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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff Below;
Respondent herein;

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v.

CARLI RENAE REED,

Defendant Below;
Petitioner herein.

Case No. 21-0227

Criminal Action No. 20-F-28 (Barbour County)

The Honorable Shawn D. Nines

REPLY BRIEF OF PETITIONER CARLI RENAE REED
TO RESPONDENT'S SUPPLEMENTAL BRIEF

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Comes now the Petitioner, Carli R. Reed, by and through her counsel, Hunter B. Mullens, C. Brian Matko and Matthew L. Ervin of Mullens & Mullens, PLLC, and, pursuant to this Court's Order of August 31, 2022, submits the following as the Petitioner's Reply Brief in Response to Respondent's Supplemental Brief.

REPLY ARGUMENT TO RESPONDENT'S SUPPLEMENTAL BRIEF

1. The trial court's failure to timely enter written orders on pre-trial rulings prejudiced the Petitioner during her trial and violated her due process rights.

In the instant case, the Petitioner's trial lasted from September 16, 2020 through September 24, 2020. The sentencing hearing was held on December 2, 2020, and the sentencing Order was entered on February 19, 2021. App. Vol. 1, pgs. 181-191. The Petitioner filed her Notice of Appeal on March 19, 2021. As part of the Notice of Appeal, the Petitioner included all alleged assignments of error and a short statement supporting each assignment of error. Included in the assignments of error, asserted by the Petitioner, were a number of pre-trial rulings the trial court made for which no order had been entered. On April 23, 2021, the trial court entered a number of orders on certain pre-trial matters. App. Vol. 1, pgs. 192-234.

In West Virginia it does not appear that there is a bright line rule regarding the time period in which a trial court must enter an order. In this case, the trial court entered a number of orders over a month after the Petitioner's Notice of Appeal was filed, and almost eight (8) months after the trial. This Court has repeatedly held that "[i]t is a paramount principle of jurisprudence that a court speaks only through its orders. See *Legg v. Felinton*, 219 W.Va. 478, 483, 637 S.E.2d 576, 581 (2006); see also *State ex rel. Erlewine v. Thompson*, 156 W.Va. 714, 718, 207 S.E.2d 105, 107 (1973). Since the trial court failed to enter written orders, Petitioner's counsel had to rely upon their recollection in conforming to the trial court's pre-trial rulings during the trial. The

evidentiary issues decided by the trial court at the pre-trial hearings were on substantive and complicated issues including, among other things, the admissibility of Rule 404(b) evidence. Petitioner's counsel was disadvantaged as they had to rely upon their recollection of the Court's rulings and could not rely on written orders in defending the Petitioner. As such, the Petitioner was prejudiced and her due process rights were violated.

2. Under West Virginia law, a trial court does not have jurisdiction to enter an order after the West Virginia Supreme Court of Appeals has granted a petition to appeal.

As stated in Petitioner's previously filed brief, once the West Virginia Supreme Court of Appeals takes jurisdiction of a matter pending before a circuit court, the circuit court is without jurisdiction to enter further orders in the matter except for specific leave of this court. *See* Syl. pt. 3, *Fenton v. Miller*, 182 W.Va. 731, 391 S.E. 2d 744 (1990). Further, when this Court grants a petition for appeal all proceedings in the circuit court relating to the case in which the petition for appeal has been granted are stayed pending this Court's decision in the case. Such stay of proceedings is mandatory under W. Va. Code § 62-7-2. *State ex rel. Dye v. Bordenkircher*, 168 W.Va. 374, 378, 284 S.E. 2d 863, 866 (1981).

In the Supplemental Brief, the Respondent argues that there is a caveat to the aforementioned rule, in that trial courts retain jurisdiction to enter written orders after filing a notice to appeal when those written orders only memorialize prior oral rulings from the bench. *See Respondent's Supplemental Brief*, page 2. In support of its position, the Respondent cites *Moats v. Preston County Comm'n*, 206 W.Va. 8, 521 S.E. 2d 180 (1999) (holding "[a]n oral order has the same force, effect, and validity in the law as a written order. In other words, the actual physical possession of a written order is not required to effectuate said order.") However, the Respondent's reliance upon *Moats v. Preston County Comm'n* is misplaced. The issue in *Moats* was whether a county commission was immune from suit and liability under the West Virginia Governmental

Tort Claims and Insurance Act. W.Va. Code §§ 29-12A-1 to -18. In *Moats*, suit was filed against the Preston County Commission after a woman intentionally hurt herself while in custody of the Preston County Sheriff's Department following an involuntary commitment proceeding. Under the West Virginia Governmental Tort Claims and Insurance Act, the Sheriff's department would be immune from suit if it was acting pursuant to an order from the mental hygiene commissioner. The Plaintiff took the position that the West Virginia Governmental Tort Claims and Insurance Act and the immunity it provided was not applicable because the Preston County Sheriff's Office did not have a written copy of the mental hygiene commissioner's order in hand at the time the woman injured herself. This Court rejected the Plaintiff's position and held that "[b]ecause the Sheriff's Department had notice of the order entered by the mental hygiene commissioner in this case, we find that the Sheriff was acting pursuant to said order." *See Moats v. Preston County Comm'n*, 206 W.Va. at 13, 521 S.E.2d at 185. The facts and rulings in *Moats* did not involve the entry of orders by a trial court after the filing of a Notice to Appeal. As such, the holding in *Moats* is not analogous to the instant case, and does not relate to the issues in this case.¹

This Court has repeatedly held that "[i]t is a paramount principle of jurisprudence that a court speaks only through its orders. This Court has also made it clear that in instances where the circuit court's written order conflicts with its oral statements, the written order controls. *See Legg v. Felinton*, 219 W.Va. 478, 483, 637 S.E.2d 576, 581 (2006); *see also State ex rel. Erlewine v. Thompson*, 156 W.Va. 714, 718, 207 S.E.2d 105, 107 (1973). Petitioner has not located any West Virginia case which specifically addresses the issue in this appeal. However, allowing a trial court

¹ *See Footnote 16, State ex rel W.Va. Dep't of Health & Human Resources, Child Support Enforcement Division v. Varney*, 221 W.Va. 517, 655 S.E. 2d 539 (2007) finding that the decision in *Moats* did not involve the entry of a judgment order as it relates to the running of statutes of limitations and thus, does not affect the holding in this case.

to enter orders regarding pre-trial matters that relate to subjects on appeal has the potential to prejudice an appellant.

Rule 5(b) of the West Virginia Rules of Appellate Procedure provide that “[w]ithin thirty days of entry of the judgment being appealed, the party appealing shall file the notice of appeal, including attachments required in the notice of appeal form contained in Appendix A of these Rules.” Paragraph 17 of the Notice of Appeal Form requires the Petitioner to identify all assignments of error and, for each assignment of error listed, state the issue and a succinct statement as to why the Court should review the issue. In compliance with Rule 5(b), the Petitioner, in her Notice of Appeal, attached an additional eight (8) pages which set forth both the assignments of error and a brief statement supporting the Petitioner’s position with regard to the assignment of error.

As stated above, under West Virginia law, if there is a conflict between an oral order and a written order, the written order controls. *See Legg v. Felinton*, 219 W.Va. at 483, 637 S.E.2d at 581. As such, a trial court can expand upon an oral order in a follow-up written order. Allowing a trial court to enter orders on pre-trial matters after a notice to appeal has been filed creates confusion and can have an effect on the petitioner’s notice of appeal.² With no time period in which a trial court is required to enter an order on pre-trial matters, a trial court could, theoretically, enter an order immediately prior to or even after argument before this Court. This confusion could be avoided by requiring trial courts to enter all orders before the notice of appeal has to be filed.

In West Virginia, a trial court is deprived of jurisdiction when it has entered a final order within the contemplation of W.Va. Code § 58-5-1, and the final order has been appealed properly

² Petitioner is not alleging or arguing that the Judge Nines in any way drafted the Orders at issue in this case in such a way as to protect his prior rulings or drafted the Orders based upon the statements made in the Petitioner’s Notice of Appeal.

to this Court. *See Bartles v. Hinkle*, 196 W.Va. 381, 388, 472 S.E. 2d 827, 834 (1996). Carving out an exception to this clear rule, in order to allow a trial court to enter orders after the filing of a notice of appeal, creates potential issues and confusion which can be avoided by requiring trial courts to enter all written orders prior to the period in which a notice of appeal must be filed.

CONCLUSION

WHEREFORE, the Petitioner, Carli R. Reed, by and through her counsel, Hunter B. Mullens, C. Brian Matko, and Matthew L. Ervin of Mullens & Mullens, PLLC, respectfully pray that the Supreme Court of Appeals of West Virginia find that the Circuit Court of Barbour County, West Virginia committed error during the underlying trial in this matter, reverse the verdict entered against the Petitioner, remand the case for a new trial, release the Petitioner from incarceration and any such further relief as justice requires.

CARLI RENAE REED

Petitioner, By Counsel



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CARLI RENA E REED,

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CERTIFICATE OF SERVICE

I, C. Brian Matko, certify that the foregoing, *Reply Brief of Petitioner Carli Renae Reed to Respondent's Supplemental Brief*, was served on the following counsel of record by electronic message and by U.S. Mail on the 8th day of September, 2022:

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