IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

WILLIAM BALLENGER,
Petitioner,

v.

CIVIL CASE NO. 19-C-92
JUDGE CHRISTOPHER D. CHILES

ROBIN MILLER, WARDEN,
Respondent.

ORDER DENYING PETITION FOR HABEAS CORPUS RELIEF

On the 7th day of April, 2022, and the 27th day of June, 2022, came the Petitioner, William Ballenger, in person and by counsel, Justin Collins and came the respondent by counsel, Lauren E. Plymale and Jessica M. Vestal, Assistant Prosecuting Attorneys of Cabell County, pursuant to this matter being set for an omnibus hearing on Petitioner's Petition for Habeas Corpus Relief.

PROCEDURAL HISTORY

This matter came before this Court on February 27, 2019 when Petitioner filed his pro se Petition under West Virginia Code § 53-4A-1 for Writ of Habeas Corpus and eligibility for assignment of legal counsel. The Habeas Division of Public Defender Services was appointed by order filed on October 21, 2019. An Agreed Scheduling Order was filed on April 30, 2020, directing Petitioner to file his Amended Petition by May 29, 2020. On May 28, 2020, an order granting Petitioner's request for a continuance was filed. On January 4, 2021, an order granting Petitioner's Motion for New Scheduling Order was filed.

On April 16, 2021, Petitioner filed a Motion to Invoke Discovery Process. On July 12, 2021, Petitioner filed his Amended Petition for Writ of Habeas Corpus, followed by a Supplemental Petition filed on October 22, 2021. On December 2, 2021, Petitioner filed a Motion for Summary Judgment to which the State filed a response on February 1, 2022. On March 4, 2022,

an order granting the State's Motion to Continue was granted. An in person Omnibus Hearing commenced on April 4, 2022, during which Petitioner called one witness and entered multiple exhibits. Thereafter, the court was in recess until June 28, 2022 due to State counsel's prior engagement in a criminal matter. On June 28, 2022, the Omnibus Hearing for this matter proceeded. Petitioner recalled Mr. Nessel and presented additional evidence. The State cross-examined Mr. Nessel and presented evidence through the testimony of Office Bentley of the Huntington Police Department.

APPLICABLE BURDEN OF PROOF

The Petitioner in a petition for habeas relief has the "burden of proving by a preponderance of the evidence the allegations contained in this petition or affidavit which would warrant his release." Syl. Pt. 1, *State ex rel. Scott v. Boles*, 150 W.Va. 453 (1986).

PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

Conclusion of Law

The Court, upon examination of the felony file, habeas corpus file, and upon the taking of evidence at the hearing, find that for the reasons set forth below, Petitioner's ineffective assistance of counsel claim is without merit.

Authority of Law

To prevail on an ineffective assistance of counsel claim, a petitioner must prove under the Strickland two-prong test that: (1) counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Syl. Pt. 5, *State v. Miller*, 194 W.Va. at 17, 459 S.E.2d at 128. "Where a counsel's performance, attacked as ineffective, arises from occurrences involving strategy, tactics and arguable courses of action, his

conduct will be deemed effectively assistive of his client's interests; unless no reasonably qualified defense attorney would have so acted in the defense of an accused." Syl. Pt. 2, *State v. Thomas*, 157, W.Va. 640 (1974).

"In reviewing counsel's performance, courts must apply an objective standard and determine whether, in light of all the circumstances, the identified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel's strategic decisions. Thus, a reviewing court asks whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue." Syl. Pt. 6, *State v. Miller*, 194 W. Va. 3 (1995). While "one always may identify shortcomings, [...] perfection is not the standard for ineffective assistance of counsel." *Id.* at 17.

Findings of Fact

In early January of 2015, a Cabell County grand jury charged Petitioner with first degree robbery, second degree robbery, malicious wounding, and obstruction. In April of 2016, trial commenced, and Petitioner, represented by Kerry Nessel, was convicted of second-degree robbery, battery as a lesser included of malicious wounding, and obstruction.

In early June of 2016, the State filed a recidivist information based upon Petitioner's prior Kentucky felony conviction for "First Degree Possession in Controlled Substances," to which he pleaded guilty. Petitioner's Kentucky felony conviction was based on events that occurred on or about September 4, 2014. According to the police report and citation, an officer of the Ashland Police Department was investigating a possible drug transaction in progress at a Colonial Inn when he observed Petitioner in the parking lot walking toward a vehicle occupied by a man who was smoking marijuana. When Petitioner noticed the officer, Petitioner dropped a plastic package

containing rock cocaine. Upon contact with the officer, Petitioner initially denied possession of the package but shortly thereafter admitted that he had purchased the cocaine for the man occupying the vehicle.

In August of 2016, a recidivist jury convicted Petitioner, finding him to be the same individual who was convicted of the Kentucky felony offense described above. Consequently, Petitioner was deemed a habitual offender and the Court enhanced his second-degree robbery conviction by five years.

Discussion

Petitioner raises several allegations of ineffective assistance of counsel as follows: (1) Petitioner asserts that Mr. Nessel failed to challenge use of the Kentucky felony conviction for enhancement purposes during recidivist proceedings; (2) Petitioner asserts that Mr. Nessel failed to challenge the superseding indictment on double jeopardy grounds; (3) Petitioner asserts Mr. Nessel failed to dismiss the indictment on the grounds that it was fraudulently procured; and (4) Petitioner further asserts that various other omissions by Mr. Nessel amounted to cumulative error such that he did not receive a fair trial.

1. **Mr. Nessel provided effective assistance of counsel with respect to Petitioner's recidivist proceedings.**

Petitioner argues that his right to effective assistance of counsel was violated by Mr. Nessel's failure to challenge use of the Kentucky felony conviction for enhancement purposes under West Virginia Code § 61-11-18(b). Petitioner's argument is without merit.

Under the first prong of *Strickland*, Petitioner must prove that Mr. Nessel acted unreasonably in failing to advance this particular argument. To support his claim, Petitioner relies on copies of the underlying indictments, recidivist information, sentencing orders, and Kentucky's controlled substance statute. At the Omnibus Hearing, Mr. Nessel testified that he could not recall

whether he challenged the State's use of Petitioner's Kentucky conviction or what his reasoning might have been.

Undisputedly, Petitioner has made a showing that the recidivist statute was applied to him based on his prior Kentucky conviction. But, all exhibits and testimony considered, Petitioner has shown nothing more than the fact that he was found guilty of a felony in West Virginia, the State subsequently filed a recidivist information based on his Kentucky felony, a jury found Petitioner to be the same individual who committed the Kentucky felony, and a judge applied the recidivist statute accordingly. Consequently, this Court "hesitate[s] to label as ineffective an attorney's actions when the reasons for those actions are not clear," see *State v. Bess*, 185 W.Va. 290, 293, 406 S.E.2d 721, 724 (1991), and finds that Petitioner has failed to satisfy the first prong of the *Strickland* inquiry.

Assuming, *arguendo*, that Petitioner proved Mr. Nessel did act unreasonably in failing to challenge use of the Kentucky felony conviction, Petitioner nevertheless fails under the second prong of *Strickland*. Under *Strickland's* second prong, Petitioner must show that there is a reasonable probability that, but for underlying trial counsel's failure to challenge use of the Kentucky felony for enhancement purposes, the result of the proceedings would have been different. In Petitioner's case, the result of the proceedings would have remained the same even if Mr. Nessel mirrored the recidivist argument advanced by Petitioner now because the prior Kentucky conviction can be properly used for enhancement purposes.

"Whether the conviction of a crime outside of West Virginia may be the basis for application of the West Virginia Habitual Criminal Statute, W.Va. Code, § 61-11-18, -19 (1943) depends upon the classification of that crime in this State." Syl. Pt. 3, *Justice v. Hedrick*, 177 W.Va. 53, 350 S.E.2d 565 (1986). In this case, Petitioner's Kentucky conviction for possession of

cocaine can be used for enhancement purposes under West Virginia's recidivist statute because both the Ashland Police Report and the Citation state that Petitioner admitted he purchased the cocaine for the purpose of delivering it to another subject. The Ashland Police Report Narrative indicates that Petitioner initially denied possession of the cocaine but then "admitted that he had purchased the cocaine for $20.00 for Mr. Northern." Likewise, the Citation indicates that Petitioner "stated that the package contained $20.00 worth of cocaine and that he had purchased it for another subject."

Applying *Hedrick*, this Court looks to the law of this State to determine the classification of Petitioner's Kentucky felony conviction. Under West Virginia's Uniform Controlled Substances Act, the most appropriate classification for Petitioner's Kentucky felony is Possession with Intent to Deliver a Controlled Substance, a felony that carries a sentence of one to five years or a maximum fine of $15,000 or both. According to the Police Report, as well as the Citation to which Petitioner pleaded guilty, Petitioner possessed the rock cocaine and admitted his intent to deliver it to another subject. Petitioner's possession paired with his admission of intent to deliver is the ideal fact pattern to support a Possession with Intent to Deliver a Controlled Substance charge in West Virginia. Consequently, this Court finds that Petitioner's Kentucky conviction may be the basis for application of the West Virginia Habitual Criminal Statute because it would be classified as a felony Possession with Intent to Deliver a Controlled Substance under West Virginia law.

Petitioner's counterargument is that *Hedrick* does not require a factual inquiry into the acts surrounding the foreign felony conviction. Under Petitioner's application of *Hedrick*, a conviction for simple possession of cocaine, albeit a felony in Kentucky, cannot be used for enhancement under § 61-11-18(a) because the corollary offense in West Virginia is a misdemeanor. This conclusion is based solely on the fact that Kentucky's felony simple possession and West

Virginia's misdemeanor simple possession are essentially elemental and nominal corollaries in each state's respective code. However, *Hedrick* does not stand for the proposition that West Virginia's classification of offenses must mirror those of foreign jurisdictions. Rather, *Hedrick* merely articulates the principle that West Virginia law governs the classification of the offense. Consequently, a factual inquiry into the nature of the acts surrounding the foreign felony conviction is necessary to determine how the offense would actually be classified under West Virginia law.

This Court's reading of *Hedrick* is consistent with the Supreme Court's recent decision in *State v. Ward*, 245 W.Va. 157 (2021). In that case, a petitioner argued that the *Hedrick* principle should apply for purposes of determining whether a foreign conviction could serve as the predicate felony conviction under West Virginia Code § 61-7-7(b)(2). *Id.* In rejecting the petitioner's argument, the Supreme Court acknowledged that the principle arising from *Hedrick* is that **the nature of the criminal conduct should be considered, not the classification affixed to the offense by another jurisdiction.** *Id.* In declining to extend *Hedrick* to § 61-7-7(b)(2), the Supreme Court stated, "Critically, the penalty for a violation for West Virginia Code § 61-7-7(b)(2) does not depend upon the circumstances of the prior felony, ***unlike a recidivist conviction, which enhances punishment based on the earlier conduct.***" *Id.* (emphasis added).

This Court's reading of *Hedrick* is also consistent with the plain language and primary purpose of the statute. Looking to the plain language of the relevant provision, subsection (b), in the Habitual Offender Act, Petitioner was convicted in the United States (Kentucky) of a crime punishable by imprisonment in a state correctional facility. Unlike subsections (c) and (d), subsection (b) is silent on whether the foreign conviction must consist of the same or substantially similar elements as any of the qualifying offenses listed in subsection (a). Furthermore, "the

primary purpose of the recidivist statute is to deter persons who have been convicted and sentenced previously on penitentiary offenses, from committing subsequent felony offenses." *Hedrick*, 177 W.Va. at 55, 350 S.E.2d at 567. Using an offense that is not only a foreign felony conviction punishable by imprisonment but also factually, a West Virginia felony offense punishable by imprisonment, as the basis for applying the Habitual Criminal Statute would certainly serve that purpose.

Because the recidivist statute was properly applied to Petitioner, the claim that trial counsel was ineffective for failing to challenge the recidivist information is without merit.

2. Trial counsel acted reasonably in not filing a motion to dismiss the second-degree robbery charge on double jeopardy grounds because first and second-degree robbery require different proof of facts.

In arguing that he has been exposed to double jeopardy, Petitioner incorrectly relies solely on the following common law definition of robbery:

(1) The unlawful taking and carrying away,
(2) Of money or goods,
(3) From the person of another or in his presence,
(4) By force or putting him in fear,
(5) With intent to steal the money or goods.

In relying solely on the above elements, Petitioner disregards the fact that the fourth element, "by force or putting him in fear," has been statutorily supplemented to differentiate between degrees of robbery. The elements for a first-degree robbery, when W.Va. § 61-2-12(a) and the common law are read together, are as follows:

(1) The unlawful taking and carrying away,
(2) Of money or goods,
(3) From the person of another or in his presence,
(4) ***By committing violence to the person or threatening deadly force by presenting a firearm or other deadly weapon,***
(5) With intent to steal the money or goods.

The elements for a second-degree robbery, when the W.Va. § 61-2-12(b) and common law are read together, are as follows:

(1) The unlawful taking and carrying away,
(2) Of money or goods,
(3) From the person of another or in his presence,
(4) ***By placing the person in fear of bodily injury by means other than those set forth in subsection (a), or by the use of any means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device,***
(5) With intent to steal the money or goods.

When reading W. Va. Code § 61-2-12 alongside the common law elements, as laid out above, the State Legislature intended to create two distinct statutory provisions under which an individual can be charged, and thus, intended to criminalize two distinct acts. While the common law provided for one offense regardless of the means by which a person commits robbery, the Legislature explicitly created two offenses for robbery depending on the means by which a person committed the robbery. Thus, an indictment for both first and second-degree robbery charges does not expose an individual to double jeopardy any more than an indictment for both battery and assault charges when the basis for each charge is supported by separate acts committed by the defendant.

In this case, Petitioner's acts supported an indictment for both first and second-degree robbery charges because one act involved actual violence and the other involved threats of violence. With respect to the first-degree robbery, the evidence showed that Petitioner struck the victim several times and subsequently took his cell phone, which was later found at the scene. With respect to the second-degree robbery, evidence showed that prior to striking the victim and taking his cell phone, Petitioner threated the victim and demanded money.

In summary, Petitioner's two robbery charges were not solely based on the multiple items involved, as Petitioner alleges, but rather on his initial threats of violence (second-degree robbery)

while he demanded money and subsequent actual violence (first-degree robbery) prior to taking the cell phone. Because Petitioner was not exposed to double jeopardy by the first and second-degree robbery charges, this Court finds that his ineffective assistance of counsel claim for his trial counsel's failure to challenge the indictment is without merit.

3. **Trial counsel acted reasonably in not moving to dismiss the superseding indictment because a minor inconsistency in testimony is not prima facie evidence of willful and intentional fraud.**

The purpose of the grand jury "is not to determine the truth of the charges against the defendant, but to determine whether there is sufficient probable cause to require the defendant to stand trial." *State ex rel. Pinson v. Maynard*, 181 W. Va. 662, 665, 383 S.E.2d 844, 847 (1989). Of course, this does not mean that evidence that satisfies a grand jury will also satisfy a petit jury or the court. *Barker v. Fox*, 160 W. Va. 749, 751, 238 S.E.2d 235, 236 (1977). But, to allow the court to "inquire into the legality or sufficiency, of the evidence on which the grand jury acted, would be to substitute, in measure, the opinion of the court for that of the grand jury, and would ultimately lead to the destruction of the grand jury system." *Id.* Consequently, evidence presented to a grand jury should be reviewed only to the extent that the defendant provides evidence of willful and intentional fraud in obtaining the indictment. *Maynard*, 181 W. Va. at 665-666, 383 S.E.2d at 847-848.

Petitioner argues that the superseding indictment was fraudulently procured because "Officer Bentley's testimony was either misleading or intentionally fraudulent." As "prima facie" evidence of intentional fraud, Petitioner points to a discrepancy in Officer Bentley's testimony between the first and second grand juries. However, at the Omnibus Hearing, when asked about the "inconsistent" testimony, Officer Bentley testified that the difference in testimony was simply the result of receiving more facts and details about the incident. [CITE]. Of course, a discrepancy

in testimony is not prima facie evidence of intentional or willful fraud, and this Court finds that there was no willful or intentional fraud in obtaining the superseding indictment.

Even if this Court concluded that the superseding indictment was defective, Petitioner's guilty verdict at trial remedied any possible defects in the indictment. In declining to find willful and intentional fraud, the Supreme Court of West Virginia has reasoned that "[a]ny discrepancies in testimony, at either the grand or petit jury levels, [...] could have been fully explored during cross-examination." *State v. Shanton*, No. 16-0266, 2017 WL 2555734, at *5 (W. Va. June 13, 2017). In this case, Officer Bentley testified and was cross-examined by Petitioner at trial. The jury, in finding Petitioner guilty of second-degree but not first-degree robbery, heard Officer Bentley's testimony and had the opportunity to consider it in light of all the other evidence that was also submitted. Thus, any earlier discrepancies in Officer Bentley's testimony at the grand jury level was cured through the procedural and evidentiary safeguards at trial.

Based upon the foregoing, this Court finds no merit in Petitioner's ineffective assistance of counsel claim with respect to Officer Bentley's testimony and the grand juries.

4. **Petitioner's other alleged instances of ineffectiveness do not constitute cumulative error because there were no errors.**

Petitioner argues that cumulative error resulted from trial counsel's failure to make various objections. "It is ***actual*** error, not ***alleged*** error, which warrants relief in a habeas proceeding." *Jenkins v. Ballard*, No. 15-0454, 2016 WL 1455611, at *56 (W. Va. Apr. 12, 2016)(emphasis added). "Cumulative error analysis should evaluate only the effect of matters determined to be rror, not the cumulative effect of non-errors." State v. Knuckles, 196 W.Va. 416, 426, 473 S.E.2d 131, 141 (1996). Furthermore, a case should not be reversed under the cumulative error doctrine when the errors "are insignificant or inconsequential." *State v. Tyler G.*, 236 W.Va. 152, 165, 778 S.E. 2d 601, 614. "[W]hen any potential errors are viewed in the context of the entire trial and

evidence presented, we cannot say that petitioner was deprived of a fair trial." *Goard v. Ames*, No. 21-0370, 2022 WL 1684661 (W. Va. May 26, 2022).

After hearing Mr. Nessel's testimony at the Omnibus Hearing, it is clear to this Court that these alleged errors are groundless. With respect to the State's opening and closing remarks, Mr. Nessel testified that he does not typically object in an opening or closing because of how it would appear to the jury. Based on his experience, judges typically give leeway to both parties in opening and closing so an objection would accomplish nothing more than losing credibility with the jury. Clearly, Mr. Nessel made a strategic decision well within the broad range of professionally competent assistance.

Petitioner also contends that Mr. Nessel failed to object to the admission of the statements of Ms. Noble and Mr. Cheeks. At the Omnibus Hearing, Mr. Nessel testified that, although he might consider the objection, he believed it would have been overruled. Mr. Nessel also testified that he did not believe the statements to be hearsay because both Ms. Noble and Mr. Cheeks testified to the contents. While the record does not reveal any agreements or conversations Mr. Nessel and the State might have had prior to the admission of these documents, the record does leave open possibility that these statements fell within a hearsay exception or were not being used for the truth of the matter asserted. Thus, Petitioner has not shown that Mr. Nessel's failure to object with respect to the statements was unreasonable.

Petitioner makes a similar argument with respect to police reports being admitted into evidence. The trial transcript, although unclear, indicates that Mr. Nessel did in fact make a hearsay objection to the admission of the police report. The transcript for the third day of trial begins with the following:

> THE COURT: Before we start, if Detective Bentley's report does reference that a bout Mr. Washington, then I think, even though it is hearsay, it comes in under the business record exception as my clerk pointed out to me. [cite].

Even if Mr. Nessel was not the individual who brought the hearsay issue to the court's attention, Mr. Nessel testified that, in his prior experience, the police report usually went back with the jury if it was admitted into evidence. Mr. Nessel also explained that he did not object because the police report contained information that the officer had testified to. Based on the trial transcripts and Mr. Nessel's testimony at the Omnibus Hearing, the Court again finds that Petitioner has not shown that Mr. Nessel acted outside the broad range of professionally competent assistance.

Petitioner also contends that Mr. Nessel failed to properly impeach the victim, Mr. Jennings. As Mr. Nessel testified, "Hindsight, of course, is 20/20." Although Mr. Nessel did not approach the cross-examination of Mr. Jennings as Petitioner would now, this Court finds that Mr. Nessel was in no way deficient under an objective standard of reasonableness when cross-examining Mr. Jennings.

Another error Petitioner alleges stems from the State establishing the height discrepancy between the victim and himself. Specifically, Petitioner argues that Mr. Nessel should have objected to the State asking Petitioner to step down from the witness box and stand next to her. Although Mr. Nessel concedes that "in hindsight [he] should have," he explains that he chose not to because he thought "that would be harmless error considering they see him walk in and out." Again, Mr. Nessel was clearly making a strategic decision in determining what objections were worth making in front of the jury.

Petitioner also argues that Mr. Nessel should have suppressed the in- and out-of-court identification involving Mr. Jennings and Ms. Noble. At the Omnibus Hearing, Mr. Nessel testified

that he could not recall his rationale behind not objecting to the photo array. Based on the record and Mr. Nessel's testimony, Petitioner has only shown that Mr. Nessel did not object to the photo array.

Even assuming, arguendo, that any of these objections or arguments should have been made, Petitioner nevertheless received a fair trial when considering the evidence that was presented and the trial as a whole.

PETITIONER'S *BRADY* CLAIM

Conclusion of Law

The Court, upon examination of the felony file, habeas corpus file, and upon the taking of evidence at the hearing, find that for the reasons set forth below, Petitioner's *Brady* claim is without merit.

Authority

"There are three components of a constitutional due process violation under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and *State v. Hatfield*, 169 W.Va. 191, 286 S.E.2d 401 (1982): (1) the evidence at issue must be favorable to the defendant as exculpatory or impeachment evidence; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must have been material, i.e., it must have prejudiced the defense at trial." Syllabus Point 2, *State v. Youngblood*, 221 W.Va. 20, 650 S.E.2d 119 (2007) .State v. Shanton, No. 16-0266, 2017 WL 2555734, at *3 (W. Va. June 13, 2017) "A *Brady* claim can not be premised upon speculation." *State v. Shanton* at *4 (W. Va. June 13, 2017).

Findings of Fact

The NCIC for Mr. Cheeks did not reflect the warrant shown in the CAD Sheet. At the Omnibus Hearing, Officer Bentley testified that he was never aware of a warrant for Mr. Cheeks or that the CAD sheet reflected such a warrant. Officer Bentley further testified he knew of no one in the investigation who would have asked Mr. Cheeks to cooperate in exchange for dismissal of a warrant.

Discussion

Petitioner alleges that the State made an agreement with Mr. Cheeks that would require him to cooperate in exchange for dismissal of a warrant. In reaching this conclusion, Petitioner points to the discrepancy between the CAD Sheet and the NCIC. However, Petitioner's allegation is pure speculation because no evidence suggests that the State made an offer or that a warrant existed. Officer Bentley unequivocally responded, "absolutely not," when asked if he knew if anyone involved in the investigation made such an offer. Ultimately, Petitioner has presented no factual basis for his assertion or evidence that such an agreement was ever existed. Therefore, Petitioner's *Brady* claim is without merit.

ORDER

This Court, upon examination of the exhibits attached to Petitioner's Petition for Habeas Corpus, Petitioner's Amended Petition for Habeas Corpus; Petitioner's Supplemental Petition for Habeas Corpus; and Respondent's Answer to Petitioner's Amended Petition for Writ of Habeas Corpus, and upon careful consideration of the arguments presented at the hearing, this court ORDERS that Petitioner's Writ of Habeas Corpus is DENIED and this matter is DISMISSED from the docket of this Court. Petitioner's objections and exceptions to this Order are noted and preserved. This is a Final Order. The Circuit Clerk shall remove this matter from the docket.

The Clerk of the Circuit Trial Court is directed to provide a certified copy of this Order to the following:

Lauren Plymale and Jessica Vestal, Assistant Prosecuting Attorneys

Justin M. Collin
Public Defender Services
Habeas Corpus Division, Managing Attorney
One Players Club Drive, Suite 301
Charleston, WV 25311
Counsel for Petitioner

William Ballenger
Saint Mary's Correctional Center and Jail

Enter this Order this ____ day of _____, 2022.

Christopher D. Chiles, Circuit Judge

STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, MICHAEL J. WOELFEL, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON JAN 26 2023
GIVEN UNDER MY HAND AND SEAL OF SAID COURT
THIS _____
Mike Woelfel, CLERK JAN 26 2023
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

JC

FILED

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

2022 JUN 27 P 3:06

MIKE WOELFEL
CIRCUIT CLERK
CABELL CO. WV

WILLIAM BALLENGER,
Petitioner,

v.

Habeas Case No. 19-C-92
Underlying Case No. 15-F-1

RUSSEL MASTON, Superintendent,
Respondent.

ORDER APPOINTING KANAWHA COUNTY PUBLIC DEFENDER CORPORATION

On a prior date, Petitioner, by counsel, Justin M. Collin, moved the Court to relieve Public Defender Services as counsel of record and to appoint the Kanawha County Public Defender Corporation as counsel of record. The State of West Virginia did not object to Petitioner's motion.

After careful consideration, and in the interest of judicial economy, the Court grants Petitioner's motion. Accordingly, Public Defender Services is hereby relieved as counsel of record. Furthermore, the Kanawha County Public Defender Corporation is hereby appointed as counsel of record.

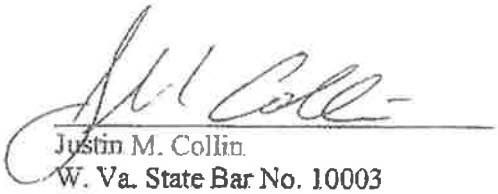
The Clerk is directed to deliver a copy of this order to Lauren Plymale, Assistant Prosecuting Attorney, and to fax copies of this order to Public Defender Services (304-558-6612) and to the Kanawha County Public Defender Corporation (304-348-2324).

ENTERED this 27 of June 2022.

Christopher D. Chiles

Judge Christopher D. Chiles

Prepared by:



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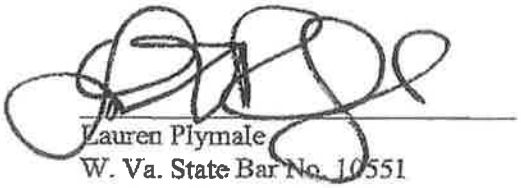

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