

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2020 DEC 15 PM 12:11

IN THE INTEREST OF:

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

G. S.	2020-JD-129	PUBLIC DEFENDER
E. J.	2020-JS-103	RICK HOLROYD (304-343-7501)
J. L.	2020-JS-104	PUBLIC DEFENDER
H. S.	2020-JS-105	PUBLIC DEFENDER

A Child Under the Age of 18 Years
PUBLIC DEFENDER (304-348-2323)

ORDER

On a former date the court on its own motion does hereby appoint an attorney practicing at the bar of this Court, to represent the above said juvenile. In the event that the child and his/her parents desire to employ private counsel, appointed counsel may be relieved of any further responsibility in this action.

DATE: DECEMBER 15 2020

ENTER:

Cami Weller

CHIEF JUDGE

RECEIVED

DEC 16 2020

PUBLIC DEFENDER
OFFICE

APPENDIX A – RULES OF APPELLATE PROCEDURE

NOTICE OF APPEAL – EXTRA SHEET

CASE NAME: STATE OF WEST VIRGINIA v. GAVIN BLAINE SMITH

Response to SECTION:

STATEMENT OF CASE

The Defendant Gavin Blaine Smith was found guilty by a jury of three counts of First Degree Murder (Counts One, Two and Four), one count of Second Degree Murder (Count Three), one count of use of a firearm during the commission of a felony after a jury trial on December 8, 2022. On January 17, 2023, he was sentenced to three life terms, forty years on Second Degree Murder and ten years on the firearm charge, to be run consecutively. Pursuant to W.Va. Code § 62-12-13(b) he will be eligible for parole in fifteen years.

Gavin Smith was arrested on December 13, 2020 and charged by juvenile petition with First Degree Murder relating to the shooting deaths of three family members on December 9, 2020. Gavin was sixteen years old at the time.

By order dated March 8, 2022, the case was transferred to adult criminal jurisdiction. An indictment was returned on June 16, 2022. Trial was held on December 5 to 7, 2022. The jury reached a verdict on December 8, 2022.

Mr. Smith appeals this conviction and sentence.

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in granting the motion to transfer to adult jurisdiction based on insufficient and inadmissible evidence.

The Court should consider this assignment of error because transfer to adult jurisdiction is a critical stage in the criminal proceeding. A transfer order based on insufficient or inadmissible evidence should be reviewed by this Court.

2. The Court erred in ruling that the defendant's statement to the police was inadmissible.

The admissibility of a defendant's statement to the police requires a review of the evidence under the Constitutional law of West Virginia and the United States. The admissibility of a juvenile's statement is subject to more stringent scrutiny than that of an adult and should be reviewed by the Court.

3. The Court erred in restricting cross-examination regarding admissible evidence known to the witnesses. This evidence was relevant to intent issues such as malice and premeditation.

Cross-examination of witnesses is a Constitutional right. The Court should review this issue which was central as to whether Mr. Smith received a fair trial.

4. The verdict of guilt in this case was based on insufficient evidence and should be reviewed by this court.

The defendant has been sentenced to life and should be reviewed by this Court to determine whether he received a fair trial and whether the evidence was sufficient for a conviction.

5. The Court erred in denying the defendant's motion for a mental health evaluation, pursuant to W.Va. Code § 49-4-710, to assist in sentencing.

The Court should consider this assignment of error because West Virginia law requires that a sentencing court give thorough consideration to numerous factors in sentencing a juvenile transferred to adult jurisdiction.

6. The defendant reserves the right to assert additional assignments of error upon review of the record of this case.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

State of West Virginia

Circuit Court Case No. 22-F-130

v.

Defendant: Gavin Blaine Smith

DOB: 05 / 17 / 2004

SSN: XXX-XX-

Gender: ☒ Male / ☐ Female

**WV DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED
PRISON COMMITMENT ORDER**

On the 17th day of January, 2023, the State of West Virginia, by
Donald P. Morris and Judson C. MacCallum, and the defendant appeared in person and with counsel,
John P. Sullivan and Allen E. Barry

The defendant has been convicted of the following offense(s):

Murder in the First Degree as contained in Counts One, Two and Four of Felony Indictment 22-F-130, Murder
in the Second Degree in Count 3 of Felony Indictment 22-F-130, and Use or Presentment of a Firearm During
the Commission of a Felony as contained in Count 5 of Felony Indictment 22-F-130.

The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a
period of: Count One: Life with mercy with credit of time served of seven hundred sixty-five (765) days; Count Two: Life with mercy to run consecutively
to Count One of Felony Indictment 22-F-130; Count Three: a determinate term of forty (40) years to run consecutively to Count Two of Felony
Indictment 22-F-130; Count Four: Life with mercy to run consecutively to Count Three of Felony Indictment 22-F-130; and Count Five: a
determinate term of ten (10) years to run consecutively to count Four of Felony Indictment 22-F-130.

Conviction Date: 12 / 08 / 2022 Sentence Date: 01 / 17 / 2023

Effective Sentence Date: 12 / 13 / 2020 Resentence Date: / /

☒ Consecutive to: ☐ Concurrent with:

Credit for Jail/Prison Time Served: 765 days Credit for Home Incarceration: days

Credit for Home Incarceration Parole: days Other Non-Penal Credit: days

☐ Credit for time served to be addressed in the detailed sentencing order.

Additionally, the court finds:

Defendant shall pay restitution in the amount of twelve thousand seven hundred sixty-one dollars and sixty-three
cents (\$12,761.63) to the Crime Victim's fund.

**The defendant shall be transported to and held in a facility under the control of the Commissioner of the
Division of Corrections and Rehabilitation. The court further orders that the cost of incarceration in the jail
pending transfer shall be paid by the Commissioner consistent with the provisions of WV Code § 15A-3-16.**

Special Instructions:

It is further ordered that the Circuit Clerk shall immediately transmit a certified copy of this commitment
order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by fax at
304-558-8430, by e-mail at dcrcourtorders@wv.gov or other electronic transmission, or by mail at 1409
Greenbrier Street, Charleston WV 25311

Enter this 24th day of January, 2023

*Detailed sentencing order to follow.

SCA-C806: WVDCA Certified Prison Commitment Order
Rev. 06/04/2019; WVSCA Approved: 06/04/2019

Circuit Judge [Signature]
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 24
DAY OF January 2023
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA

v.

22-F-130
COUNTS One, Two, Three, Four, Five
Judge Ballard

7022 JAN 24 AM 10:37
KANAWHA COUNTY CIRCUIT COURT

GAVIN BLAINE SMITH

AMENDED DISPOSITION ORDER

On January 17, 2023, came the defendant, GAVIN BLAINE SMITH, in person and by counsel, John P. Sullivan and Allen E. Barry and also came the State of West Virginia by Donald P. Morris and Judson C. MacCallum, Assistant Prosecuting Attorneys for Kanawha County, for the purpose of disposition.

Whereupon, the defendant was found guilty by a jury of Murder in the First Degree as contained in Counts One, Two and Four of Felony Indictment 22-F-130; to the felony offense of Murder in the Second Degree, a lesser included offense as contained in Count Three of Felony Indictment 22-F-130; and to the felony offense of Use or Presentment of a Firearm During the Commission of a Felony, as contained in Count Five of Felony Indictment 22-F-130, on December 8, 2022, with his counsel then present, it is the judgment of this Court that the defendant, Gavin Blaine Smith, is guilty of the felony offenses of Murder in the First Degree, Murder in the Second Degree, and Use or Presentment of a Firearm During the Commission of a Felony.

THEREUPON, it was demanded of GAVIN BLAINE SMITH, whether there was any reason why the Court should not proceed to pronounce the sentence of the law against him. No valid reason being offered or alleged in delay of judgment, it is CONSIDERED and ORDERED by the Court that the defendant GAVIN BLAINE SMITH, be sentenced as follows:

22-F-130 COUNT ONE (Murder in the First Degree): to a state correctional facility for life with mercy, with credit for time spent in jail awaiting trial and conviction, which credit for time spent in jail is seven hundred sixty-five (765) days;

22-F-130 COUNT TWO (Murder in the First Degree): to a state correctional facility for life with mercy. This sentence shall run consecutively to the sentence imposed in Count One of Felony Indictment 22-F-130;

22-F-130 COUNT THREE (Murder in the Second Degree-Lesser Included Offense) to a state correctional facility for a determinate term of forty (40) years. This sentence shall run consecutively to the sentence imposed in Count Two of Felony Indictment 22-F-130;

22-F-130 COUNT FOUR (Murder in the First Degree); to a state correctional facility for life with mercy. This sentence shall run consecutively to the sentence imposed in Count Three of Felony Indictment 22-F-130

22-F-130 COUNT FIVE (Use or Presentment of a Firearm During the Commission of a Felony); to a state correctional facility for a determinate term of ten (10) years. This sentence shall run consecutively to the sentence imposed in Count Four of Felony Indictment 22-F-130.

The Court further ORDERED that the defendant pay restitution in the amount of twelve thousand seven hundred sixty-one dollars and sixty-three cents (\$12, 761.63) to the Crime Victim's Fund.

And it is further ORDERED that the proper officer do, as soon as practicable, remove and safely convey the said GAVIN BLAINE SMITH, from the South Central Regional Jail to the Division of Corrections and Rehabilitation, to be kept imprisoned and maintained in the manner prescribed by law.

WHEREUPON, the prisoner was remanded to jail.

The Clerk of this Court is directed to prepare a certified commitment order consistent with this Order and transmit the same to the West Virginia Division of Corrections and Rehabilitation. The Clerk shall send a certified copy of this Order to counsel or record, the South Central Regional Jail and the West Virginia Division of Corrections and Rehabilitation.

ENTERED this 24th day of January, 2023



The Honorable Kenneth D. Ballard
Thirteenth Judicial Circuit

Prepared by:

Inspected by:

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 24
DAY OF January 2023
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

/s/ John Sullivan

John P. Sullivan (#6808)
Allen E. Barry (#10787)
P.O. Box 2827
Charleston, WV 25330

Donald P. Morris (#2635)
Judson C. MacCallum (#11632)
Assistant Prosecuting Attorneys
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