

In the Circuit Court of Braxton County, West Virginia

State of West Virginia,
Plaintiff,

vs.)

DAVID GILBERT RIFFLE,
Defendant

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Case No. CC-04-2019-F-5

SENTENCING HEARING ORDER

On the 24th day of August, 2020, came the State of West Virginia by and through Jasmine R. H. Morton, Prosecuting Attorney of Braxton County, West Virginia; Tyler Morlan on behalf of the Braxton County Probation Office; and the Defendant, **DAVID GILBERT RIFFLE**, in person appearing by video conferencing from the Central Regional Jail, and by counsel, Tyler Mason, pursuant to the Court setting this day for sentencing in this matter.

WHEREFORE, the Court inquired of the parties as to whether there was an objection to the matter being taken up by video conferencing, and all parties replied there was no objection. The Court then reviewed the procedural history of the case and noted that the matter was in front of the Court on this date due to the West Virginia Supreme Court of Appeals remanding the matter to this Court to correct a sentence as to Count One being the felonious offense of *Soliciting a Minor via a Computer to Travel and Engage the Minor in Prohibited Sexual Activity*.

WHEREUPON, the Court did inquire of Defendant's counsel whether he had an opportunity to inspect and review the pre-sentence report returned by the Braxton County Probation Department and discuss said report with the Defendant, to which Defendant's counsel replied that the Defendant's previous counsel, Andrew Shaffer, had been counsel for the Defendant at the time that the pre-sentence report was

completed and counsel did not review the pre-sentence report with the Defendant in preparation of the appeal.

THEREAFTER, the Defendant, in person and by and through his counsel, addressed the Court as to sentencing in this matter. Counsel for the Defendant noted that there was not an actual victim in the case, it was actually just a Homeland Security Agent located out of state and it was very unlikely that the Defendant would have traveled to the alleged location of the victim as he did not have adequate transportation. Counsel for the Defendant further stated that this incident was a one-time incident and the Defendant is ready to take responsibility for his actions. Counsel for the Defendant requested that the Defendant be sentenced to the minimum sentence for the offense of *Soliciting a Minor via a Computer to Travel and Engage the Minor in Prohibited Sexual Activity* and that all sentences run concurrently to each other. The Defendant addressed the Court and stated that he understands that what he did was wrong and he takes responsibility for the same. The Defendant further stated that he would not have traveled to Minnesota and the real victims here are his family, his children and the people that he helped when he was a firefighter. The State of West Virginia remained silent with regard to a recommendation for sentencing, pursuant to the plea agreement between the parties.

The Court informed the parties that it had previously sentenced the Defendant to no less than five (5) years nor more than thirty (30) years in the penitentiary for Count One (1) of the Indictment and five (5) years each for Counts Two (2), Three (3) and Four (4). The Court admitted it had made a mistake and Count One (1) should have been a determinate sentence.

The Court informed the parties it had reviewed the Pre-Sentence Investigation Report prepared by the Braxton County Probation Office and the underlying record in this matter. The Court **FINDS** that the Defendant is in need of correctional treatment in

a correctional setting. The Court noted that the Defendant has an extensive criminal history and a serious substance abuse problem that he is not properly addressing. The Court noted that the Defendant has a sporadic employment history and has failed to benefit from prior opportunities. The Court further noted that the Defendant's past behaviors are the best indicator of his future actions. The Court **DENIED** the Defendant's motion for alternative sentencing stating to sentence the Defendant to anything other than incarceration would depreciate the seriousness of the offense. The Court further noted that the Defendant did not know that the "victim" was actually an undercover Homeland Security Agent and the Defendant is a forty-three (43) year old man that engaged in conversations with what he thought would be a thirteen (13) year old female. Additionally, the Court noted that the Defendant failed to take responsibility for his actions as he had told the probation officer that he did not know what had happened as he was under the influence of controlled substances during his interactions with the Homeland Security Agent.

The Court noted that based on the Defendant's lack of work history, his anti-social attitude, his significant criminal history, his substance abuse problem, and the deliberate nature of the offense, it is accordingly **ADJUDGED, ORDERED and DECREED**, that upon his conviction, by the entry of a plea to one (1) count of the felonious offense of *Soliciting a Minor via a Computer to Travel and Engage the Minor in Prohibited Sexual Activity*, as contained in Count One (1) of the Indictment, the Defendant, **DAVID GILBERT RIFFLE**, is hereby sentenced to thirty (30) years in the penitentiary. It is further **ADJUDGED, ORDERED and DECREED** that that upon his conviction, by the entry of a plea to three (3) counts of the felonious offense of *Use of Obscene Matter with the Intent to Seduce a Minor*, as contained in Counts Three (3), Four (4) and Five (5) of the Indictment, the Defendant, **DAVID GILBERT RIFFLE**, is hereby sentenced to five (5) years in the penitentiary for each of the three counts. The

Court further **ORDERED** that said sentences shall run consecutively for a total of forty-five (45) years. Following the Defendant's release from incarceration he shall be subject to extended supervision for a period of fifty (50) years and shall be required to register as a sexual offender for the remainder of his life.

It is further **ORDERED** that there shall be no fine imposed against the Defendant for his convictions in any of the aforementioned offenses.

It is further **ORDERED** that the Defendant shall be given credit for time served awaiting disposition in this matter, being four hundred and fifty-four (454) days, which includes the time the Defendant has spent at the Central Regional Jail, against the maximum term of his sentence.

It is further **ORDERED** that the Defendant shall be offered intensive drug rehabilitation, if the same is available and he desires to participate in the same, while the Defendant is in the custody of the Division of Corrections.

It is further **ORDERED** that the Defendant shall be forthwith remanded to the custody of the Commissioner of Corrections to be transferred to the facility where he is currently housed to begin serving the sentence imposed by this Court in these proceedings, pending transfer to the penitentiary.

The Court advised the Defendant of his right to file an appeal with the West Virginia Supreme Court of Appeals of this Court's Order by filing notice of intent to appeal within thirty (30) days from the final judgment and by filing a petition for appeal with the West Virginia Supreme Court of Appeals within four (4) months of the entry of the final judgment. The Court further advised the Defendant that should he be unable to afford an attorney for appeal matters, the Court appoints Kevin Hughart to represent him, and if the Defendant cannot afford a transcript for appeal matters, the Court shall order the Court Reporter to produce the same and order the State to incur the costs thereof.

The Court further advised the Defendant of his right to file a Motion for Reconsideration of his sentence with this Court, pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure, within one hundred twenty (120) days of this date.

It is further **ORDERED** that the bondsman in this matter shall be forthwith released.

Counsel is hereby notified that any objections to this Order must be filed, in writing, with the Court, within five (5) days of receipt of the proposed Order. Otherwise, the Court shall consider the Order approved as to form for entry by the Court. It is further **ORDERED** that the Clerk of this Court shall send certified copies of this Order to the Central Regional Jail, the Braxton County Probation Office, the Central Regional Jail, the facility where the Defendant is housed, and the Commissioner of Corrections.

The parties' objections and exceptions are noted.

/s/ Richard Facemire
Circuit Court Judge
14th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.