

Case No. CC-02-2020-F-212

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The jury was then recalled. Defendant Small rested, calling no witnesses. Defendant Mason called one witness and rested. The State did not call any rebuttal witnesses.

The Court then conducted a charge conference, during which the Court compiled a jury charge based upon instructions previously submitted by all parties. The final charge was reviewed, page-by-page, with counsel. Any objection to the Court's instructions were preserved.

The instructions, as a written Court's charge, were then read to the jury on Thursday, March 31, 2022. Finally, counsel offered their closing arguments, and the jury retired to begin deliberations. Due to the late hour, the jury selected a foreperson and retired for the evening, with deliberations to begin in earnest the following day.

The jury, after deliberating for approximately six and a half hours, returned to the courtroom on Friday, April 1, 2022 and presented the Court with the following unanimous verdicts, signed and dated by the foreperson:

Count 1: Richard Small: GUILTY of 1<sup>st</sup> Degree Murder

Joseph Mason: GUILTY of 1<sup>st</sup> Degree Murder

Count 2: Richard Small: GUILTY of Conspiracy to Commit Murder

Joseph Mason: GUILTY of Conspiracy to Commit Murder

The Court inquired if any party wished to have the jury polled. No polling was requested. The Court next asked each member of the jury if the verdicts reflected on the verdict form and recited in open court was their true verdict, and each juror individually responded in the affirmative. Accordingly, the verdicts were ordered entered herein. The parties then examined the verdict form and had no objections thereto.

It is therefore ordered and adjudged that the Defendants, Richard Small and Joseph Mason, are **CONVICTED** of the following offenses:

Count One: 1<sup>st</sup> Degree Murder;

Count Two: Conspiracy to Commit First Degree Murder

The Court then informed the jury that they would need to decide whether to attach “mercy” to the Defendants’ convictions for 1<sup>st</sup> Degree Murder. The parties gave brief opening statements to the jury. Defendant Small called one witness and rested. Defendant Mason also called one witness and rested. The State then called one witness and rested. Two members of the victim’s family provided Victim Impact Statements to the Court and Defendant Mason stood upon his right of allocution and gave a statement to the jury.

The Court then instructed the jury on mercy and counsel presented closing argument. The jury deliberated on the issue of mercy for approximately an hour and a half before returning to the Courtroom with the following unanimous verdicts:

Richard Small: Mercy shall not attach

Joseph Mason: Mercy shall not attach

The Court inquired if any party wished to have the jury polled. Again, no polling was requested.

It is therefore ordered and adjudged that mercy shall not attach to the 1<sup>st</sup> Degree Murder convictions of Richard Small or Joseph Mason. The Defendants were **ORDERED** to file post-trial motions, if any, within the timeframe allotted by the rules.

The Probation Department is **ORDERED** to complete a pre-sentence investigation, prepare reports of the same, and provide copies to the Court, the State, and counsel for the Defendants.

Accordingly, the parties shall appear for a hearing on post-trial motions and Sentencing on **July 1, 2022 at 10:00 a.m.**

There being nothing further for the Court’s consideration at this time, the Clerk shall enter the foregoing Order and forward attested copies to all counsel of record, the Probation Department, and Eastern Regional Jail.

Prepared by:

/s/ Joseph R. Kinser

Joseph Raymond Kinser (WVSB #11820)

Berkeley County Assistant Prosecuting Attorney

380 West South Street, Suite 1100

Martinsburg, WV 25401

/s/ Michael Lorensen

Circuit Court Judge

23rd Judicial Circuit

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

**State of West Virginia,**  
Plaintiff,

v.

Case No. CC-02-2020-F-212  
Judge Michael Lorensen

**Richard Dane Small,**  
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

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