

**In the Circuit Court of Berkeley County, West Virginia**

**State of West Virginia,**  
Plaintiff,

v.

Case No. CC-02-2020-F-213  
Judge Michael Lorensen

**Joseph Wayne Mason,**  
Defendant

**Sentencing Order**

THIS MATTER came on for sentencing on the 12<sup>th</sup> day of August, 2022. The State of West Virginia appeared by Berkeley County Prosecuting Attorney Catie Wilkes Delligatti and Joseph R. Kinser, Assistant Prosecuting Attorney. Defendant Richard Small appeared in person and by counsel, Kevin Mills, Esq. and Jacob Mills, Esq. Defendant Joseph Mason appeared in person and by counsel Jason Gain, Esq.

WHEREUPON, the Court turned first to Defendant Small's Motion for a New Trial. The Court acknowledged receipt of the Defendant's Motion for a New Trial, Amended Motion for a New Trial, and the State's Response to in Opposition to the Defendant's Motion for a New Trial. The Court heard the arguments of counsel on the motion. Based upon the written filings and the arguments of Counsel, Defendant Richard Small's Motion for a New Trial is Denied. The Court adopts and incorporates the State's written response to the Defendant's Motion and the State's argument into this ruling.

The Court then turned to Defendant Mason's Motion for a New Trial and Motion for Acquittal. The Court acknowledged receipt of the Defendant's Motions as well as the State's Response in Opposition. The Court then heard the arguments of counsel. Based upon the written filings and the arguments of counsel, Defendant Mason's

Motion for a New Trial and Motion for Acquittal are Denied. The Court adopts and incorporates the State's written response to the Defendant's Motions and the State's argument into this ruling.

The Court then inquired whether there were any objections to the pre-sentence investigation. The parties advised that there were no objections or corrections, only a clarification from Defendant Small regarding his race. The parties further acknowledged that they had received the addendums to the Pre Sentence Investigation Report as well as the victim impact statement from the victim's biological father and had no objections.

The Court then inquired if there was any reason that the matter should not proceed to sentencing. Hearing no objection, the Court heard arguments of counsel. Neither Defendant provided a statement directly to the Court.

Based upon Defendant Richard Small's conviction for 1<sup>st</sup> Degree Murder, the sentencing verdict of the jury, and the arguments of counsel, it is the sentence of the law and the judgment of the Court that Defendant Richard Small be confined in the penitentiary house of this State for the remainder of his life, without the possibility of parole. Further, upon Defendant Richard Small's conviction for Conspiracy to Commit Murder, it is the sentence of the law and the judgment of the Court that Defendant Richard Small be confined in the penitentiary house of this State for a period of not less than one nor more than five years. It is further ORDERED that these sentences shall run consecutively to one another.

Based upon Defendant Joseph Mason's conviction for 1<sup>st</sup> Degree Murder, the sentencing verdict of the jury, and the arguments of counsel, it is the sentence of the law and the judgment of the Court that Defendant Joseph Mason be confined in the penitentiary house of this State for the remainder of his life, without the possibility of

parole. Further, upon Defendant Joseph Mason's conviction for Conspiracy to Commit Murder, it is the sentence of the law and the judgment of the Court that Defendant Joseph Mason be confined in the penitentiary house of this State for a period of not less than one nor more than five years. It is further ORDERED that these sentences shall run consecutively to one another.

The Court ORDERS that court costs in this case are payable upon their taxation and if the Defendants should have funds available while in Division of Corrections and Rehabilitation custody for payment toward costs, the same may be deducted from the Defendants' accounts pursuant to WV Code § 15A-4-11(c)(1).

**RICHARD SMALL 20-F-212**

**CONVICTION DATE: APRIL 1, 2022**

**SENTENCE DATE: AUGUST 12, 2022**

**EFFECTIVE SENTENCE DATE: NOVEMBER 20, 2020**

**JOSEPH MASON 20-F-213**

**CONVICTION DATE: APRIL 1, 2022**

**SENTENCE DATE: AUGUST 12, 2022**

**EFFECTIVE SENTENCE DATE: OCTOBER 30, 2020**

The Defendants were advised of their appellate rights.

Defendant Richard Small then asked the Court to be transported back to federal custody as quickly as possible. Counsel advised that preparation for the appeal had already occurred and Defendant Small's presence at the Eastern Regional Jail was no longer required or requested by counsel. The State advised that it would make the necessary arrangements for transport.



The Clerk **SHALL** enter this order as of the day and date first above written and shall transmit attested copies to all counsel of record and the Eastern Regional Jail.

Prepared by:

/s/ Joseph Kinser  
Joseph R. Kinser, Esq.  
Assistant Prosecuting Attorney  
State Bar No.: 11820

/s/ Michael Lorensen  
Circuit Court Judge  
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtsww.gov/e-file/](http://www.courtsww.gov/e-file/) for more details.

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**Joseph Wayne Mason,**  
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**Order**

Motion for New Trial filed by John Sutton is hereby DENIED.

/s/ Michael Lorensen  
Circuit Court Judge  
23rd Judicial Circuit

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**ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL**

On this 19<sup>th</sup> day of July 2022, came S. Andrew Arnold, Esquire, and moved that he be permitted to withdraw from representation of the Defendant in the above referenced case.

WHEREFORE, good cause being shown, it is ORDERED that S. Andrew Arnold, Esquire is hereby removed as counsel of record for Joseph Wayne Mason. The Court hereby appoints Jason T. Gain, Esquire, a discrete and competent attorney to represent the Defendant in these proceedings.

The Clerk shall enter the foregoing Order as of and for the day and date first herein above written and shall transmit attested copies to all counsel of record.

/s/ Michael Lorensen  
Circuit Court Judge  
23rd Judicial Circuit

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**CERTIFICATE OF SERVICE**

I certify that I have caused a copy of this Notice of Appeal to be served by the efilng system on this 24<sup>th</sup> day of August, 2022. I have also served the Court Reporters and others not on the efilng system by first class mail.



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Jason T. Gain (WV Bar #12353)

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**Counsel for Petitioner**