁵ He further asserted that the drug quantities involved were on the low end for drug sales: 0.383 grams of cocaine and 0.510 grams of methamphetamine.²⁶ To put these amounts in perspective, a United States dime has a mass of 2.268 grams—over two and a half times that of both drugs, combined.²⁷

As to the predicates, Petitioner argued that the attempted third offense shoplifting conviction was not a violent crime.²⁸ He conceded that the 1997 non-aggravated robbery conviction involved a threat of force, but argued that an offense from twenty-one years ago, committed when Petitioner was eighteen, failed to show a pattern or escalation in violence and should not enhance a drug delivery conviction to a life sentence.²⁹

The State did not file a written response to Petitioner's motion.³⁰ At sentencing, it argued that the circuit court had discretion to impose a life sentence under the totality of the circumstances.³¹

The circuit court expressed concern that case law did not provide it with clear guidance.³² In considering the appropriateness of a life sentence, it did not limit its analysis to

²⁴ A.R. 548–59.

²⁵ A.R. 551–52.

²⁶ A.R. 378B, 553.

²⁷ 31 U.S.C.A. § 5112 (West).

²⁸ A.R. 554.

²⁹ A.R. 556, 361.

³⁰ A.R. 352–53.

³¹ A.R. 367.

³² A.R. 360.

the actual facts of the triggering offense and it looked beyond the fact of conviction for the predicate offenses.³³

For the triggering offense, the court found that based on the State's version of events, Petitioner's delivery convictions did not involve actual or threatened violence.³⁴ However, the court rejected Petitioner's argument to confine its analysis to the actual facts found by the jury. It instead ruled in the abstract that drug sales "certainly have the potential for violence."³⁵

The court agreed that the attempt to shoplift predicate was non-violent.³⁶ For the remote predicate, the 1997 non-aggravated robbery, the court did not limit its analysis to the conviction charged in the information. Instead, the court noted that Petitioner pleaded down from first degree robbery and inferred that the underlying conduct must have been more serious.³⁷ It did not address Petitioner's remoteness argument.

Based on its finding that any drug sale is inherently dangerous and that first degree robbery, as originally charged, is violent, the court therefore concluded that Petitioner deserved a life sentence.³⁸

SUMMARY OF ARGUMENT

Petitioner's case exposes a conflict in this Court's case law that recently found expression in two competing cases: *State v. Lane* and *State v. Norwood*, decided in April and May 2019, respectively. Petitioner argued his triggering offense was not violent based on the facts found by the jury—the standard this Court used in *Lane*. The circuit court, however, looked beyond the trial evidence to conclude that drug sales carry an inherent potential for violence—the standard this Court applied in *Norwood*. Petitioner urges the Court

³³ See A.R. 367–74.

³⁴ A.R. 368, 372.

³⁵ A.R. 368–69.

³⁶ A.R. 372.

³⁷ See A.R. 356–57, 372.

³⁸ A.R. 372–73, 571.

to reject *Norwood's* standard as unworkable. Instead, the Court should use this opportunity to explicitly adopt *Lane's* fact-based approach for analyzing triggering offenses.

Following the correct standard shows that Petitioner's history does not involve a pattern or escalating trend of violence necessary to justify a life sentence. His case is similar to *State v. Lane*, and as proportionality is a question of law that should produce consistent and predictable results, Petitioner's outcome should be the same as *Lane's*.

Petitioner's triggering offense is a controlled buy of a Schedule II drug, which, as the circuit court itself found, did not involve actual or threatened violence—just as in *Lane*. His most recent predicate offense likewise involves no actual or threatened violence—just as in *Lane*. His remote predicate did involve violence—just as in *Lane*—but it occurred decades ago, when he was a teenager. If an eighteen-year-old unlawful wounding conviction did not justify a life recidivist sentence for *Lane*, a twenty-year-old non-aggravated robbery conviction should not subject Petitioner to a life sentence, either.

STATEMENT REGARDING ORAL ARGUMENT

Petitioner argues that his recidivist life sentence, triggered by his convictions for delivery of a Schedule II controlled substance, violates the Proportionality Clause of the West Virginia Constitution. Because he asks that the Court vacate his sentence, oral argument and a signed opinion are appropriate.

Furthermore, Petitioner's case provides an opportunity to resolve a conflict in the law concerning violence analysis for recidivist-triggering offenses. In *State v. Lane*,³⁹ the Court looked to the recent trial to determine whether the crime, as committed, involved actual or threatened violence.⁴⁰ The Court rejected the State's invitation to consider the nature and impact of the drug trade itself.⁴¹

³⁹ *State v. Lane*, 241 W. Va. 532, 826 S.E.2d 657 (2019).

⁴⁰ *Lane*, 826 S.E.2d at 664.

⁴¹ *Id.*

However, the Court did the opposite in *Norwood*.⁴² It ignored the non-violent trial facts to find that the opiate heroin has a greater potential of violence than the opioid oxycodone. This analysis conflicts with the analysis just a few weeks earlier.⁴³

This conflict exists due to a longstanding gap in West Virginia's case law. Although the Court has long held life recidivist sentences are only proportionate if the priors are violent,⁴⁴ it has not expressed a consistent standard for how to judge violence.⁴⁵

The Court should therefore grant Petitioner a Rule 20 argument to provide needed guidance to the circuit courts. Petitioner proposes the following syllabus points:

1. In analyzing a life recidivist sentence under the Proportionality Clause of the West Virginia Constitution, W. Va. Const. Art. III, § 5, courts must give initial emphasis to the facts underlying the triggering offense because its sentence is the one which will be enhanced and therefore it is the offense which the punishment must fit.
2. In a recidivist proceeding, the jury only needs to find identity: that the defendant on trial is the same individual convicted of the predicate offenses. Therefore, in considering the proportionality of a life recidivist sentence, a court must also limit its inquiry to the fact of conviction. A predicate offense charged in a recidivist information is violent if it includes an element of actual or threatened force against a person, such as malicious assault, or if, historically, the offense existed due to a grave concern for imminent potential violence, such as common law burglary or arson.
3. In a recidivist proceeding the triggering offense receives the most scrutiny and, if violent, may alone justify a life sentence. However, a life recidivist sentence may also comport with the Proportionality Clause of the West Virginia Constitution, W. Va. Code Art. III, § 5, if the predicates show the defendant has a propensity or escalating tendency towards violent behavior.

⁴² *State v. Norwood*, ___ W. Va. ___, ___, ___ S.E.2d ___, ___ (2019).

⁴³ *See Norwood*, ___ S.E.2d at ___ (Workman, J., dissenting).

⁴⁴ *See* Syl. Pt. 4, *Wanstreet v. Bordenkircher*, 166 W. Va. 523 (1981).

⁴⁵ *e.g. compare Lane*, 826 S.E.2d at 664 *with Norwood*, ___ S.E.2d at ___.

ARGUMENT

The circuit court applied an incorrect legal standard to judge Petitioner's life recidivist sentence and erroneously concluded that his prior convictions showed sufficient violence to satisfy the Proportionality Clause of the West Virginia Constitution.

As written, West Virginia's "recidivist statute is among the most draconian in the nation."⁴⁶ However, the West Virginia Constitution requires that "[p]enalties ... be proportioned to the character and degree of the offence."⁴⁷ Therefore, the Court reads the recidivist statute "... in a restrictive fashion in order to mitigate its harshness."⁴⁸ The Proportionality Clause of the West Virginia Constitution only permits life recidivist sentences if the underlying crimes "involve actual or threatened violence to the person."⁴⁹ In analyzing for violence, this Court "give[s] initial emphasis to the nature of the final offense which triggers the recidivist sentence, although consideration is also given to the other underlying convictions."⁵⁰

The standard of review is *de novo*.⁵¹ Normally, trial courts exercise considerable discretion at sentencing.⁵² However, courts have little discretion as to recidivist sentences.⁵³ If the triggering and predicate felonies show a propensity for violence, then the legislature only authorizes a life with mercy sentence.⁵⁴ In the alternative, the Proportionality Clause prohibits a life sentence if the charged priors do not show a pattern of violence.⁵⁵ Either

⁴⁶ *Wanstreet v. Bordenkircher*, 166 W. Va. 523, 536, 276 S.E.2d 205, 213 (1981).

⁴⁷ W. Va. Const. Art. III, § 5.

⁴⁸ *Wanstreet*, 166 W. Va. At 528.

⁴⁹ Syl. Pt. 7, *State v. Beck*, 167 W. Va. 830, 286 S.E.2d 234 (1981).

⁵⁰ *Id.*

⁵¹ See *Lane*, 826 S.E.2d 657 at Syl. Pt. 4 (standard of review for the constitutionality of a sentence not reviewed under abuse of discretion standard).

⁵² Cf. *State v. Head*, 198 W. Va. 298, 305, 480 S.E.2d 507, 514 (1996) (Rulings on W. Va. Crim. P. R. 35(b) motions entitled to considerable discretion because they are derivative of the initial sentencing decision) (Cleckley, J., concurring).

⁵³ See *Wanstreet*, 166 W. Va. at 527 ("A recidivist proceeding is not simply a sentencing hearing ..."); *id.* At Syl. Pt. 2 ("In [habitual criminal proceedings] a court has no inherent or common law power or jurisdiction.").

⁵⁴ Cf. *State ex rel. Daye v. McBride*, 222 W. Va. 17, 24, 658 S.E.2d 547, 554 (2007) (courts lack authority to impose second-time recidivist sentences for third-time recidivists).

⁵⁵ See *supra*, at n. 46.

way, the propriety of a life recidivist sentence is a question of law and not discretion or grace.⁵⁶

Because the imposition of a life recidivist sentence is a question of law, circuit courts require clear guidance.⁵⁷ However, two recent cases from this Court highlight a conflict in the case law by applying contrary legal standards. *Lane* looked to the actual facts presented to the jury for the triggering offense.⁵⁸ Yet in *Norwood*, the analysis eschews the facts and looks outside the record to determine whether, in the abstract, the triggering offense could have been violent.⁵⁹ To remedy this conflict and provide a consistent rule for trial courts, this Court should adopt the fact-based standard from *Lane* and vacate Petitioner's life sentence as disproportionate.⁶⁰

1. The circuit court applied the wrong legal standard by ignoring the triggering offense's facts to instead focus on the court's opinion on the drug trade.

Though the circuit court sentenced Petitioner before *Lane* or *Norwood*,⁶¹ this case reflects the same inconsistency apparent between those decisions. Petitioner urged the circuit court to focus on the facts used to convict Petitioner of the triggering offense, as this Court did in *Lane*.⁶² By instead looking outside the record to the drug trade generally, the circuit court conducted the same analysis as the *Norwood* Court.⁶³ *Lane* provides the better rule, and the circuit court therefore erred.

⁵⁶ See *Lane*, 826 S.E.2d 657 at Syl. Pt. 4.

⁵⁷ *Wanstreet*, 166 W. Va. at 531 ("The utilization of a series of objective standards to determine whether a particular sentence violates our constitutional concept of proportionality is designed to prevent sentencing patterns that merely reflect the personal predilections of individual judges. ... Such objective standards also ensure that appellate courts will not inject their personal views as to appropriateness of a given sentence unless the sentence can be shown to have violated the objective criteria of constitutional proportionality.").

⁵⁸ See *Lane*, 826 S.E.2d at 663-64.

⁵⁹ See *Norwood*, ____ S.E.2d at ____.

⁶⁰ See, *supra*, at n. 58.

⁶¹ Compare A.R. 570 with *Lane*, 826 S.E.2d 657 (2019) and *Norwood*, ____ S.E.2d ____ (2019).

⁶² See *Lane*, 826 S.E.2d at 664.

⁶³ *Norwood*, ____ S.E.2d at ____.

In *Lane*, this Court looked first to the facts of the triggering offense.⁶⁴ Conversely for the predicate offenses, the Court analyzed the statutory elements for violence without regard for any proffered facts concerning the years-old convictions.⁶⁵

Norwood, decided weeks after *Lane*, employed a qualitatively different analysis for the triggering offense. The Court in *Lane* rejected the State’s argument to consider the nature of the drug trade and ruled the transaction nonviolent based solely on the facts presented to the jury.⁶⁶ Yet in *Norwood*, the Court did precisely the opposite. It conceded that the facts showed an entirely non-violent transaction but looked outside the record to decide, in the abstract, that selling drugs can be dangerous.⁶⁷

Lane and *Norwood* do not merely reach different outcomes from applying the same standard to distinguishable cases; they applied two different, irreconcilable standards for judging violence, and it is unclear which approach circuit courts should employ going forward. To provide guidance, this Court should adopt *Lane* as the better rule.

Lane’s focus on the triggering conviction’s facts best comports with the text of the Proportionality Clause, which commands that the punishment fit “the offence.”⁶⁸ Though “offense” can be an ambiguous term,⁶⁹ for purposes of proportionality this Court looks to whether the actual conduct warrants a particular sentence.⁷⁰ Even when the Court compares the statutory definition to other jurisdictions, it still considers the facts of conviction to determine which foreign crimes the defendant’s conduct would implicate.⁷¹ And Petitioner is unaware of any case in which the Court has invalidated a statutory sentence

⁶⁴ *Lane*, 826 S.E.2d at 664.

⁶⁵ *See id.*

⁶⁶ *Lane*, 826 S.E.2d at 663–64.

⁶⁷ *Norwood*, ___ S.E.2d at ___.

⁶⁸ W. Va. Const. Art. III, § 5.

⁶⁹ Cf. *U.S. v. Stitt*, ___ U.S. ___, ___, 139 S. Ct. 399, 405 (2018) (The term “crime” may refer to general, statutory definition or a specific occurrence meeting that definition.).

⁷⁰ *See, e.g., State v. Williams*, 205 W. Va. 552, 555, 519 S.E.2d 835, 838 (1999) (per curiam).

⁷¹ *See, e.g., State v. Gibbs*, 238 W. Va. 646, 661, 797 S.E.2d 623, 638 (2017).

range as disproportionate in the abstract; the question is always whether the defendant's conduct, as found by the jury, warrants the sentence, as imposed by the trial court.⁷²

Similarly, *Lane's* standard accords with the triggering offense's primacy: "[T]he third felony is entitled to more scrutiny than the preceding felony convictions since it provides the ultimate nexus to the sentence."⁷³ Recidivism enhances the penalty for the triggering offense, not the predicates. Therefore, it is the defendant's conduct leading to the triggering offense that must fit the punishment.

Finally, *Norwood's* unbounded approach is unworkable. If not limited by the facts found by the jury, one could see potential harm arising from any crime; even shoplifting could lead to a confrontation between a would-be thief and store clerk. If the test for violence is left solely to inexhaustible judicial imagination, then this Court would lose the authority to review the proportionality of circuit court decisions because trial judges could never be wrong. Or, this Court would have to dictate lower courts' judgments by declaring whether each, individual offense listed in the criminal code is violent on a piecemeal basis. A so-called standard that cannot be reviewed, or which always requires one-off judgments, has no predictive power and is no standard at all.⁷⁴

This Court has endorsed inconsistent rules for judging the proportionality of triggering offenses. Circuit courts require clarification, and only this Court's analysis in *Lane* provides a workable framework. Circuit courts should analyze the facts which underly the triggering offense and examine the elements of the predicates. The circuit court therefore erred when it applied the *Norwood* analysis to Petitioner's case.

⁷² See, e.g., *State v. Adams*, 211 W. Va. 231, 233, 565 S.E.2d 353, 355 (2002) (per curiam); *Williams*, 205 W. Va. at 554–55; *State v. Phillips*, 199 W. Va. 507, 513, 485 S.E.2d 676, 682 (1997) (per curiam); *State v. Ross*, 184 W. Va. 579, 582, 402 S.E.2d 248, 251 (1990) (per curiam); *State v. Spence*, 182 W. Va. 472, 481–82, 388 S.E.2d 498, 507–08 (1989); *State v. England*, 180 W. Va. 342, 356, 376 S.E.2d 548, 562 (1988); *State v. Brown*, 177 W. Va. 633, 642, 355 S.E.2d 614, 623 (1987); *State v. Glover*, 177 W. Va. 650, 659, 355 S.E.2d 631, 640 (1987).

⁷³ *Wanstreet*, 166 W. Va. at 534.

⁷⁴ *But see id.* at 531 (The Court must create objective, reliable criteria for judging proportionality to prevent the test from relying upon the idiosyncrasies of individual judges).

2. Under the correct analysis from *State v. Lane*, the circuit court should have rejected Petitioner's life sentence as unconstitutionally disproportionate.

Under the clear, cogent standard this Court applied in *Lane*, the circuit court erred by ruling that Petitioner's triggering offense was violent even though it found no trial evidence of actual or threatened violence.⁷⁵ And given the remarkably similar prior offenses between this case and those in *Lane*, the circuit court further erred by ruling that Petitioner's life sentence was proportionate to the crime of selling less than a gram of drugs.⁷⁶

First, the triggering offenses in *Lane* and Petitioner's case are materially identical: delivery of a Schedule II controlled substance.⁷⁷ Both cases involved controlled buys conducted by CIs under the close supervision of law enforcement.⁷⁸ And in both cases, the State presented the jury with no evidence of threatened or actual violence.⁷⁹ The circuit court in Petitioner's case even made the explicit finding that the actual, charged triggering offenses did not involve violence,⁸⁰ and there is no need for this Court to disturb this finding of fact. Therefore, under *Lane's* fact-based analysis, Petitioner's triggering offense was non-violent.

The predicates are also similar, and thus, per *Lane*, the charged convictions do not show a pattern of escalating violence. In fact, they show the opposite. For both *Lane* and Petitioner, the only violent predicates were the earliest ones charged. *Lane* had committed an unlawful wounding eighteen years prior, when he was in his early 20s.⁸¹ Unlawful wounding entails serious, intentional harm and is unquestionably violent.⁸² However, this

⁷⁵ See A.R. 368, 372.

⁷⁶ Compare A.R. 382 with *Lane*, 826 S.E.2d at 661.

⁷⁷ Compare *Lane*, 826 S.E.2d at 663 with A.R. 378.

⁷⁸ Compare *Lane*, 826 S.E.2 at 660 with A.R. 107-08, 111.

⁷⁹ Compare *Lane*, 826 S.E.2 at 664 with A.R. 368.

⁸⁰ A.R. 368, 372.

⁸¹ Compare *Lane*, 826 S.E. 2d at 661 with See West Virginia Division of Corrections and Rehabilitation Database Search for Joe Lane, <https://apps.wv.gov/ois/offendersearch/doc/>, (search Offender ID (OID) Number "3508270," complete website validation entries, click "Search").

⁸² See W. Va. Code 61-2-9(a) (1997) ("If any person ... shoot, stab, cut, or wound any person, or by any other means cause his bodily injury with intent to maim, disfigure, disable, or kill, ... unlawfully but not maliciously, ... then the offender shall be guilty of a felony[.]").

Court easily concluded that the offense's remoteness, combined with a lack of any other violent felonies, failed to show a pattern or escalation in violence.⁸³

Petitioner's earliest predicate is similar, and the circuit court erred by looking behind the fact of conviction and by not addressing Petitioner's remoteness argument.⁸⁴ Petitioner pleaded guilty to a non-aggravated robbery that occurred twenty years prior to his triggering offense.⁸⁵ He was eighteen-years-old at the time of commission.⁸⁶ Unquestionably, non-aggravated robbery requires a threat of physical force without a weapon or actual harm.⁸⁷ However, standing in isolation, decades ago, when only a few months separated Petitioner from the juvenile justice system, the offense does not alone suggest that Petitioner has a propensity for violence. If Lane's only violent predicate, which required serious injury as an element, did not qualify him for a life recidivist sentence, then neither should Petitioner's only violent predicate, which required only a threat.⁸⁸

Finally, in *Lane* and in Petitioner's case, the most recent predicates were property crimes. The State charged that Lane had conspired to receive stolen property, and Petitioner pleaded guilty to attempted third offense shoplifting.⁸⁹ The elements of neither offense suggest actual or threatened violence.⁹⁰ And these offenses, occurring between the defendants' only violent predicates and their non-violent triggering offenses, show a de-escalation in violence that make life sentences disproportionate. Just as this Court struck down the recidivist sentence in *Lane*, Petitioner asks that it do the same in his case.

⁸³ See *Lane*, 826 S.E.2d at 664–665.

⁸⁴ Compare A.R. 554–55 with A.R. 356, 371, 372.

⁸⁵ A.R. 554

⁸⁶ A.R. 281, 554.

⁸⁷ See W. Va. Code § 61-2-12 (1997) (“If any person commit, or attempt to commit, a robbery [without violence to the person or threatening violence with a weapon], he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than five, nor more than eighteen years.”).

⁸⁸ See *Wanstreet*, 196 W. Va. at 531 (Proportionality standards should be objective and reliable).

⁸⁹ See *Lane*, 826 S.E.2d at 664; A.R. 553.

⁹⁰ W. Va. Code § 61-10-31 (conspiracy), W. Va. Code 61-3-18 (receiving or transferring); W. Va. Code 61-3A-1 (shoplifting).

CONCLUSION

Selling a quantity of drugs weighing less than a third of the binder clip with which Petitioner bound these pages is not violent and does not warrant a life sentence. Petitioner therefore requests that this Court vacate his life recidivist sentence and remand the case back to circuit court for resentencing.

A handwritten signature in blue ink, appearing to read "Matt Brummond", is written over a horizontal line.

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