

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS:

INDICTMENT NO. 21-F-130

The Honorable Paul M. Blake, Jr., Judge

TIMOTHY R. MAICHLE

DOB: 09/02/1967

ORDER DENYING MOTION FOR NEW TRIAL AND
SENTENCING AND COMMITMENT ORDER

FAYETTE COUNTY
CIRCUIT CLERK
DEBORAH B. RENNISON
2021 OCT 20 A 1033

This matter came on for the consideration the Honorable Paul M. Blake, Jr., Circuit Judge on Monday, October 4, 2021, for the imposition of sentence and a hearing upon the Defendant's application for probation, pursuant to the Defendant being convicted at trial on August 18, 2021, for the felony offense of attempted murder in the second degree, a lesser included offense, as charged in Count One of Indictment No. 21-F-130; the felony offense of malicious assault, as charged in Count Two of Indictment No. 21-F-130; and, the felony offense of third offense domestic battery, as charged in Count Three of Indictment No. 21-F-130. The State of West Virginia, appeared by Anthony Ciliberti, Jr., Prosecuting Attorney and the Defendant, Timothy R. Maichle, appeared in person and by counsel, James A. Adkins, Counsel for the Defendant with all parties appearing via Microsoft TEAMS video/audio link.

WHEREUPON the Court inquired of the Defendant if he was willing to waive appearing in Court in person and willing to conduct the hearing via TEAMS with the Defendant consenting to the same.

THEREAFTER, the Court noted that the State had filed a recidivist information against the Defendant, Information No. 21-F-156, and that the Defendant's arraignment on the same was held on September 9, 2021. The Court further noted that at the aforementioned arraignment the

Defendant made an admission to his prior felony conviction of third offense domestic battery as alleged in said Information.

The Court then reviewed the *Presentence Investigation Report* prepared by Robin K. Hollard, Probation Officer, dated September 15, 2021, and addressed the issue of additions or corrections to said report with none being raised by either party.

The Court then addressed the Defendant's *Motion for a New Trial* filed in the instant action on August 27, 2021, and after hearing arguments of counsel regarding the same, **FINDS:**

1. The language of Count Two of Indictment No. 21-F-130, alleging the offense of malicious assault, tracks one way by which the crime of malicious assault can be committed and all of the essential elements for committing malicious assault are present.
2. The missing language which the Defendant claims renders Count Two defective tracks the second manner in which the statute can be violated and the crime committed.
3. As the language of Count Two contains all of the essential elements of one manner of committing the offense of malicious assault, Count Two is not defective.
4. The Defendant next raises the issue of the Grand Jury not hearing evidence that the victim stated she jumped from the vehicle at issue when she was in the emergency room at Charleston Area Medical Center being treated for her injuries.
5. The State counters that the Petit Jury that tried the case heard such evidence as well as all other relevant evidence, which included testimony from two medical experts which called into question whether such statements by the victim should be believed given she was given a powerful narcotic pain medication and given she sustained severe head trauma.
6. The burden of proof before the Grand Jury is probable cause and burden of proof before the Petit Jury is beyond a reasonable doubt.

7. The Petit Jury heard all of the relevant evidence, including evidence that the victim said she jumped from the vehicle.
8. While operating under a much higher burden of proof, and having considered all relevant evidence, the Petit Jury found the Defendant guilty of a lesser included felony offense as to Count One and guilty to the two felony offenses alleged in Counts Two and Three.

ACCORDINGLY, and based on the preceding findings, it is the **ORDER** and **JUDGMENT** of the Court that the Defendant's Motion for a New Trial should be and the same is **DENIED**.

The Court then offered all parties, including the Defendant, an opportunity to speak in open court prior to pronouncement of sentence. The Defendant, Timothy R. Maichle, and James A. Adkins, Counsel for the Defendant, both addressed the Court. The State of West Virginia also addressed the Court.

WHEREUPON, the Court, after having given all parties an opportunity to be heard, is of the opinion and, therefore, it is the **ORDER** and **JUDGMENT** of the Court that for the Defendant's conviction of the felony offense of attempted murder in the second degree, a lesser included offense, as charged in Count One of Indictment No. 21-F-130, the Defendant be sentenced to the West Virginia State Penitentiary for an indeterminate period of not less than one (1) year nor more than three (3) years. It is further the **ORDER** and **JUDGMENT** of the Court that for the Defendant's conviction of the felony offense of malicious assault, as charged in Count Two of Indictment No. 21-F-130, the Defendant be sentenced to the West Virginia State Penitentiary for an indeterminate period of not less than four (4) years nor more than ten (10) years, the minimum sentence being doubled as a result of the recidivist information filed against the Defendant and the Defendant's admission thereto. It is further the **ORDER** and **JUDGMENT** of the Court that for the Defendant's conviction of Third Offense Domestic Battery, as charged in

Count Three of Indictment No. 21-F-130, the Defendant be sentenced to the West Virginia State Penitentiary for an indeterminate period of not less than one (1) year nor more than five (5) years and fined in the amount of Two Thousand Dollars (\$2,000.00).

It is further the **ORDER** and **JUDGMENT** of the Court, that the aforementioned sentences are to be served **CONSECUTIVELY**.

THEREAFTER, the Court in acting upon the Defendant's application for probation reviewed the *Presentence Investigation Report* and took the following matters into consideration:

1. The Defendant violated the terms of his bond by having contact with the victim in the above matter resulting in the Defendant's bond being revoked.
2. The Defendant is fifty-four (54) years old.
3. The Defendant did not complete high school but has obtained a G.E.D.
4. The Defendant maintains his innocence and states his wife and victim jumped from a moving vehicle, which based upon trial testimony, was traveling at a speed of at least thirty-five miles per hour.
5. Common sense dictates that had the victim actually jumped from a moving vehicle which was being driven by the Defendant, that the Defendant would have immediately stopped.
6. Instead, after the victim came out of the vehicle, the Defendant drove down the road some distance and then turned around and came back.
7. At trial, the jury found that the Defendant slowed the vehicle as though he was going to let the victim out and as the victim prepared to exit the vehicle, the Defendant accelerated and shoved the victim out of the vehicle.
8. The Defendant has utterly failed to take responsibility for his actions.
9. The Defendant continues to blame the victim.
10. The victim continues to suffer from the injuries caused by the Defendant's actions.

11. There is a high likelihood the victim will continue to suffer from the injuries caused by the Defendant's actions for life.
12. The Defendant has a problematic history of domestic violence.
13. The Defendant has two (2) previous felony convictions and has been sent to prison because of the same.
14. The Defendant's most recent felony conviction was domestic violence related and was for Third Offense Domestic Battery.
15. The Defendant is a danger to women.
16. The victim described the Defendant as a "manipulative monster."
17. The Defendant is volatile and dangerous.
18. To place the Defendant on probation would make a mockery of justice.

Based thereon, it is the **ORDER** and **JUDGMENT** of the Court that the Defendant's application for probation should be and the same is hereby **DENIED**.

The effective date of this sentence shall be January 21, 2021, the Defendant being given credit for two hundred fifty-six (256) days served while awaiting disposition of this matter.

It is further the **ORDER** and **JUDGMENT** of this Court that the Defendant shall be assessed all court costs associated with this matter. All court costs and fines are to be paid within one hundred eighty (180) days of the Defendant's release from incarceration, or pursuant to a reasonable payment plan established with the Court. The Defendant was advised that failure to pay the assessed court costs and fines could result in collection activity being taken against the Defendant.

WHEREUPON, the Court explained to the Defendant his right to appeal the Court's judgment to the Supreme Court of Appeals of West Virginia and gave him written notice of the same.

The Defendant is hereby remanded to the custody of the Department of Corrections for further execution of this sentence.

It is further the **ORDER** and **JUDGMENT** of this Court that the Clerk of this Court shall complete the Court Disposition Reporting Form, DPS Form 29, and shall send the original of such form to the appropriate agency for recordation. The Clerk is further directed to forthwith send attested copies of this Order via facsimile machine to Margaret Chico-Eddy, Records Manager, West Virginia Division of Corrections, 304.558.8430; and, Southern Regional Jail, at 304.254.2943; and, further shall forward certified copies of this Order to the West Virginia Division of Corrections, 1409 Greenbrier Street, Charleston, WV 25311. The Clerk is further directed to forward attested copies of this Order to Anthony Ciliberti, Jr., Prosecuting Attorney, 108 East Maple Avenue, Fayetteville, West Virginia 25840; James A. Adkins, Counsel for Defendant, 102 Fayette Avenue, Fayetteville, West Virginia 25840; Robin K. Holland, Fayette County Probation Office, 100 Court Street, Fayetteville, West Virginia 25840; Michelle Holly, County Clerk, 100 Court Street, Fayetteville, West Virginia 25840; and Det./Sgt. W.K. Willis, Fayette County Sheriff's Office, 100 Church Street, Suite 5, Fayetteville, West Virginia 25840.

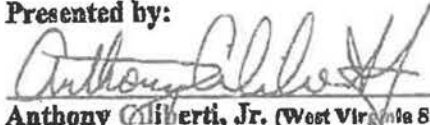
ORDER:

ENTER: October ¹⁶ 19, 2021.



PAUL M. BLAKE, JR., JUDGE

Presented by:



Anthony Ciliberti, Jr. (West Virginia State Bar No. 7609)
Prosecuting Attorney
108 East Maple Avenue
Fayetteville, West Virginia 25840
304-574-4230
anthony.ciliberti.pa@gmail.com

A TRUE COPY of an order entered
October 20, 2021
Teste: *Donald B. [unclear]*

Attested Copies to:

MCE(F) / MH
AC / WKW
JAA / DH
RKH /
Date: 10-20-2021
Initials: SM

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
Plaintiff

INDICTMENT NO.: 21-F-156
JUDGE PAUL M. BLAKE, JR.

v.

TIMOTHY R. MAICHLE
Defendant

ORDER APPOINTING APPELLATE COUNSEL

The Court previously appointed the Public Defender's Office to represent the Defendant. The Defendant remains incarcerated at Southern Regional Jail, currently has no income and is indigent within the meaning of West Virginia Code § 29-1-1 et. seq.

Therefore, it is the ORDER and JUDGMENT of the Court that Public Defender Services- Appellate Division is appointed to represent the Defendant on appeal.

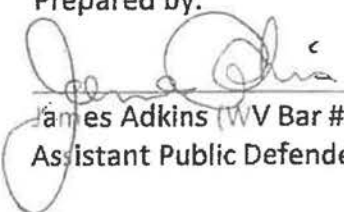
The Clerk is further ORDERED to forward copies of this ORDER to: Crystal Walden, Public Defender Services- Appellate Division, One Players Club Drive Suite 301, Charleston, WV 25311; Prosecuting Attorney; and Public Defender.

ENTER: 10/29/2021

PAUL M. BLAKE, JR.
JUDGE

PAUL M. BLAKE, JR.
FAYETTE CIRCUIT JUDGE

Prepared by:


James Adkins (WV Bar # 9892)
Assistant Public Defender

A TRUE COPY of an order entered
October 29, 2021
Teste: Deborah B. Henderson
Circuit Clerk Fayette County, WV