

State of West Virginia ex rel. Santé C. Butler

— Writ Of Habeas Corpus —

Motion for Discharge Of imprisonment
Pursuant to West Virginia Code 62-2-12

— Comes now the petitioner, Santé C. Butler, Pro se, and moves this Honorable Court, pursuant to West Virginia Code 62-2-12, to discharge from imprisonment as the state of West Virginia has failed to indict me before the end of the second term of court while I am incarcerated. In Support of this motion, I respectfully represent the following:

I. Factual Background

1. On August 15, 2023, I was arrested, charged with the felony offenses of "possession with the intent to distribute" in violation of W. Va. Code 60A-04-401 (a).
2. According to Rule 2.01 of the West Virginia Trial Court Rules, the terms of Court in Ohio County shall be held on the second Monday of January, May, ³ September.
3. I was not indicted before the end of the May 2023 term of court.

4. I was not indicted before the end of the September 2023 term of court.
5. I was not indicted before the end of the January 2024 term of court.
6. Though I was on the list for presentment to the May 2024 grand jury that was held on May 13, 2024, my case was ultimately not presented and I remain incarcerated without indictment.
7. A Bond hearing was held in this matter on May 29, 2024 wherein the Assistant Prosecuting Attorney did dispute the above timing of events and explained that the delay was due to failed plea negotiations and a lack of chemical testing on the alleged controlled substances in this matter.

II. Applicable law

1. West Virginia Code 62-2-12 states:
"a person in jail, on a Criminal charge, shall be discharged from imprisonment, if he be not indicted before the end of the second term of the court, at which he is held to answer, unless it

appear to the court that material witnesses for the state have been enticed or kept away, or are prevented from attendance by sickness or inevitable accident, and except also that, when a person in jail, on a charge of having committed an indictable offense, is not indicted by reason of his insanity at the time of committing the act, the grand jury shall certify that fact to the court; whereupon the court may order him to be sent to a state hospital for the insane, or to be discharged."

2. "where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. pt 2, State v. Elder, 152 W. Va. 571 (1968).

3. "failure to indict within two terms, after he has been held releases him from imprisonment. Of course that does not discharge him from prosecution." Ex parte Blankenship, 93 W. Va. 408 at 93 (1923).

III. Argument

The plain reading of West Virginia Code 62-2-12 states that if a defendant is not indicted by the end of the second term of court for which he is held, he shall be discharged from imprisonment. The only exceptions are related to delay caused by a witness being enticed or kept away from the grand jury or a witness being sick and issues of competency. Here, there are no allegations made by the State of West Virginia that I have enticed a witness to not testify, nor are there issues related to competency. The State of West Virginia only contends that the delay is related to plea negotiations and chemical testing. Neither of these reasons are contemplated by the statute. Therefore, I should be immediately discharged from imprisonment pursuant to West Virginia Code 62-2-12.

Respectfully Submitted,

Santi C. Butler

x Santi C. Butler



Catherine Horvath

— Certificate of Service —

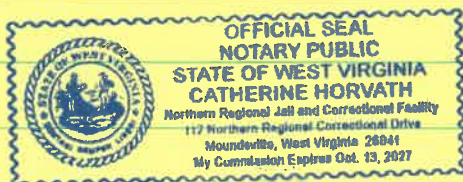
I hereby certify that a copy of the foregoing document was mailed this

July 2024 to:

Shawn Sfraugh
Superintendent of the Northern Regional Jail
112 Northern Regional Correctional Drive
Moundsville, WV 26041

Sonté C. Butler

x Sonté C. Butler



x *[Signature]*