IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 24-_____

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,
***Petitioner*,**

v.

THE HONORABLE JASON A. CUOMO,[1]
Circuit Court Judge of the Circuit Court of
Brooke County, West Virginia,
and THOMAS ANTHONY SMOGONOVICH,
defendant below,
***Respondents*.**

PETITION FOR A WRIT OF PROHIBITION

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[1] The Honorable Ronald E. Wilson, former Judge of the Circuit Court of the First Judicial Circuit, issued the order that is the subject of the petition for a writ of prohibition. Judge Wilson subsequently retired and the Honorable Jason A. Cuomo currently presides over the Brooke County criminal docket.

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QUESTION PRESENTED

Should this Court issue a writ of prohibition to prohibit the Circuit Court of Brooke County, West Virginia, from enforcing its order dismissing the criminal indictment in Case Number 23-F-78 based on an incorrect reading of West Virginia Code § 15-12-9?

INTRODUCTION

This Court has clearly and unequivocally declared that a circuit court exceeds its legitimate authority and invades the province of the grand jury when it grants a defendant's pretrial motion to dismiss an indictment based on the sufficiency of the evidence or whether a factual basis for the indictment exists. Yet the Circuit Court of Brooke County dismissed the indictment of Respondent Thomas Anthony Smogonovich on that very basis.

This case once again concerns the applicability of West Virginia sex-offender registration requirements to persons who committed their offenses out of state. Smognovich, while a resident of Ohio, was adjudicated delinquent for gross sexual imposition in 2021 under Ohio law, and Ohio law requires him to register as a sex offender for 20 years. When he moved to West Virginia, his ongoing obligation to register as an offender in Ohio required him to also register in West Virginia pursuant to West Virginia Code § 15-12-9(c). The circuit court, however, disregarded the plain language of West Virginia Code § 15-12-9(c) and decided the Sex Offender Registration Act (SORA) did not apply to Smognovich because, under West Virginia law, a juvenile adjudicated delinquent for sexual offenses does not stand "convicted" of an offense. The lower court thus found that despite Smognovich's ongoing 20-year sex offender registration obligation in Ohio, he bore no obligation to register as a sex offender in West Virginia. That is, the indictment lacked a factual predicate for the offenses charged. The circuit court thus dismissed the three-count indictment.

The circuit court's approach directly contravenes this Court's previous decisions, including Syllabus Point three of *State ex rel. State v. Gwaltney* (*Gwaltney I*), 249 W. Va. 706, 901 S.E.2d 70 (2024) and Syllabus Point one of *State ex rel. State v. Gwaltney* (*Gwaltney II*), ___ W. Va. ___, 908 S.E.2d 192 (2024). Accordingly, the circuit court erred as a matter of law and exceeded its legitimate authority when it found that Smogonovich was not required to register as a sex offender in West Virginia. Because the State has no other remedy at law to correct this injustice, the Court should issue a writ of prohibition to prevent the lower court from enforcing its erroneous order.

STATEMENT OF THE CASE

A. Ohio Delinquency Adjudication

In May 2021, the State of Ohio filed a juvenile delinquency complaint in Jefferson County, Ohio, charging seventeen-year-old Smogonovich with the felony offenses of rape of an eleven-year-old, in violation of Ohio Revised Code § 2907.02(A)(1)(b) and gross sexual imposition against an eleven-year-old, in violation of Ohio Revised Code § 2907.05(A)(4). App. 32-35. Pursuant to an agreement, in August 2021 the State dismissed the rape charge, and Smogonovich admitted to the charge of gross sexual imposition. App. 36.

In October 2021, the court committed Smogonovich to the custody of the Ohio Department of Youth Services for an indeterminate term of six months until he reached the age of twenty-one. App. 38. The court then suspended that sentence and placed Smogonovich on probation for a minimum term of one year. App. 38. As part of the disposition of the case, the court classified Smogonovich as a Tier II Sex Offender and Child Victim Offender Registrant under Ohio law, which required him to register as a sex offender in the State of Ohio for twenty years. App. 37, 38-40.

B. West Virginia Indictment and Proceedings Below

Smogonovich relocated to West Virginia sometime before November 2021 and initially registered as a sex offender. *See* App. 7-8, 22. He did not, however, continue to comply with his registry obligations. *See* App. 7-8. In November 2023, a Brooke County, West Virginia, grand jury indicted Smogonovich on three counts of failure to register as a sex offender, in violation of West Virginia Code § 15-12-8(b). App. 7-8. The indictment alleged that Smogonovich registered when he moved to Hancock County, West Virginia—which was no later than November 2021, App. 22—but on or about September 12, 2023, Smogonovich failed to provide information concerning a change of address to Brooke County, West Virginia, within ten days of the change; failed to provide information concerning a change of employment within ten of the change; and failed to provide information concerning a change of social media accounts within ten days of the change, App. 7-8.

Smogonovich moved to dismiss the indictment based on the language in West Virginia Code §§ 15-12-2(b), 15-12-8(b), and 49-4-103 and the holding in *State v. J.E.*, 238 W. Va. 543, 796 S.E.2d 880 (2017). App. 11-22. Cut to its essence, Smogonovich argued that these authorities establish that an adjudication of juvenile delinquency by a juvenile court does not constitute a conviction in West Virginia, and the phrase "any person who has been convicted of an offense" in Section 15-12-2(b) of SORA, therefore, does not include a juvenile who has been adjudicated delinquent. App. 20.

The State emphasized that *J.E.* is not instructive here because the juveniles in *J.E.* were adjudicated as delinquents under West Virginia law and thus lacked the necessary "conviction" to incur West Virginia registry obligations. App. 24-25. Smogonovich, on the other hand, was adjudicated delinquent of a sexual offense under Ohio law, which specifically required him to

register as a sex offender in Ohio. App. 38-40, 53-80; Ohio Rev. Code §§ 2950.01 to 2950.99. Hence, when Smogonovich relocated to West Virginia, Section 15-12-9(c) required him to register as a sex offender in West Virginia regardless of his juvenile status at the time of the offense because this section encompasses "any person changing residence to this state from another state . . . who is required to register under the laws of that state." App. 25.

In reply, Smogonovich asserted that if West Virginia Code § 15-12-9(c) applied to him, then West Virginia Code § 15-12-8 was vague and ambiguous because he would have to be a lifetime registrant to incur felony failure to register charges and "the State cannot prove [ ] Smogonovich's Ohio juvenile adjudication is a conviction for a qualifying offense" subjecting him to lifetime registration under the Act. App. 86.

The circuit court granted Smogonovich's motion to dismiss. App. 88-90. It decided that SORA did not apply to Smognovich despite the plain language of Section 15-12-9(c), reasoning that Smogonovich lacked the requisite conviction to trigger a registration obligation in West Virginia. App. 88-89. The circuit court was wholly wrong and exceeded its legitimate authority when it dismissed the indictment.

SUMMARY OF ARGUMENT

The State meets the criteria for awarding a writ of prohibition. First, the State has no other means to obtain relief. Second, direct appeal is unavailable to the State as the trial court did not dismiss the indictment because it is bad or insufficient. The trial court's error, thus, cannot be corrected on appeal.

Third, the trial court's order dismissing the indictment is clearly wrong as a matter of law. West Virginia Code § 15-12-9(c) requires Respondent Smogonovich to register in West Virginia because he relocated from Ohio to West Virginia while required to register as a sex offender under

the laws of Ohio—an obligation Smogonovich recognized and initially complied with when he moved to West Virginia. The circuit court ignored the language of Section 15-12-9(c) and Smognovich's ongoing 20-year sex offender registration obligation in Ohio, and decided Smogonovich bore no obligation to register as a sex offender in West Virginia. That is, the indictment lacked a factual predicate for the offenses charged.

Finally, the statute in question is "consistently misapplied," and the underlying legal issue remains unaddressed by this Court. The Court should issue the requested writ of prohibition preventing the lower court from enforcing its order dismissing the indictment.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State requests oral argument in this case. This issue is a matter of first impression that involves the important issue of how West Virginia's sex-offender registration laws apply. Therefore, oral argument may help aid this Court in its consideration of the questions presented.

ARGUMENT

I. Legal Standard

The State may seek a writ of prohibition in a criminal case "where the trial court has exceeded or acted outside of its jurisdiction." Syl. pt. 3, *Gwaltney II*, ___ W. Va. ___, 908 S.E.2d 102; syl. pt. 1, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70. This Court has held that "[w]here the State claims that the trial court abused its legitimate powers, the State must demonstrate that the court's action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction." Syl. pt. 3, *Gwaltney II*, ___ W. Va. ___, 908 S.E.2d 102; syl. pt. 1, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70. This Court considers five "general guidelines" when determining whether the lower court's decision meets that standard and a writ should issue:

> (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower

> tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and [5] whether the lower tribunal's order raises new and important problems or issues of law of first impression.

Syl. pt. 2, *Gwaltney II*, ___W. Va. ___, 908 S.E.2d 192 (quoting syl. pt. 4, *State ex rel. Hoover v. Berger,* 199 W. Va. 12, 483 S.E.2d 12 (1996)); syl. pt 1, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70. "Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." *Id.*

II. The circuit court exceeded its legitimate authority and deprived the State of the right to prosecute the case when it dismissed the indictment. Relief in prohibition is appropriate.

Twice in recent months, this Court has addressed a circuit court's authority to dismiss an indictment at the pretrial stage, and twice this Court has issued a writ prohibiting the lower court from enforcing its dismissal orders. *See Gwaltney I & II.* And twice, this Court has unequivocally held that "[a] circuit court may not grant a defendant's pretrial motion to dismiss an indictment on the basis of the sufficiency of the evidence or whether a factual basis for the indictment exists." Syl. pt. 1, *Gwaltney II*, ___ W. Va. ___, 908 S.E.2d 192 (quoting syl. pt. 3, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70)). Yet the Circuit Court of Brooke County did so anyway. Just as the circuit court in *Gwaltney I* and *II* exceeded its legitimate authority when it dismissed the respective indictments based on its assessment of the legality or sufficiency of the evidence supporting the indictment, so, too, did the Circuit Court of Brooke County. It thus deprived the State of its right to prosecute Smogonvich for his failure to register as a sex offender when he relocated from Ohio to West Virginia. The *Hoover* factors are satisfied, and a writ of prohibition should issue.

A. Because the State could not appeal the circuit court's decision, it has no other adequate means to obtain relief.

Starting with the first two *Hoover* factors, the State has no other means to obtain relief and the circuit court's error cannot be corrected on appeal because direct appeal is unavailable. *See*,

e.g., *State v. Walters*, 186 W. Va. 169, 171-72, 411 S.E.2d 688, 690-91 (1991). As a result, "prohibition is an appropriate method for the State to challenge the dismissal of an indictment." *State ex rel. State v. Gustke*, 205 W. Va. 72, 76, 516 S.E.2d 283, 287 (1999).

As this Court held in Syllabus Point 1 of *State v. Jones*, "[t]he State has no right of appeal in a criminal case, except as may be conferred by the Constitution or a statute." 178 W. Va. 627, 363 S.E.2d 513 (1987); *see also, e.g.*, *Gwaltney I,* 249 W. Va. at 716, 901 S.E.2d at 80 (reiterating the holding in *Jones* that "[t]he State only has limited rights to appeal in criminal cases, and only if the right is 'conferred by the Constitution or a statute.'"); *Carroll v. United States*, 354 U.S. 394, 400 (1957) (finding that "appeals by the Government in criminal cases are something unusual, exceptional, not favored."); *State v. Hubbs*, No. 18-0438, 2019 WL 6242313, at *3 (W. Va. Supreme Court, Nov. 21, 2019) (memorandum decision) (limiting appellate review of criminal case to "(1) those situations covered by either constitution or statute; and (2) those situations in which the circuit court acted beyond its jurisdiction") (quotation omitted)). The limited exceptions in which the State can appeal are if "the case relates to the public revenue" or "an indictment is held to be 'bad or insufficient' by the order of a circuit court." *Walters*, 186 W. Va. at 171, 411 S.E.2d at 690 (internal citations omitted). The public revenue is not at stake here. So, the question for purposes of the first two *Hoover* factors is whether the State could appeal the circuit court's order dismissing the indictment. It could not.

West Virginia Code § 58-5-30 allows the State to appeal in a criminal case if "an indictment is held bad or insufficient by the judgment of a circuit court." A "bad or insufficient" indictment means one where "there was a failure *substantively* to charge a crime." *Gwaltney I*, 249 W. Va. at 716, 901 S.E.2d at 80 (emphasis in original) (quoting *Walters*, 186 W. Va. at 172, 411 S.E.2d at 691). The standard focuses on whether the circuit court dismissed based on a defect in "the

indictment itself," as opposed to any other reason a lower court might grant a motion to dismiss. *Jones*, 178 W. Va. at 629, 363 S.E.2d at 515 ("[I]t is questionable whether an appeal under [West Virginia] Code § 58-5-30 lies where the issue is something other than a defective indictment."). That is, the standard looks at whether the indictment passes constitutional muster, *i.e.*, whether the lower court dismissed because, "within the four corners of the indictment," the indictment "(1) fails to contain the elements of the offense to be charged and sufficiently apprise the defendant of what he or she must be prepared to meet; [or] (2) fails to contain sufficient accurate information to permit a plea of former acquittal or conviction." Syl. pt. 1, *State v. Zain*, 207 W. Va. 54, 528 S.E.2d 748 (1999); *Gwaltney I*, 249 W. Va. at 715, 901 S.E.2d at 79 (citing syl. pts. 2 and 6, *State v. Wallace*, 205 W. Va. 155, 517 S.E.2d 20 (1999)). Outside those narrow circumstances, the State cannot appeal in a criminal case—and the Court would "lack jurisdiction to hear [the] appeal" if the State tried. *Walters*, 186 W. Va. at 173, 411 S.E.2d at 692.

Those circumstances do not describe what happened here. The circuit court dismissed the indictment based on its erroneous finding that the evidence did not support the indictment. It applied its interpretation of *State v. J.E.*, 238 W. Va. 543, 796 S.E.2d 880, and Ohio Senate Bill 10 to the evidence that Smognovich was adjudicated delinquent for a sex offense in Ohio, and concluded Smogonovich lacked a "'conviction' under W[est] V[irginia] Code § 15-12-4(a)(2) by which to subject him to the felony offenses with which he has been indicted." App. 90. In other words, the court did not find the indictment constitutionally deficient but rather usurped the jury's role and found the evidence insufficient to convict him of the offenses charged. Because the indictment was not dismissed as "bad" or "insufficient," direct appeal is not an avenue of relief available to the State.

This Court's decision in *State ex rel. Lorenzetti v. Sanders*, 235 W. Va. 353, 774 S.E.2d 19 (2015), *Gwaltney I*, and *Gwaltney II*, confirm that a writ of prohibition is the right path forward for the State, not an appeal. The *Lorenzetti* Court granted the State's writ where the circuit court dismissed most counts of an indictment based on incorrect legal conclusions, including "applying a meaning" to the contested statute "that [was] contrary to the plain language used therein." *Lorenzetti*, 235 W. Va. at 363-64, 774 S.E.2d at 29-30. It also rejected the respondent's argument that the State should have appealed: the bad or insufficient indictment exception did not apply because the circuit court's order "d[id] not indicate that the indictment was bad or insufficient" and lacked "any findings that the indictment failed to contain all of the elements of the offense addressed therein," "failed to apprise [the respondent] of what she must be prepared to meet," or "failed to contain sufficiently accurate information to permit appeal of former acquittal or conviction." *Id.* at 367, 774 S.E.2d at 33.

Gwaltney I and *II* likewise underscore that a writ of prohibition is the appropriate recourse for the State when a circuit court dismisses an indictment based on incorrect legal conclusions, the sufficiency of the evidence, or the existence of a factual basis for the indictment. Both cases resulted in a writ of prohibition, and in both cases this Court explained that the State has no right to appeal when a circuit court dismissed an indictment based on its evidentiary conclusions. *Gwaltney II*, ___ W. Va. ___, 908 S.E.2d at 197-98; *Gwaltney I*, 249 W. Va. at 713-16, 901 S.E.2d at 77-80.

All of that tracks this case, which parallels *Gwaltney II*, in that both cases involve a circuit court's misapplication of the SORA requirements to out-of-state offenders, leading to an erroneous pre-trial dismissal of the indictment. The circuit court dismissed the indictment because of how it interpreted West Virginia Code § 15-12-4(a)(2). It said nothing in the order about the indictment being flawed and made no findings that the indictment was missing elements of the offense or

lacked enough information for Smogonovich to know what he was facing. Instead, it dismissed the indictment based on its belief that Smogonovich had no "conviction." So just like in *Lorenzetti, Gwaltney I*, and *Gwaltney II*, the State does not have a right to appeal in this case and a writ is the appropriate remedy.

In short, because the State cannot appeal, factors one *and* two weigh in favor of relief. The State has no other adequate means of relief because it could not appeal. *See Lorenzetti,* 235 W. Va. at 367, 774 S.E.2d at 33 (finding that where "[West Virginia] Code § 58-5-30 does not permit an appeal, . . . [t]he first *Hoover* factor therefore weighs in favor of granting the writ requested by the State"). And because it could not appeal, it necessarily follows that waiting for an appeal to correct the lower court's error is not an option. *Id.* "The second *Hoover* factor . . . also weighs in favor of the State" because "[t]he State would be foreclosed from challenging the dismissal of the counts on appeal following trial." Consequently, if relief in prohibition is not granted, the State of West Virginia "will be damaged [and] prejudiced in a way that is not correctable on appeal." Syl. pt. 4, *Hoover,* 199 W. Va. 12, 483 S.E.2d 12.

B. The lower court's order dismissing the indictment is clearly wrong.

The circuit court erred in dismissing the indictment in this case. And not in a debatable way: it improperly substituted its assessment of the facts for that of the grand jury, and its rationale was "clearly erroneous as a matter of law." *State ex rel. State v. Wilson,* 239 W. Va. 802, 805, 806 S.E.2d 458, 461 (2017) (citation omitted). The "standard of review concerning a motion to dismiss an indictment is, generally, *de novo.*" Syl. pt. *1, State v. Holden,* 243 W. Va. 275, 843 S.E.2d 527 (2020) (quoting syl. pt. 1, *State v. Grimes,* 226 W. Va. 411, 701 S.E.2d 449 (2009)). Applying a de novo, plain text approach to West Virginia Code § 15-12-9(c) shows that Smogonovich has a

mandatory duty to register in West Virginia. The circuit court's hopscotch from statute to statute and jurisdiction to jurisdiction does not change this mandatory obligation.

Further, "[m]ost courts"—including this one—"hold that as a general rule, a trial court should not grant a motion to dismiss criminal charges unless the dismissal is consonant with the public interest in the fair administration of justice." Syl. pt. 2, *State v. Spinks,* 239 W. Va. 588, 803 S.E.2d 558 (2017) (internal citations and quotation marks omitted). The circuit court's decision to dismiss the indictment was not "consonant with the public interest," as it thwarts SORA's purpose to protect the public from sex offenders by keeping law enforcement informed about where they live. The circuit court's dismissal was, thus, wrong, and the Court should issue the writ to cure this error.

1. The circuit court exceeded its legitimate authority by dismissing the indictment based on its conclusion that the facts of the current case were insufficient to sustain the charges against Respondent Smogonovich.

In both *Gwaltney I* and *Gwaltney II*, this Court dove deep into the role and function of the grand jury as well as a circuit court's limited authority to review an indictment returned by the grand jury "for constitutional error and prosecutorial misconduct" only. *Gwaltney II*, ___ W. Va. ___, 908 S.E.2d at 197 (footnote omitted); *Gwaltney I*, 249 W. Va. at 714, 901 S.E.2d at 78 (citing *State v. Adams*, 193 W. Va. 277, 284, 456 S.E.2d 4, 11 (1995)). Unequivocally, at the pretrial motions stage, a circuit court has no authority to examine an indictment to appraise the legality or sufficiency of the evidence considered by the grand jury in the absence of willful, intentional fraud. *Id.* (citing syl., *Barker v. Fox*, 160 W. Va. 749, 238 S.E.2d 235 (1977)).

The Court correspondingly held that a circuit court exceeds its legitimate authority when it grants "a defendant's pretrial motion to dismiss an indictment on the basis of the sufficiency of the evidence or whether a factual basis for the indictment exists." *Gwaltney II*, ___ W. Va. ___,

908 S.E.2d at 197 (quoting syl. pt. 3, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70). Indeed, "courts must presume that 'every indictment is found upon proper evidence.'" *Gwaltney I*, 249 W. Va. at 714, 901 S.E.2d at 78 (citing *State v. Clements*, 175 W. Va. 463, 472, 334 S.E.2d 600, 609-10 (1985)).

Despite the Court's clear delineation of a circuit court's authority, the Circuit Court of Brooke County disregarded these legal tenets. It invaded the province of the grand jury when it dismissed Smogonovich's indictment based on its assessment of the evidence supporting the indictment and its disregard of the plain statutory language and, thus, exceeded its legitimate authority. As discussed above, the circuit court dismissed the indictment because of how it interpreted and applied West Virginia Code § 15-12-4(a)(2) to the evidence. App. 89-90. It did not address any aspect of the indictment, let alone make even a single finding that the indictment was missing an element of the offense, failed to substantively charge a crime, or lacked enough information to provide Smogonovich notice of the charges he faced. *See id.* Instead, the court engaged in legal hopscotch to reach the conclusion that Smogonovich's Ohio juvenile delinquency adjudication for a sexual offense "cannot be consider[ed] a 'conviction'" under West Virginia law subjecting him to registry obligations. So just as this Court held in *Lorenzetti, Gwaltney I*, and *Gwaltney II*, because the circuit court dismissed the indictment based on its appraisal of the factual or evidentiary predicate for the indictment (as well as incorrect legal conclusions), it exceeded its legitimate authority and deprived the State of the right to prosecute the case.

2. West Virginia Code § 15-12-9(c) requires Smogonovich to register in West Virginia.

This Court specified in *Gwaltney II* that the dispositive issue was whether the circuit court had the authority to dismiss the indictment based on its conclusion that the facts were insufficient to sustain the charges of an indictment. The Court held that the circuit court had no such authority

and, thus, declined to address the State's substantive argument regarding the application of West Virginia Code § 15-12-9(c). ___ W. Va. ___, 908 S.E.2d at 197-98. Although the circuit court committed that same legal error here, the State nonetheless urges this Court to address the basic substantive argument herein because a circuit court has once again disregarded the plain language of West Virginia Code § 15-12-9(c). In so doing, it continued the trend among circuit courts that makes West Virginia a safe haven for sex offenders from other jurisdictions. This repeated error endangers the public and eviscerates the very purpose of SORA.

The circuit court in this case did not acknowledge the existence of West Virginia Code § 15-12-9(c), let alone apply it. App. 88-90. Yet it is this section that establishes Smogonovich's mandatory obligation to register as a sex offender in West Virginia. Section 15-12-9(c), entitled "Registration of out-of-state offenders," applies when an out-of-state jurisdiction requires a person to register as a sex offender. Particularly, subsection (c) provides that "[a]ny person changing residence to this state from another state or federal or military jurisdiction who is required to register as a sex offender under the laws of that state or federal or military jurisdiction shall register as a sex offender in this state." W. Va. Code § 15-12-9(c).

Without question, Smogonovich falls within the purview of section 9(c), which he knew and initially complied with upon relocating to this state. In October 2021, Smogonovich was an Ohio resident when he was adjudicated under Ohio law to be a delinquent on a sex offense, classified as a Tier II offender, and required to register as a sex offender for twenty years. App. 32, 37. He relocated to West Virginia in November 2021, one month after the Ohio disposition, App. 22, and carried with him the 20-year requirement under Ohio law to register as a sex offender. As a result, Smogonovich fits squarely within West Virginia Code § 15-12-9(c) and

correspondingly is required to register as a sex offender in West Virginia for as long as he "is required to register as a sex offender under the laws of [Ohio]." W. Va. Code § 15-12-9(c).

The circuit court, however, paid no mind to Section 9(c) or the scope of its authority. Instead, it leapfrogged between statutes and jurisdictions until it arrived at the conclusion that "Ohio law does not require registration in West Virginia and West Virginia does not require registration by a juvenile." App. 90. The court thus declared that Smogonovich's Ohio adjudication of delinquency for a sex offense was not a conviction under Section 15-12-4. App. 90. Irrespective of Section 15-12-4, however, West Virginia Code § 15-12-9(c) requires Smogonovich to register in West Virginia for the twenty-year term imposed by the State of Ohio because he is a person "who is required to register as a sex offender under the laws of" Ohio. Section 15-12-9(c) does not refer to any "conviction," so the circuit court's discussion of whether Smogonovich was "convicted" in Ohio is beside the point. Likewise, Section 15-12-9(c) does not say that some other aspect of West Virginia law must independently require Smogonovich to register; in determining whether an offender must likewise register here, it looks only to whether he was, at the time of his move, required to register under the laws of *Ohio*—"that state."

Section 9(c) irrefutably establishes Smogonovich's registration obligation—an obligation he is charged with violating. When the circuit court assessed the evidence supporting the indictment, it invaded the province of the grand jury and exceeded its authority when it dismissed the indictment in Criminal Case Number 23-F-78 based on its factual predicate. The State was entitled to proceed to trial and a writ should issue to correct the circuit court's overstepping.

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So along with the first and second factors, the third factor—which deserves "substantial weight," *Wilson,* 239 W. Va. at 805, 806 S.E.2d at 461 (citation omitted)—counsels strongly in favor of the writ. The fourth *Hoover* factor is met because the statute in question, Section 15-12-

9(c), is "consistently misapplied," and circuit courts "consistently misapply" the jurisprudence delimiting their authority to dismiss indictments. The fifth *Hoover* factor "weighs in favor of granting a writ of prohibition" because this important "issue of first impression . . . has not been the subject of any decisions of this Court." *Lorenzetti*, 235 W. Va. at 368, 774 S.E.2d at 34. Because all five *Hoover* factors weigh in favor of relief in prohibition, the Court should find that "the state is entitled to the writ it seeks." *Id.*

CONCLUSION

The State respectfully requests a writ of prohibition preventing the lower court from enforcing its November 12, 2024, order and reinstating the indictment in Criminal Case Number 23-F-78, and issue the requested writ of prohibition preventing the lower court from enforcing its order dismissing the indictment.

Respectfully submitted,

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