
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0227

STATE OF WEST VIRGINIA,

Respondent,

v.

CARLI RENAE REED,

Petitioner.



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RESPONDENT'S SUPPLEMENTAL BRIEF

Appeal from the February 19, 2021, Order
Circuit Court of Barbour County
Case No. 20-F-28

FILE COPY

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I. ARGUMENT

In her final assignment of error, Petitioner alleges that she was denied due process when the trial court entered orders after she filed her Notice of Appeal and when the trial court was divested of jurisdiction. (Pet'r Br. 53–54.) Petitioner argues that the trial court entered its Sentencing Order on February 19, 2021, from which Petitioner filed her Notice of Appeal on March 19, 2021. (Pet'r Br. 53.) After Petitioner filed her Notice of Appeal the trial court entered four orders: (1) April 23, 2021 Order Following Pre-Trial Hearing (App. 192–220), (2) April 23, 2021 Order Following In Camera Hearing on State's Motion to Bifurcate (App. 221–23), (3) April 23, 2021 Order denying post-trial motions (App. 224–27), and (4) May 14, 2021 Order Following Hearing on Defendant's Motion to Dismiss (Denying Defendant's Motion to Dismiss) (App. 228–38). Citing *Bartles v. Hinkle*, 196 W.Va. 381, 388, 472 S.E.2d 827, 834 (1996), Petitioner asserts that “a trial court is deprived of jurisdiction only when it was entered a ‘final’ order within the contemplation of W.Va. Code § 58-5-1, and the final order has been appealed properly to this Court.” (Pet'r Br. 54.) Petitioner is wrong that the trial court lacked jurisdiction to enter these orders—each written decision memorialized orders that the trial court had issued from the bench *before* jurisdiction transferred to this Court.

To be sure, “all proceedings in the circuit court relating to the case in which [a] petition for appeal has been granted are stayed pending this Court's decision in the case.” Syl. Pt. 1, *State v. Doom*, 237 W.Va. 754, 791 S.E.2d 384 (2016) (quoting Syl. Pt. 2, *State ex rel. Dye v. Bordenkircher*, 168 W.Va. 374, 284 S.E.2d 863 (1981)). And this Court has held that “[t]he required finality is a statutory mandate, not a rule of discretion.” *Province v. Province*, 196 W.Va. 473, 478, 473 S.E.2d 894, 899 (1996) (slip op. at 8).” *Bartles v. Hinkle*, 196 W.Va. 381, 389, 472 S.E.2d 827, 834 (1996).

There is a caveat to this general rule, however: Trial courts retain jurisdiction to enter written orders after the filing of a notice appeal when those written orders only memorialize prior oral rulings from the bench. This is because oral orders have “the same force, effect, and validity in the law as a written order.” *Moats v. Preston Cnty. Comm’n*, 206 W.Va. 8, 13, 521 S.E.2d 180, 185 (1999). In other words, oral orders issue immediately; they are not delayed until the court enters a confirming written order. This Court has not expressly applied this principle to the specific context here, but other jurisdictions have found that as long as the trial court issued an oral order when it still had jurisdiction, it is appropriate for that court to enter a written order memorializing it later. *See State v. Walker*, 806 S.E.2d 326, 328–29 (N.C. App. 2017) (finding that “our appellate courts have repeatedly held that a delay in the entry of findings of fact and conclusions of law does not amount to prejudicial error” when the order memorializes oral rulings from the bench, despite the State having filed its notice of appeal); *Henry v. State*, 42 So.3d 317 (Dist. Ct. Fla. 2010) (finding that “a trial court has jurisdiction to render written orders after a notice of appeal is filed when those orders simply memorialize oral rulings made by the court prior to the notice of appeal being filed”).

That is what happened here. All four written orders Petitioner challenges memorialized oral orders that the trial court entered *before* Petitioner filed her Notice of Appeal on March 19, 2021. The trial court had jurisdiction to enter them from the bench, and the later written entries on the docket were essentially *nunc pro tunc* orders formalizing its previous rulings on the record:

- *Order Following Pre-Trial Hearings* (App. Vol. 1 at 192–220): This order memorialized rulings the trial court made on the bench at hearings on August 27, 2020 and September 1, 2020. (App. Vol. 2 at 301–544; Vol. 3A at 545–686.) It included rulings on several pre-trial suppression and admissibility issues.

- *Order Following In Camera Hearing on State’s Motion to Bifurcate* (App. Vol. 1 at 221–23): This order followed the trial court’s decision at an in camera hearing on the State’s motion to bifurcate, which the court held on September 16, 2020. (App. Vol. 1 at 221.)
- *Order Denying Post-Trial Motions* (App. Vol. 1 at 224–27): This order reflects the trial court’s oral rulings at the December 2, 2020 sentencing hearing. (*See generally* App. Vol. 5 at 1911–57.) In addition to sentencing issues, the court ruled on motions regarding evidence preservation and transcript requests, and denied Petitioner’s motions for a new trial and for post-verdict judgment of acquittal.
- *Order Following Hearing on Motion to Dismiss* (App. Vol. 1 at 228–38): This order reflects the trial court’s ruling at a July 17, 2020 hearing denying Petitioner’s motion to dismiss on speedy trial grounds. (App. Vol. 5B at 1911–57.)²

The trial court issued all four oral orders half a year or more before the Notice of Appeal transferred jurisdiction to this Court. Because entering formal written orders on the docket simply confirmed what the court had already done months before, there was nothing improper—much less unconstitutional—about the post-trial “clean up” orders.

Petitioner offers nothing to support a different result. She does not dispute the dates of any of the underlying hearings. She also does not argue that the trial court did anything new in the written orders or anything inconsistent with the prior rulings from the bench. The order denying post-trial motions, for example, expounds upon the reasons for denying Petitioner’s motion for new trial but does not include new relief or any analysis contrary to the oral rulings on December 2. (App. Vol. 1 at 224–27.) With respect to the order on the bifurcation motion, though Petitioner did not include the transcript of the *in camera* hearing in the Appendix Record, Petitioner’s brief and the nature of the trial make clear. Critically, Petitioner does not allege that the April 23 written

² The transcript of the hearing on Petitioner’s Motion to Dismiss appears to contain the incorrect cover page, which is that of the December 2, 2020 sentencing hearing. (App. Vol. 5B at 1911.) The docket sheet for criminal case number 20-F-282 and the trial court’s order correctly reflect that the hearing was held on September 17, 2020.

order—or any of the other three orders, for that matter—is inconsistent with any ruling orally made from the bench.

Finally, even if there were any doubt about the trial court’s jurisdiction to enter the memorializing orders, Petitioner has not shown that anything in them constitutes a due process violation. Petitioner was not denied notice of the trial court’s rulings and had an opportunity to be heard at each of the pre-trial hearings at issue. Nor does Petitioner explain how entering the written orders after trial undermined her right to a full and fair trial in any way. So even if she could show a jurisdictional defect in the orders, that would not be a reason to set aside the verdict.

The trial court’s orders effectively are *nunc pro tunc* orders that did not issue any new decisions but rather memorialized the trial court’s previous oral rulings. Consequently, the trial court was not divested of jurisdiction when the orders were entered and Petitioner was not denied her right to due process. There is no error to correct.

II. CONCLUSION

This Court should affirm Petitioner’s conviction and sentence.

Respectfully Submitted,

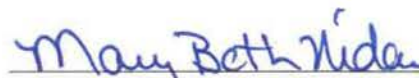
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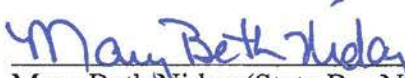
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CERTIFICATE OF SERVICE

I, Mary Beth Niday, counsel for the Respondent, hereby certify that I have served a true and accurate copy of the foregoing **Respondent's Supplemental Brief** upon counsel for Petitioner, by depositing said copy in the United States mail, postage prepaid, on this day, August 15, 2022, addressed as follows:

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