

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0554



**State of West Virginia
Plaintiff Below, Respondent**

vs.) No. 21-0554

**Shaundarius Reeder,
Defendant Below, Petitioner**

**FROM THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
CIVIL ACTION NO. 20-F-122
HON. SUSAN B. TUCKER**

PETITIONER'S BRIEF

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I. CERTIFIED QUESTION

- I. Whether a jury's failure to unanimously decide the recommendation of mercy allows the Circuit Court to impose the life sentence required for conviction of First Degree Murder pursuant to W.Va. Code §61-2-2 and either grant mercy or decline to grant mercy?**

Answer of the Circuit Court: Yes.

STATEMENT OF THE CASE

On June 18, 2020, the Grand Jurors of the State of West Virginia, in and for the citizens of Monongalia County, upon their oaths, charged Shaundarius Reeder (“Mr. Reeder’ or ‘Petitioner’”) with Murder in the First Degree pursuant to West Virginia Code § 61-2-1 and Conspiracy to Commit Murder pursuant to West Virginia Code § 61-10-31.

The case arises out of actions that occurred on February 28, 2020, in Morgantown, Monongalia County, West Virginia. On Tuesday, June 8, 2021, the Circuit Court of Monongalia County empaneled a jury to hear the case to be tried between the State of West Virginia and Mr. Reeder. After the State of West Virginia and Petitioner presented their respective cases and the Court instructed the jury as to the applicable laws and rules governing deliberation on Thursday, June 10, 2021, the jury returned a unanimous verdict of Guilty as to Count One, Murder in the First Degree, and Guilty as to Count Two, Conspiracy to Commit Murder as charged in the Indictment against Mr. Reeder.

On May 28, 2021, prior to the commencement of the trial, counsel for Defendant submitted Defendant’s Motion to Bifurcate Determination of Mercy from the Trial (“Motion”). The State of West Virginia did not oppose the Motion and the undersigned granted the same. Therefore, on Friday, June 11, 2021, the jury returned to begin the mercy phase of the trial. The Petitioner presented his evidence followed by the State of West Virginia. The Circuit Court instructed the jury as to the applicable law, counsel of record presented closing arguments, and the jury began deliberation regarding the determination of mercy.

Thereafter, it was apparent that the jury was having difficulty in reaching a decision given the two (2) jury questions submitted to the Circuit Court. That evening, upon the jury’s request, the undersigned recessed, and the jury returned on Monday, June 14, 2021 to resume deliberations.

That same day, the jury informed the Court that it was unable to come to a unanimous verdict after approximately twelve (12) hours of deliberation. Because the Court had previously instructed the jury as to their duty in accordance with *State vs. Blessing*, 331 S.E.2d 863 (1985), the Court found it appropriate to dismiss the jury.

This matter now appears before this Honorable Court as a Certified Question attempting to obtain guidance as to the procedure by which a trial court should handle a hung jury in the mercy phase of a first degree murder trial.

SUMMARY OF ARGUMENT

I. Because the Petitioner requested a trial by jury in the underlying case, he has an absolute right, pursuant to W.Va. Code §62-3-15 for the issue of the applicability of mercy to his sentence to be considered and determined by a jury.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to West Virginia Rules of Appellate Procedure 18(a)(4), the Petitioner submits that the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument.

ARGUMENT

- I. **As a matter of first impression- and without the express guidance of Legislative authority- this Honorable Court should answer the Certified Question of the Circuit Court of Monongalia County in the negative and direct the Circuit Court to impanel a new jury on the issue of mercy.**

West Virginia Code §62-3-15, enacted during the 1994 legislative session, provides as follows:

If a person indicted for murder be found by the jury guilty thereof, they shall in their verdict find whether he or she is guilty of murder of the first degree or second degree. If the person indicted for murder is found by the jury guilty thereof, and if the jury find in their verdict that he or she is guilty of murder of the first degree, or if a person indicted for murder pleads guilty of murder of the first degree, he or she shall be punished by imprisonment in the penitentiary for life, and he or she, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be eligible for parole: Provided, That the jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve, except that, notwithstanding any other provision of this code to the contrary, such person shall not be eligible for parole until he or she has served fifteen years: Provided, however, That if the accused pleads guilty of murder of the first degree, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy, except that, notwithstanding any provision of said article twelve or any other provision of this code to the contrary, such person shall not be eligible for parole until he or she has served fifteen years.

This Honorable Court has previously held that, “in a trial involving a potential first degree murder verdict, the trial court has discretionary authority to bifurcate the guilt and recommendation-of-mercy inquiries of the jury.” *State v. LaRock*, 196 W.Va. 294, 470 S.E.2d 613 (1996). Likewise, this Court has addressed the purpose behind the mercy phase of a bifurcated

trial, stating, “the issue during the mercy phase of a bifurcated trial is whether or not the defendant, who already has been found guilty of murder in the first degree, should be afforded mercy, i.e., afforded the opportunity to be considered for parole after serving no less than fifteen years of his or her life sentence.” and further held that the decision of the jury regarding the granting or refusal of mercy must be unanimous. See *State v. Trail*, 236 W.Va. at 616, 778 S.E.2d at 630 (2015), and *State v. McLaughlin*, 700 S.E.2d 289 (W.Va. 2010).

Both the statutory provisions and the established caselaw in this State, however, are devoid of any instruction as to what the trial court must do in the event of a deadlocked jury during the mercy phase. As such, it is necessary to not only examine the relevant decisions touching upon the application of W.Va. Code §62-3-15 (1994) but also the positions of other jurisdictions in which Courts have addressed the issue of deadlocked juries during the penalty phase of a murder trial. In those other jurisdictions, however, the established caselaw can be distinguished by the fact that most of the cases involve the application of the death penalty and the respective statutory language generally authorizes the trial court to make a determination in the absence of a unanimous decision of the jury. See *Holmes v. Indiana*, 820 N.E.2d 136 (Indiana 2005); *Burchette v. Georgia*, 596 S.E.2d 162 (Georgia 2004). Neither W.Va. Code §62-3-15 nor any of this Honorable Court’s decisions make any such authorization and there does not appear to be any case, in any jurisdiction, which is solidly on point with the matter *sub judice*.

It is undisputed that the Petitioner has a Sixth Amendment right to trial by jury as well as a right to due process flowing from the Fourteenth Amendment. Having invoked that right, the Petitioner is entitled to have the issue of mercy decided by a jury. W.Va. Code §62-3-15 expressly provides for the procedure by which the trial court must address the issue of mercy in the instance of a plea to First Degree Murder. Because the Legislature saw fit to address the trial court’s

authority in the context of a plea, it is purposefully differentiating that from those instances where a defendant invokes their right to trial by jury. As such, the Circuit Court's position that, in the absence of a unanimous recommendation as to mercy by the jury, it may now impose the statutory sentence for First Degree Murder and determine whether or not to grant mercy is flawed. Any such decision would abrogate the rights of the Petitioner under both the Constitutions of the United States and of the State of West Virginia.

This Honorable Court, in light of the obvious oversight of the Legislature in setting forth the procedure to be followed by trial courts in the instant set of circumstances, is now seemingly left with the following options: (1) authorize the impaneling of a new jury to address the issue of mercy; or (2) confer upon the trial court the discretion to sentence the Petitioner in apparent contravention to the clear language of W.Va. Code §62-3-15.

The Petitioner respectfully submits that the Circuit Court should be directed to impanel a new jury to address the issue of mercy. Until such time as the Legislature sees fit to set forth the procedure by which the courts of this State must handle this very situation, the rights of the Petitioner, as guaranteed by both the Sixth and Fourteenth Amendments, should control this decision and he should be afforded the right to impartial jury consideration as permitted by statute.

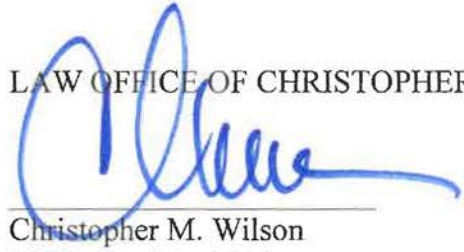
CONCLUSION

As a matter of first impression- and without the express guidance of legislative authority- this Honorable Court should answer the Certified Question of the Circuit Court of Monongalia County in the negative and direct the Circuit Court to impanel a new jury on the issue of mercy.

SHAUNDARIUS REEDER,
Petitioner,

By Counsel,

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CERTIFICATE OF SERVICE

I, Christopher M. Wilson, Counsel for the Petitioner, do hereby certify that a true and actual copy of the foregoing "Petitioner's Brief" was served upon the following via overnight delivery, on the 10th day of March, 2022:

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