

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 13, 2023, the following order was made and entered.

SCA EFiled: Sep 13 2023
09:40 AM EDT
Transaction ID 70847817

State of West Virginia,
Plaintiff Below, Respondent

vs.) No. 22-811

Timothy Lee Mullinex,
Defendant Below, Petitioner

RULE TO SHOW CAUSE IN CONTEMPT

On this day came the Court, on its own motion, and proceeded to consider sanctions against John A. Scott, counsel for the petitioner Timothy Lee Mullinex, for his failure to file perfect the appeal by filing a petitioner's brief and appendix in compliance with the Rules of Appellate Procedure in this matter and comply with orders of this Court.

On October 26, 2022, the petitioner, by his former counsel Perry B. Jones, filed a notice of appeal from an order of the Circuit Court of Harrison County (Case No. 21-F-192-3) entered on September 26, 2022. By Scheduling Order entered on October 31, 2022, the deadline to perfect the appeal was January 26, 2023. When the appeal was not perfected, the Court entered a Notice of Intent to Sanction on February 7, 2023, against Perry B. Jones, ordering that the petitioner's appeal be perfected on or before February 22, 2023. On February 16, 2023, John A. Scott filed a notice of appearance as counsel for the petitioner.

The Court entered an Amended Scheduling Order on February 23, 2023, extending the deadline to perfect the appeal to March 27, 2023. On March 27, 2023, the petitioner, by counsel John A. Scott, filed a motion to stay the petitioner's appeal pending the resolution of a motion for reduction of sentence filed below with the Circuit Court of Harrison County. The Court granted the petitioner's motion and held the petitioner's appeal in abeyance until receipt of the circuit court's order denying the petitioner's motion for reduction of sentence on April 28, 2023.

On May 12, 2023, the Court entered a second Amended Scheduling Order, extending the deadline to perfect the appeal to May 31, 2023. On May 31, 2023, John A. Scott submitted a

petitioner's brief that does not comply with Rule 10 of the Rules of Appellate Procedure. No appendix was filed.

The Court entered a Notice of Intent to Sanction on June 15, 2023, ordering John A. Scott to perfect the appeal by filing a petitioner's brief and appendix in compliance with the Court's Rules on or before June 26, 2023. To date, John A. Scott has not filed a petitioner's brief and appendix that comply with the Court's Rules in this matter.

Upon consideration and review, the Court is of the opinion that a rule in contempt against the petitioner's counsel, John A. Scott, should be awarded.

It is ORDERED that a rule does issue directed against the petitioner's counsel and the respondent herein, John A. Scott, Esq., returnable before this Court at its courtroom in the City of Charleston, County of Kanawha, on October 10, 2023, at 2:10 p.m. commanding and directing the said respondent to show cause, if any he can, why he should not be held in contempt of this Court for failure to perfect the appeal in this, unless sooner mooted by filing a petitioner's brief and appendix that fully comply with the Rules of Appellate Procedure.

The Court directs the Clerk of Court to refer the actions of John A. Scott in failing to perfect the appeal on behalf of the petitioner, to the Office of Disciplinary Counsel.

It is further ordered that a copy of this order be sent to the Honorable James A. Matish, Judge.

Service of an attested copy of this order shall constitute sufficient notice of the contents.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

