

572-574

In the Circuit Court of Preston County, West Virginia

State of West Virginia

vs.

\\

Case No. 19-F-49

Honorable Steven L. Shaffer

Kelly Marie Tusing

Sentencing Order

A Sentencing Hearing was held in the above-styled case on December 28, 2020. The State appeared by Megan M. Fields, Assistant Prosecuting Attorney of Preston County. The Defendant appeared in person and by counsel, William L. Frame. Also present was Bill Cobasky, Probation Officer of this Court.

A jury trial was held in this case October 5, 2020, thru October 9, 2020. At the conclusion of the trial, the jury returned a verdict finding the Defendant guilty of "Death of a Child by Parent, Guardian, or Custodian or Other Person by Child Abuse," a felony as charged in the Indictment.

The Court has received the Pre-Sentence Investigation Report and inquired of Counsel whether the report had been received and reviewed by them and by the Defendant. Counsel informed the Court that the Defendant had not received the Pre-Sentence Investigation Report prior to the day of Sentencing. After conferring with counsel, Defendant elected to waive the 10-day requirement and proceed with Sentencing. Upon addressing counsel for the Defendant and the Assistant Prosecuting Attorney, the Court determined that all parties have had the opportunity to read the Pre-Sentence Investigation and have discussed the report thereof made available to them pursuant to Rule 32(b) of the West Virginia Rules of Criminal Procedure. The Pre-Sentence Investigation Report was filed and made a part of the record herein. The Court accepts the Pre-Sentence Investigation and incorporates it as the Court's Findings of Fact in this Sentencing Hearing.

The Court then heard and considered the statements of the State, the Defendant and the Defendant's counsel, and informed the Defendant of her right of allocution before

Sentencing.

Thereupon, the Court reviewed the Defendant's background as set forth in the Pre-sentence Investigation Report and other matters as stated on the record in this case, which are incorporated herein by reference. The Court concluded that it is not appropriate to grant the Defendant probation nor alternative sentencing for the reasons stated on the record, and that a period of confinement is appropriate in this case.

Nothing further being offered in delay of judgment herein with regard to the Defendant's convictions as herein recited,

It is hereby **ORDERED** that the Defendant, Kelly Marie Tusing, upon her conviction of "Death of a Child by Parent, Guardian, or Custodian or Other Person by Child Abuse," a felony as charged in the Indictment, is sentenced to imprisonment in the State Penitentiary for a period of 100 years. The Defendant is given credit for 148 days time served in Tygart Valley Regional Jail for this charge. The Defendant is assessed Court costs in this proceeding.

CONVICTION DATE:	October 9, 2020
SENTENCE DATE:	December 28, 2020
EFFECTIVE SENTENCE DATE:	The Defendant is given credit for 148 days time served at TVRJ.

The Court then read and the Defendant signed in open Court her "Notice of Child Abuse and Neglect Registry Requirements." It is further

ORDERED that the Defendant's Motion for Acquittal and Motion for New Trial shall be heard on **January 22, 2021, at 1:00 p.m.** If there is a Jury Trial on that date, the Motions shall be heard on **March 5, 2021, at 9:00 a.m.**

The Court explained to the Defendant her right to appeal, the necessity of filing a notice of appeal within thirty (30) days, her right to a free transcript, her right to have the Court appoint her an attorney if she cannot afford one, and her right to file a motion for Reduction of Sentence within 120 days as provided in Rule 35(b) of the West Virginia Rules of Criminal Procedure. The Defendant was further given a written copy of her

Notice of Appellate Rights, which explains her appellate rights in more detail. The original of the Notice of Appellate Rights was filed in the Court file in this case.

It is further **ORDERED** that the Defendant be remanded immediately to the custody of the West Virginia Division of Corrections for disposition in accordance with this Order.

The Defendant is saved her objections and exceptions to the ruling of the Court.

It is further **ORDERED** that the Clerk of this Court mail or deliver a copy of this Order to: William L. Frame, counsel for the Defendant; Bill Cobasky, Probation Officer of this Court; West Virginia Division of Corrections, facsimile no. 304/558-8430; Tygart Valley Regional Jail, facsimile no. 304/637-0385; and the Office of the Prosecuting Attorney.

Enter: January 2, 2021



Judge

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Entered: JANUARY 7, 2021



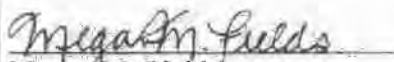
Clerk

By:




Deputy

Order Prepared By:


Megan M. Fields
Assistant Prosecuting Attorney

Order Approved By:


William L. Frame
Counsel for the Defendant
Email 1-6-21
SLS