

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Memorandum Order

State of West Virginia ex rel. Stanley M. Meyers, Petitioner

vs.) No. 35473

Honorable Gina Groh, Judge of the Circuit Court of Berkeley
County, Respondent

On a former day, to wit, January 28, 2010, this Court entered a rule to show cause returnable on April 21, 2010, as to why a writ of prohibition should not be directed against the respondent, the Honorable Gina Groh, Judge of the Circuit Court of Berkeley County, as requested in the petition for a writ of prohibition filed by the petitioner, Stanley M. Meyers, on December 17, 2009. Having thoroughly considered the matter raised in the petition, the response thereto, and the oral arguments of counsel, this Court hereby denies the writ and remands this case to the circuit court for additional proceedings including a hearing pursuant to Rule 404(b) of the West Virginia Rules of Evidence.

The petitioner was previously convicted of three counts of first degree sexual abuse and one count of third degree sexual assault. The victims were four male children ranging in age from six to twelve years old at the time the offenses were committed. Prior

to his sentencing, the petitioner underwent a pre-sentence evaluation pursuant to W. Va. Code § 62-12-7a (1994) (Repl. Vol. 2005). The petitioner discharged his sentences on June 13, 2006. He registered as a sex offender with the State Police the next day.

On May 20, 2009, the petitioner was indicted on one felony count of failure to register as a sex offender and one misdemeanor count of contributing to the delinquency of a minor. The charges arose out of the petitioner's alleged efforts to cultivate a relationship with another young boy and his creation of an e-mail account which he did not inform the State Police about as required by the Sex Offender Registration Act, W.Va. Code § 15-12-3 (2006) (Repl. Vol. 2009).

On August 18, 2009, the petitioner filed a motion to suppress seeking to prevent the State from using the pre-sentence evaluation report completed in connection with his prior convictions at his upcoming trial. By order dated December 2, 2009, the respondent denied the petitioner's motion, finding that the State may present information in the report through expert testimony. The respondent indicated, however, that she would consider the use of the report again when ruling upon the admissibility of evidence that the State seeks to introduce at the petitioner's trial pursuant to Rule 404(b) of the West Virginia Rules of Evidence. Thereafter, the petitioner filed his petition for a writ of prohibition with this Court.

Upon review of the December 2, 2009, circuit court order, it is clear that the respondent has only partially ruled upon the admissibility of the pre-sentence evaluation report as she has indicated that she will consider whether the State can use the report at the petitioner's trial during the hearing on the State's 404(b) evidence. Absent a ruling on the merits by respondent, this Court declines to resolve this issue. "It would be premature on our part to prohibit the circuit court from doing that which it has yet to rule upon." *State ex rel. Nationwide Mut. Ins. Co. v. Kaufman*, 222 W. Va. 37, 45, 658 S.E.2d 728, 736 (2008). Accordingly, the writ is denied, and this case is remanded to the circuit court for further proceedings including a hearing pursuant to Rule 404(b) of the West Virginia Rules of Evidence.

The mandate of this Court shall issue contemporaneously herewith.

Writ denied.