

No. 33659 – *State of West Virginia v. Joshua Lee Slater*

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OF WEST VIRGINIA

Benjamin, Justice, concurring:

I agree with the majority opinion but write separately to address the issue raised in the dissenting opinion.

According to the dissent, the majority opinion is inconsistent with the United States Supreme Court's rulings in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004). This simply is not true. As this Court explained in *State v. Haught*, 218 W.Va. 462, 624 S.E.2d 899 (2005), *Apprendi* and *Blakely* stand for the principle that any fact other than a prior conviction that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. In contrast, our kidnaping statute does not provide for the *enhancement* of a defendant's sentence beyond the statutory maximum based on additional facts found by the trial judge, but rather provides for the possible *reduction* of a defendant's sentence based on the trial judge's additional findings. Because *Apprendi* and *Blakely* are not applicable to the instant facts, those cases were properly omitted from the discussion in the majority opinion.

Thus, for the reason stated above, I concur with the majority opinion.