

DO NOT REMOVE
FROM FILE



IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

vs.

FILE COPY

CASE NO.: 20-F-122

JUDGE SUSAN B. TUCKER

SHAUNDARIUS REEDER,

Defendant.

ORDER OF CERTIFICATION

EVAN JENKINS, Chief Justice:

The Honorable Susan B. Tucker, Division 1 of the 17th Judicial Circuit of the State of West Virginia, pursuant to WEST VIRGINIA CODE §58-5-2, respectfully requests that the Supreme Court of Appeals of West Virginia (“Supreme Court”) exercise its discretion to answer the following question:

- 1) Whether a jury’s failure to unanimously decide the recommendation of mercy allows the Circuit Court to impose the life sentenced required for a conviction of First Degree Murder pursuant to WEST VIRGINIA CODE §61-2-2 and either grant mercy or decline to grant mercy?

Answer: Yes.

It is this Court’s opinion that there is no controlling appellate decision, constitutional provision, or statute delineated in the WEST VIRGINIA CODE that answers this question.

Accordingly, this Court concludes that the question is appropriate for certification under

WEST VIRGINIA CODE §58-5-2.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On June 18, 2020, the Grand Jurors of the State of West Virginia, in and for the citizens of Monongalia County, upon their oaths, charged Shaundarius Reeder (“Mr. Reeder” or “Defendant”) with Murder in the First Degree pursuant to WEST VIRGINIA CODE §61-2-1 and Conspiracy to Commit Murder pursuant to WEST VIRGINIA CODE §61-10-31.

The case arises out of actions that occurred on February 28, 2020 in Morgantown, Monongalia County, West Virginia. On Tuesday, June 8, 2021, the undersigned empaneled a jury to hear the case to be tried between the State of West Virginia and Mr. Reeder. After the State of West Virginia and Defendant presented their respective cases and this Court instructed the jury as to the applicable laws and rules governing deliberation, on Thursday, June 10, 2021, the jury returned a unanimous verdict of Guilty as to Count One, Murder in the First Degree, and Guilty as to Count Two, Conspiracy to Commit Murder as charged in the Indictment against Mr. Reeder.

On May 28, 2021, prior to the commencement of the trial, counsel for Defendant submitted Defendant's Motion to Bifurcate Determination of Mercy from the Trial ("Motion"). The State of West Virginia did not oppose the Motion and the undersigned granted the same. Therefore, on Friday, June 11, 2021, the jury returned to begin the mercy phase of the trial. The Defendant presented his evidence followed by the State of West Virginia. The undersigned instructed the jury as to the applicable law, counsel of record presented closing arguments, and the jury began deliberation regarding the determination of mercy.

Thereafter, it was apparent that the jury was having difficulty in reaching a decision given the two (2) questions submitted to the undersigned. That evening, upon the jury's request, the undersigned recessed, and the jury returned on Monday, June 14, 2021 to resume deliberations. That same day, the jury informed the Court that it was unable to come to a unanimous verdict after approximately twelve (12) hours of deliberation. Because the Court had previously instructed the jury as to their duty in accordance with *State vs. Blessing*, 331 S.E.2d 863 (1985), the undersigned found it appropriate to dismiss the jury.

At this juncture, the Defendant stands convicted of the crimes of Murder in the First Degree and Conspiracy to Commit Murder as charged in the Indictment. The undersigned has not yet set a hearing on Post-Trial Motions and/or Sentencing pending the instant submission to this Court.

ANALYSIS

WEST VIRGINIA CODE §62-3-15 was enacted during the 1994 legislative session. To date, although this Court has had the opportunity to interpret specific questions related to the statute, for example bifurcation and instructions, it has not addressed the precise issue at hand.

The certified question aims to determine the course of procedure when the Court encounters a hung jury in the mercy phase of a bifurcated First Degree Murder trial. It is well settled that a jury verdict regarding the granting or refusal to grant mercy must be unanimous. *See State v. McLaughlin*, 700 S.E.2d 289 (W. Va. 2010). Additionally, it is clear that if a jury cannot make a determination regarding mercy, that does not affect the conviction of guilt. *See State v. Doman*, 512 S.E.2d 211 (W. Va. 1998); *see also Lister v. Ballard*, 784 S.E.2d 733 (W. Va. 2016) (stating that the issue of mercy in a bifurcated trial is whether or not a defendant who has already been found guilty should be afforded mercy.). However, there is a gap in West Virginia law about how a Circuit Court must proceed when a jury is unable to reach a verdict in the mercy phase of the trial.

The Supreme Court has ruled that the sentencing court is given broad discretion in imposing a sentence if it is within the statutory limits and not based on an impermissible factor. *See State vs. Broughton*, 470 S.E.2d 413 (W. Va. 1996). The Supreme Court has also stated that the First Degree Murder Statute leaves “very little sentencing discretion to juries” because a finding of guilt “*automatically* results in a life sentence and a jury’s only discretion

is whether to grant parole eligibility by recommending mercy.” *See State ex rel. Leach v. Hamilton*, 280 S.E.2d 62 (W. Va. 1980) (emphasis added).

There are cases where a defendant takes a plea to First Degree Murder. In those instances, the Circuit Court imposes a sentence and determines the attachment of mercy based on the facts and circumstances presented. In the situation at hand, the Circuit Court presided over the mercy phase of the trial and therefore knows the facts and circumstances presented and, arguments thereto, that counsel presented to the jury. Accordingly, the Circuit Court is able to make a qualified determination regarding mercy just like the jury had the opportunity to do at trial.

Given the above coupled with the fact that West Virginia law regarding the sentence for First Degree Murder is unambiguous and requires “confinement in the penitentiary for life,” it is the undersigned’s position that absent a unanimous recommendation of mercy, it is appropriate for the Circuit Court to impose the statutory sentence for First Degree Murder and determine whether or not to grant mercy. *See* WEST VIRGINIA CODE §61-2-2

This Court acknowledges that the Supreme Court of Appeals of West Virginia may reformulate this question pursuant to WEST VIRGINIA CODE §58-5-2.

Accordingly, pursuant to WEST VIRGINIA CODE §58-5-2 and Rule 17(a) of the *West Virginia Rules of Appellate Procedure*, it is hereby **ORDERED** that this action is stayed until such question has been decided and the decision thereof certified back to this Court. The parties are **DIRECTED** to prepare a joint appendix of the record sufficient to permit review of the certified question.

Therefore, it is further **ORDERED** (1) that the question stated above be, and the same hereby is, certified to the Supreme Court of Appeals of West Virginia, and (2) that the Clerk of this Court forward to the Supreme Court of Appeals of West Virginia, under the official seal of this Court, a copy of this Order.

The names and addresses of counsel of record are the following:

Perri Jo DeChristopher
Monongalia County Prosecuting Attorney's Office
75 High Street, Suite 11
Morgantown, WV 26505
Counsel for the State of West Virginia

William B. Summers
William B. Summers & Associates
3301 Dudley Avenue
Parkersburg, WV 26104
Counsel for Defendant Shaundarius Reeder

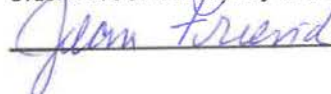
The Clerk of this Court shall provide a copy of this Order to all counsel of record.

Entered this July 07, 2021.


SUSAN B. TUCKER, JUDGE OF THE 17th JUDICIAL CIRCUIT

STATE OF WEST VIRGINIA, SS:

I, Jean Friend, Clerk of the Circuit/Family Court of Monongalia County State aforesaid do hereby certify the attached ORDER is a true copy of the original Order made and entered by said Court.

 Circuit Clerk

July 7 2021
115

CIRCUIT CLERK

CASE#: **20-F-122**

Sub Code:

Date Opened: 06/23/2020

JUDGE: SUSAN B. TUCKER

Date Printed: 07/13/2021

vs
Plaintiff: **STATE OF WEST VIRGINIA**
Defendant: **SHAUNDARIUS T. REEDER**

Pro Attorney: PERRI DECHRISTOHER

Def Attorney: WILLIAM SUMMERS

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>	<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
1	06/17/2020	INDICTMENT: Murder: Conspiracy to Commit Murder		.00	.00	.00
2	06/17/2020	CO-DEFENDANT: Terrell T. Linear 20-F-121		.00	.00	.00
3	06/17/2020	Notice of Appearance by William Summers		.00	.00	.00
4	06/17/2020	CLERK	1010	20.00	.00	20.00
5	06/17/2020	PROSECUTING ATTORNEY	1030	30.00	.00	30.00
6	06/17/2020	MAGISTRATE 20-M31F-108 no bond set	1070	10.00	.00	10.00
7	06/17/2020	COURT SECURITY FUND	2000	5.00	.00	5.00
8	06/17/2020	LAW ENFORCEMENT TRAINING	2020	12.00	.00	12.00
9	06/17/2020	COMMUNITY CORRECTION	2085	10.00	.00	10.00
10	06/17/2020	CFIF	2005	5.00	.00	5.00
11	06/17/2020	RJ PARTIAL REIMBURSEMENT	2025	30.00	.00	30.00
12	06/17/2020	TEEN	1050	5.00	.00	5.00
13	06/17/2020	CVC	2010	50.00	.00	50.00
14	06/17/2020	REGIONAL JAIL AUTHORITY	2030	40.00	.00	40.00
15	06/17/2020	Travel to NCRJ on 2-28-20	1060	76.59	.00	76.59
16	06/17/2020	CFIF	2006	10.00	.00	10.00
17	06/24/2020	Court's Notice of Arraignment hrg via video: 6-30-20, 9:30 am		.00	.00	.00
18	06/25/2020	D-Motion to Modify Bond		.00	.00	.00
19	06/30/2020	D-Motion to Appear by Video for Bond w/Notice of Hg (7-17-20, 4 pm)		.00	.00	.00
20	06/30/2020	D-Req for Discovery and Inspection		.00	.00	.00
21	06/30/2020	D-Motion Detailing General and Specific Req for Favorable Evidence		.00	.00	.00
22	06/30/2020	and Impeachment Evidence		.00	.00	.00
23	06/30/2020	D-Motion for Disclosure of Writings Used to Refresh Memoray etc		.00	.00	.00
24	06/30/2020	D-Motion for Notice of Intent to Use Suppressible Evidence		.00	.00	.00

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Def Attorney: **WILLIAM SUMMERS**

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25	06/30/2020	D-Motion for Notice of Intent to Use and Description of 404(b) Evid		.00	.00	.00
26	06/30/2020	D-Motion for Rule 403 R.,O.E. Hearing		.00	.00	.00
27	07/01/2020	Court's Amended Notice of Bond Hrg (7-20-20, 2 pm)		.00	.00	.00
28	07/01/2020	ORDER (6-30-20): trial week of 8-4-20: hrg 7-27-20, 9:30 am		.00	.00	.00
29	07/01/2020	Notice to Defendant of Criminal Trial Rights/Duties		.00	.00	.00
30	07/07/2020	Court's Notice of Status Hrg via video set for 7-27-20, 9:50- am		.00	.00	.00
31	07/09/2020	S-Disclosure of Information Pursuant to TCR 32 & CPR 16		.00	.00	.00
32	07/09/2020	S-Request for Discovery & Inspection Pursuant to TCR 32 & CPR 16		.00	.00	.00
33	07/23/2020	Joint Motion to Continue		.00	.00	.00
34	07/23/2020	ORDER: trial re-set for 10-6-20; status hrg 9-28-20 at a time TBD		.00	.00	.00
35	07/27/2020	Court's Amended Notice of Bond Hrg 8-17-20, 11 am via video		.00	.00	.00
36	08/19/2020	ORDER (8-17-20): motion to set bond denied		.00	.00	.00
37	09/09/2020	S-Supplemental Disclosure		.00	.00	.00
38	09/22/2020	Court's Notice Regarding Status Hrg: 9-28-20, 9:35 am		.00	.00	.00
39	09/29/2020	D-Motion to Continue		.00	.00	.00
40	09/30/2020	ORDER (9-28-20): trial week of 12-8-20: hrg 11-30-20, 9:30 am		.00	.00	.00
41	10/13/2020	Court's Notice Regarding Status Hearing on November 30, 2020 (9:40)		.00	.00	.00
42	11/02/2020	Court's Amended Notice of Status Hrg (11-30-20, 9:50 am)		.00	.00	.00
43	11/17/2020	D-Motion in Limine - in re: evidence photos		.00	.00	.00
44	11/17/2020	D-Motion to Continue		.00	.00	.00
45	11/17/2020	D-Motion for Separate Trial		.00	.00	.00
46	11/17/2020	ORDER: trial 2-2-21: hrg 1-25-21, 3 pm		.00	.00	.00
47	01/11/2021	S-Supplemental Disclosure (Forensic Lab Rpt)		.00	.00	.00
48	01/12/2021	S-Supplemental Disclosure (Forensic Lab Rpt)		.00	.00	.00

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49	01/22/2021	D-Motion to Continue		.00	.00	.00
50	01/22/2021	ORDER: trial re-set for 4-6-21: hrg 3-29-21, 9:30 am: 2-25-21 hrg		.00	.00	.00
51	01/22/2021	cancelled		.00	.00	.00
52	02/01/2021	S-Supplemental Disclosure of information		.00	.00	.00
53	03/17/2021	D-Motion to Continue jury trial		.00	.00	.00
54	03/26/2021	ORDER: trial 6-8-21: hrg 6-1-21, 930		.00	.00	.00
55	05/13/2021	S-Response to Pre-Trial Motions (Separate Trial/Motion in Limine)		.00	.00	.00
56	05/13/2021	S-Response to Pre-Trial Motions (404B Evid etc)		.00	.00	.00
57	05/14/2021	Notice of Limited Appearance (Dustin N. Schirmer)		.00	.00	.00
58	05/14/2021	S-Memo for Witness: 5/19/21 @ 2:30 pm for Off Aaron Graves		.00	.00	.00
59	05/14/2021	D-Notice of Pre-Trial Motion Hrg (5-19-21, 2:30 pm)		.00	.00	.00
60	05/14/2021	S-Memo for witness: week of 6-8-21, 9 am (S. Lester)		.00	.00	.00
61	05/17/2021	S-Memo for witness: week of 7-6-21 (S. Lester)		.00	.00	.00
62	05/17/2021	S-Memo for witness: week of 8-3-21 (S. Lester)		.00	.00	.00
63	05/17/2021	S-Amended Notice of Hrg on various Motions (5-20-21, 2:30 pm)		.00	.00	.00
64	05/18/2021	S-Motion in Limine		.00	.00	.00
65	05/19/2021	S-Supplemental Disclosure (Criminal Histories of Witnesses)		.00	.00	.00
66	05/27/2021	Sub for 6-1-21, 11 am served by PAO on Aaron Graves		.00	.00	.00
67	05/28/2021	D-Response to State's Motion in Limine		.00	.00	.00
68	05/28/2021	D-Motion to Bifurcate Determination of Mercy from the Trial		.00	.00	.00
69	05/28/2021	TRANSPORT ORDER: NCRJ transport 6-8-21 thru 6-11-21 for trial		.00	.00	.00
70	05/28/2021	Court's Notice of Status Hrg: 6-1-21, 11:30 am		.00	.00	.00
71	05/28/2021	S-Proposed Jury Instructions and Verdict Forms		.00	.00	.00
72	05/28/2021	S-Response Joining in Def's Motion for Bifurcation		.00	.00	.00

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73	06/01/2021	D-Proposed Voir Dire		.00	.00	.00
74	06/01/2021	D-Verdict Form		.00	.00	.00
75	06/01/2021	ORDER: GJ transcript be transcribed in accordance w/rule		.00	.00	.00
76	06/02/2021	S-Subpoena for week of 6-8-21 served on S. Lester by PAO		.00	.00	.00
77	06/02/2021	S-Supplemental Disclosure (Forensic Lab Rpt)		.00	.00	.00
78	06/02/2021	S-Memo for witnesses: week of 6-8-21: Meagan Lesser		.00	.00	.00
79	06/03/2021	S-Memo for witness: week of 6-8-21 (Officer Armstrong) PA to serve		.00	.00	.00
80	06/03/2021	S-Memo for witness: week of 6-8-21 (Bart Johnston) PA to serve		.00	.00	.00
81	06/04/2021	D-Supplemental Voir Dire		.00	.00	.00
82	06/04/2021	D-Final Witness List		.00	.00	.00
83	06/04/2021	D-Supplemental Proposed Jury Instructions		.00	.00	.00
84	06/04/2021	S-Proposed Voir Dire		.00	.00	.00
85	06/04/2021	S-Objection to Def's Req for Juries Instructions for Lesser-Included		.00	.00	.00
86	06/04/2021	S-Supplemental Disclosure (CV for P. Cochran)		.00	.00	.00
87	06/04/2021	S-Proposed Witness List		.00	.00	.00
88	06/04/2021	S-Memo for witness for 6-9 & 10, 2021 B. Stewart/J. Wheeler		.00	.00	.00
89	06/04/2021	S-Memo for witness for 6-9-21 (K. Powers)		.00	.00	.00
90	06/04/2021	S-Proposed Exhibit List		.00	.00	.00
91	06/07/2021	Sub for 6-9-21 served on K. Powers by PAO		.00	.00	.00
92	06/07/2021	Sub for week of 6-9-21 served on B. Stewart/J. Wheeler by PAO		.00	.00	.00
93	06/07/2021	Sub for week of 6-8-21 served on M. Lesser by PAO		.00	.00	.00
94	06/08/2021	S-Motion in Limine (co-defendant)		.00	.00	.00
95	06/08/2021	D-E-Mail stating did not have time to respond to State's motion		.00	.00	.00
96	06/08/2021	GJ Transcript filed/sealed		.00	.00	.00

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97	06/08/2021	D- Sub serve on S. Lester for 6-10-21 personally 6-8-21		.00	.00	.00
98	06/08/2021	D- Sub served on K. Powers personally for 6-10-21		.00	.00	.00
99	06/08/2021	TRANSPORT ORDER: NCRJ transport T. Linear 6-10-21 for trial testimony		.00	.00	.00
100	06/09/2021	D-Sub for T. Linear served personally at NCRJ 6-9-21 for 6-10-21		.00	.00	.00
101	06/09/2021	Amended Transport ORDER: NCRJ release Terrell Linear to WVU PD on		.00	.00	.00
102	06/09/2021	6-10-21 and will return when testimony is completed		.00	.00	.00
103	06/10/2021	JURY LIST (June 8, 9, 10, 11, 12, 2021)	1120	3251.04	.00	3251.04
104	06/10/2021	TRIAL LOG Megan Joseph	1080	45.00	.00	45.00
105	06/10/2021	E-Mail from Defendant: Additional Mercy Phase Witness		.00	.00	.00
106	06/12/2021	TRANSPORT ORDER: NCRJ transport 6-14-21, 9 am for trial		.00	.00	.00
107	06/11/2021	Jury Charge (guilt phase)		.00	.00	.00
108	06/11/2021	Notes from Jury		.00	.00	.00
109	06/11/2021	VERDICT: guilty of 1st Degree Murder: Conspiracy to Commit Murder		.00	.00	.00
110	06/11/2021	Jury Charge (Mercy phase)		.00	.00	.00
111	06/17/2021	VERDICT ORDER: guilty on count 1: Murder in the first Degree and		.00	.00	.00
112	06/17/2021	count 2: Conspiracy to Commit First Degree Murder: jury was		.00	.00	.00
113	06/17/2021	unable to reach a verdict on the mercy phase of trial:		.00	.00	.00
114	06/28/2021	D-Motion for New Trial		.00	.00	.00
115	07/07/2021	ORDER OF CERTIFICATION TO THE SUPREME COURT regarding the issue of		.00	.00	.00
116	07/07/2021	mercy: this case is stayed pending a decision		.00	.00	.00
117	07/13/2021	W. Summer's Motion to withdraw and Notice of Intent to Withdraw as		.00	.00	.00
118	07/13/2021	counsel and Notification Certificate		.00	.00	.00
Totals				3599.63	.00	3599.63