IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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No. 25-_____

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

v.

HONORABLE JAMES YOUNG, Judge of the Circuit Court of Wayne County, sitting by special assignment in Cabell County, JAN HITE KING, Defendant below, and KIMBERLY MAYNARD, Defendant below,
Respondents.

PETITION FOR A WRIT OF PROHIBITION

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QUESTION PRESENTED

Should this Court issue a writ of prohibition to prohibit the circuit court from relying on the one-year statute of limitations in West Virginia Code § 61-11-9 to dismiss an indictment in full, when the five-year statute of limitations found in West Virginia Code § 3-9-24 governs the first four counts of that indictment?

INTRODUCTION

In 2022, Respondents Jane Hite King and Kimberly Maynard conspired to lie about their residency so they could run for seats on the Cabell County Commission from the wrong division. The Secretary of State's office then conducted a comprehensive investigation into Respondent King and Respondent Maynard's falsehoods, ultimately leading to an indictment against both. Everyone agrees that the indictment did not violate the applicable five-year statute of limitations for elections-related prosecutions. But Respondent Judge James Young found a different statute of limitations—one relevant to general misdemeanor charges—barred the prosecution in full. He clearly erred as a matter of law in dismissing the indictment with prejudice. In doing so, the Respondent Judge ignored fundamental tenets of statutory construction and failed to examine the facts as applied to the single interpretive principle he utilized. Thus, the State seeks a writ of prohibition to prevent the circuit court from enforcing its dismissal order. Because the State meets all relevant factors, the Court should issue a writ.

STATEMENT OF THE CASE

Respondents King and Maynard attempted to run for Cabell County Commission in 2022. App. 3-4. When filing paperwork with the Cabell County Clerk's office on February 3, 2022, each swore that they were residents of Magisterial District 1 in Cabell County. App. 1-2. These sworn statements, however, were false. Respondent King resided in Magisterial District 2, and

Respondent Maynard resided in Magisterial District 3; each was ineligible to run as the District 1 representative. App. 1-2.

After their misrepresentations were discovered, a Cabell County grand jury indicted both Respondent King and Respondent Maynard in a joint five-count indictment. App. 1-2. Count One alleged false swearing pursuant to West Virginia Code § 3-9-3(b) against Respondent King, noting that she "knowingly ma[d]e a false statement or representation" that she was "a resident of Magisterial District 1" while "knowing she was a resident of Magisterial District 2." App. 1. Count Two alleged false swearing under the same code provision against Respondent Maynard, who represented "she was a resident of Magisterial District 1, although knowing she was a resident of Magisterial District 3." App. 1. Counts Three and Four alleged that each defendant conspired with the other to commit false swearing by misrepresenting her residency to the County Clerk of Cabell County. App. 2. Finally, both were charged with conspiracy in Count Five pursuant to West Virginia Code § 61-10-31. App. 2.

Just after the grand jury returned the indictment, Respondent King moved to dismiss, arguing that the one-year statute of limitations found at West Virginia Code § 61-11-9 precluded conviction on all five counts. App. 3-7. Ten days later, Respondent Maynard moved to dismiss on the same grounds. App. 11-12. In opposition, the State pointed to West Virginia Code § 3-9-24, which provides for a five-year statute of limitations on crimes prosecuted under Chapter 3 of the Code—that is, the Elections Code. App. 9-10.

At a hearing conducted on April 25, 2025, the Respondent Judge considered the motions to dismiss together. App. 22. Respondent King argued again that the statute of limitations found in West Virginia Code § 61-11-9 (pertaining to misdemeanor charges) governs this case. Respondent King believed that Section 61-11-9 would trump Section 3-9-24 in the event of any conflict, as the

Legislature amended the former more recently than the latter. App. 24. Respondent Maynard opined that the Legislature intended to bring all misdemeanors under Section 61-11-9 when it amended that provision in 2002. App. 25-26.

In response, the State explained that the Legislature knew of the express statute of limitations in Section 3-9-24 when it amended Section 61-11-9. App. 27. Thus, the particular crimes enumerated in Chapter 3, Article 9 of the West Virginia Code were still subject to the five-year statute of limitations found in Section 24. App. 28. The State suggested that Section 24 "carv[ed] out an expressed exception" to the one-year statute of limitations. App. 28. While the State admitted that Section 3-9-24 was "written in the negative," it did not concede that the statute was generally vague. App. 29-30. Moreover, the State identified "policy reasons" for this statute of limitations exception, noting that the investigation must occur after "the election at issue," a requirement that "necessitates" additional time as compared to other misdemeanors. App. 30-31. Thus, Section 3-9-24 applied to the first four counts of the complaint.[1]

Respondent King agreed that the two statutes are not vague but still insisted that only West Virginia Code § 61-11-9 controls. She alleged without any reference to legal authority that this Court has found West Virginia Code § 61-11-9 is one of "specific application" to misdemeanors. App. 32.

The circuit court sided with Respondents. It opined that the provisions of West Virginia Code § 3-9-24 are vague in that they do not address misdemeanors specifically. App. 33. Further, the circuit court believed leniency was required because this case is a criminal matter. App. 34. Thus, it entered an order dismissing all counts with prejudice, finding that West Virginia Code § 3-

[1] The State conceded that West Virginia Code § 61-11-9 applied to Count Five, the conspiracy charge, barring that claim. App. 31. Thus, the State is not seeking a writ on that count.

9-24 is "written in the negative and is vague." App. 14. It "turn[ed] to the rules of statutory construction," focusing particularly on the notion that when two legislative provisions conflict, effect should be given to the last enactment. App. 15 (citing syl. pt. 2, *Stamper by Stamper v. Kanawha Cnty. Bd. of Educ.*, 191 W. Va. 297, 445 S.E.2d 238 (W. Va. 1994)). The circuit court found that West Virginia Code § 61-11-9 "is the latest reflection of legislative will with respect to statutes of limitation in misdemeanor cases," so "it must control here." App. 15. While the court dismissed all counts, it noted that "we can let a higher being than this one," meaning a higher court, "figure it out." App. 34.[2]

SUMMARY OF THE 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 no statutory provision provides an avenue of appeal for the State to appeal this dismissal. The clear error, thus, cannot be corrected on appeal.

Third, the decision is clearly wrong as a matter of law for several reasons. The Respondent Judge failed to apply the appropriate principles of statutory construction, including the rule that a specific statute governs over a general one. On the other hand, the Respondent Judge erroneously applied a statutory construction canon instructing that the last statute to be amended governs, without examining the amendment itself. This failure prevented the Respondent Judge from properly applying the plain meaning of both statutes in question. This failure also rendered Section 3-9-24 meaningless as to misdemeanors.

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[2] Although Respondent King referenced different manuals drafted by the Office of the Secretary of State below, *see* App. 5-6, the lower court did not rely on them. Those manuals are not binding legal authority, and no manual currently refers to a one-year statute of limitations for elections crimes. *See generally* W. VA. SEC'Y OF STATE'S OFF., MANUAL FOR ELECTION OFFICIALS OF WEST Virginia (Rev. May 2025), *available at* https://bit.ly/45M6Ph9.

As to the fourth and fifth factors, the Respondent Judge disregarded procedural and substantive law by failing to properly analyze and apply the rules of statutory construction. Moreover, this case is one of first impression, as no West Virginia case has analyzed how these two statutes of limitation coexist.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State does not request oral argument in this case. The Respondent Judge committed numerous clear legal errors that are obvious on the face of this record in dismissing this action, so a writ should issue. Oral argument is unnecessary to aid this Court in its consideration of the question 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, *State ex rel. State v. Gwaltney* (*Gwaltney II*), 250 W. Va. 695, 908 S.E.2d 192 (W. Va. 2024) (citation omitted); syl. pt. 1, *State ex rel. State v. Gwaltney* (*Gwaltney I*), 249 W. Va. 706, 901 S.E.2d 70 (W. Va. 2024) (citation omitted). "Where 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*, 250 W. Va. 695, 908 S.E.2d 192 (citation omitted); syl. pt. 1, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70 (citation omitted). The State was deprived of its right to prosecute Respondents King and Maynard when the Respondent Judge erroneously dismissed the charges with prejudice.

In deciding whether a challenged decision meets that standard, this Court considers five "general guidelines":

> (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. 3, *State ex rel. Frazier v. Thompson*, 243 W. Va. 46, 842 S.E.2d 250 (W. Va. 2020) (quoting syl. pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (W. Va. 1996)). "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.* (quoting syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12).

II. The Court should issue a writ to prohibit the Respondent Judge from enforcing his decision because the State can meet all five *Hoover* factors.

For many years, a five-year statute of limitations has applied to election-law violations. West Virginia Code § 3-9-24 speaks in plain terms that directly apply to the charges implicated here: "No person shall be prosecuted for any crime or offense under any provision of [Chapter 3], unless upon an indictment found and presentment made within five years after the date of the commission of the crime or offense." Chapter 3's crimes and offenses are meant to address all manner of "direct intrusions on the election itself," including "fil[ing] false returns, tamper[ing] with ballots," "b[uying] or s[elling] votes, or the like." *Hutchinson v. Miller*, 797 F.2d 1279, 1285 (4th Cir. 1986) (citing W. Va. Code §§ 3-9-1 to 3-9-24).

Despite that clarity, the lower court found West Virginia Code § 3-9-24 ambiguous and determined it did not apply to the elections-related charges here. The court reasoned that an unrelated 2002 amendment to Section 61-11-9—which *generally* provides the statute of limitations for misdemeanors—overrides Section 3-9-24. This approach contradicts the Legislature's intent to extend the statute of limitations period for election-specific crimes beyond the general one-year

term. The Respondent Judge ignored or misapplied the rules of statutory construction to reach this conclusion.

Prohibition should lie here because the lower court exceeded its legitimate powers in dismissing the charges against Respondents Maynard and King. Although "prohibition is a drastic, tightly circumscribed, remedy which should be invoked only in extraordinary situations," this case presents one of those extraordinary situations. *State ex rel. W. Va. Nat'l Auto. Ins. Co. v. Bedell,* 223 W. Va. 222, 228, 672 S.E.2d 358, 364 (W. Va. 2008). The State meets each of the *Hoover* factors, and, thus, the Court should issue a writ of prohibition barring enforcement of the Respondent Judge's dismissal order.

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 (W. Va. 1991).

"[T]he State has no right of appeal in a criminal case, except as may be conferred by the Constitution or a statute." Syl. pt. 1, *State v. Jones*, 178 W. Va. 627, 363 S.E.2d 513 (W. Va. 1987). In West Virginia, "the State may appeal to this Court in a criminal case if (1) the case relates to the public revenue, or if (2) 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). A "bad or insufficient" indictment is construed "in the traditional sense," such "that there was a failure *substantively* to charge a crime." *Id.* at 172, 411 S.E.2d at 691 (emphasis in original); *see also* syl. pt. 1, *State v. Zain*, 207 W. Va. 54, 528 S.E.2d 748 (W. Va. 1999) ("An indictment is considered bad or insufficient ... when within the four corners of the indictment it: (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; and (2) fails to contain sufficient accurate information to permit a plea of former acquittal or conviction.").

None of the conditions allowing for a state appeal exist here. This case does not relate to the public revenue. And the circuit court did not grant relief based on an insufficient indictment that failed "substantively to charge a crime." *Walters*, 186 W. Va. at 172, 411 S.E.2d at 691. Rather, the Respondent Judge dismissed the indictment based on an erroneous legal premise that produced an erroneous legal finding that the statute of limitations expired. Therefore, direct appeal is not an avenue of relief available to the State.

Because the State cannot appeal, the second factor also weighs in favor of a writ, as the State has no other adequate means of relief. *State ex rel. Lorenzetti v. Sanders,* 235 W. Va. 353, 367, 774 S.E.2d 19, 33 (W. Va. 2015) (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"). 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. Absent intervention by this Court through a writ of prohibition the State is effectively deprived of its right to prosecute. *State ex rel. Clifford v. Stucky*, 212 W. Va. 599, 575 S.E.2d 209 (W. Va. 2002).

So the first two factors weigh in favor of the State.

B. The court's order represents clear error of law, so the State meets the most important third *Hoover* factor here.

The State meets the third *Hoover* factor because the Respondent Judge erred by failing "to ascertain and give effect to the intention of the Legislature." Syl. pt. 1, *Young v. State*, 241 W. Va. 489, 826 S.E.2d 346 (W. Va. 2019) (quoting syl. pt. 8, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (W. Va. 1953)). Instead, the lower court incorrectly relied on an single rule of construction:

the notion that later statutes generally prevail over earlier ones. In so doing, the Respondent Judge ignored the rule that a specific statute prevails over a general one. It also rendered West Virginia Code § 3-9-24 meaningless.

1. The Respondent Judge clearly erred in failing to apply a more specific statute, West Virginia Code § 3-9-24, over a more general statute, West Virginia Code § 61-11-9.

The Respondent Judge in this action erred as a matter of law because he failed to apply—or even consider—"[t]he general rule of statutory construction" that "requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled." Syl. pt. 3, *Young*, 241 W. Va. 489, 826 S.E.2d 346 (quoting syl. pt. 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (W. Va. 1984)). In cases with seemingly contradictory statutes, a court is required to apply the more specific statute, as "[t]his Court has long recognized that when both a general and a specific statute apply to a given set of facts, our well-established rules of statutory construction instruct that the specific statute governs." *Id.* at 429, 826 S.E.2d at 349 (quoting *Wells v. State ex rel. Miller*, 237 W. Va. 731, 752, 791 S.E.2d 361, 382 (W. Va. 2016)); *accord Bowers v. Wurzburg,* 205 W. Va. 450, 462, 519 S.E.2d 148, 160 (W. Va. 1999) ("Typically, when two statutes govern a particular scenario, one being specific and one being general, the specific provision prevails." (citation omitted)). The rule holds even when the general statute is the later one. Syl. pt. 1, *U.S. Coal & Coke Co. v. Turk*, 127 W. Va. 368, 33 S.E.2d 463 (W. Va. 1944) ("A legislative act dealing broadly and in general terms with a subject, will not affect an earlier statute which comprehensively covered a specific and particular branch of that subject, in the absence of a clearly manifested intent of the Legislature that it should so operate.").

A more "general" statute is one that applies to "several different types of cases" as opposed to one that relates only to a specific type of case. *In re Chevie V.*, 226 W. Va. 363, 371, 700 S.E.2d 815, 823 (W. Va. 2010); *see also State ex rel. Tucker Cnty. Solid Waste Auth. v. W. Va. Div. of Lab.*, 222 W. Va. 588, 598, 668 S.E.2d 217, 227 (W. Va. 2008) (discussing a general statute on wages and a more specific statute defining certain terms). A "general" statute, this Court has explained, "deal[s] with a number of subjects, treating them all in general terms by making a provision common to all." *UMWA*, 174 W. Va. at 332, 325 S.E.2d at 122 (quoting *Hawkins v. Bare,* 63 W. Va. 431, 436-37, 60 S.E. 391, 393 (W. Va. 1908)). In contrast, a more specific statute governs a narrower subject. When a "new statute" includes a "special provision" addressing one of the subjects covered by the general statute, "the intention to substitute that provision for the general law to that extent is equally as obvious and apparent." *Id.* (quoting *Hawkins,* 63 W. Va. at 436-37, 60 S.E. at 393)

Here, West Virginia Code § 3-9-24 is the more specific statute. It applies *only* to the enumerated crimes found in Chapter 3 of the West Virginia Code, limiting its own application to "any crime or offense under any provision of this chapter," meaning Chapter 3. No West Virginia case holds that West Virginia Code § 61-11-9 is a specific as opposed to a general statute. And Section 3-9-24 "specifically speaks to the matter at hand." *Int'l Union of Operating Eng'rs, Loc. Union No. 132 Health & Welfare Fund v. L.A. Pipeline Const. Co.*, 237 W. Va. 261, 267, 786 S.E.2d 620, 626 (W. Va. 2016). West Virginia Code § 61-11-9, on the other hand, just governs "prosecution for a misdemeanor." It applies to crimes in general.

If Respondents argue that West Virginia Code § 61-11-9 is a "specific" statute, they are wrong. App. 24, 32. The only case referencing West Virginia Code § 61-11-9 as "specific" is *State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (W. Va. 2000). But there, this Court did not

find that the statute was specific as opposed to general. Rather, it merely observed that the statute was enacted specifically to establish a statute of limitations for misdemeanors (as opposed to some felony crimes). Perhaps for this reason, not even the lower court relied on *Leonard* in reaching its decision.

The Respondent Judge clearly erred by failing to consider and apply the specific-versus-general canon in his analysis.

2. The Respondent Judge clearly erred by rendering West Virginia Code § 3-9-24 meaningless, depriving it of force and effect.

The Respondent Judge also ignored another canon of statutory interpretation: "a court may not interpret a statute such that the result is to make the statute meaningless since one of the basic principles of statutory construction is that the Legislature will not enact a meaningless statute." *Lightner v. Riley*, 233 W. Va. 573, 580, 760 S.E.2d 142, 149 (W. Va. 2014) (citing *State ex rel. Hardesty v. Aracoma-Chief Logan No. 4523, Veterans of Foreign Wars,* 147 W. Va. 645, 129 S.E.2d 921 (W. Va. 1963)); *see also* syl. pt. 7, *W. Va. Auto. v. Ford Motor Co.*, __ W. Va. __, 913 S.E.2d 534 (W. Va. 2025) (same). Very recently, this Court reiterated that "[a] cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute." Syl. pt. 6, *W. Va. Auto.*, __ W. Va. __, 913 S.E.2d 534 (quoting syl. pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (W. Va. 1999)). The rule holds even when two statutes are in apparent conflict. *See* Syl. pt. 9, *Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W. Va. 663, 815 S.E.2d 474 (W. Va. 2018) ("[W]here two statutes are in apparent conflict, the Court must, if reasonably possible, construe such statutes so as to give effect to each." (quoting syl. pt. 4, *State ex rel. Graney v. Sims*, 144 W. Va 72, 105 S.E.2d 886 (W. Va. 1958)).

Here, by finding West Virginia Code § 3-9-24 does not apply, the Respondent Judge nullified a large portion of this code provision that has been in place since 1908. The Respondent

Judge gave no significance or effect to West Virginia Code § 3-9-24 as it relates to misdemeanor violations. This provision relates solely to the statute of limitations for violations of election law found in Chapter 3 of the West Virginia Code; eliminating its applicability to misdemeanors that make up the vast majority of Chapter 3 removes the teeth of the provision and renders it useless.

Reading these two provisions *together* would be consistent with the Legislature's intent in Section 3-9-24 to protect the public good. "As a rule, statutes enacted for the public good are to be interpreted in the public's favor." *Ogden Newspapers, Inc. v. City of Williamstown*, 192 W. Va. 648, 651, 453 S.E.2d 631, 634 (W. Va. 1994). Quite obviously, election-related crimes are intended to serve the public good by ensuring that candidates are qualified, elections are fair, and qualified votes count. Indeed, "[p]reserving the integrity of the electoral process, preventing corruption, and sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government are interests of the highest importance." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 788-89 (1978) (internal quotation marks and citation omitted). But the Respondent Judge's approach would undermine those interests. As noted by the State below, investigations into alleged election law violations take time. Charges often cannot be brought until an election has ended. App. 30. By applying a one-year statute of limitations, Respondent Judge directly undermined the ability of local prosecutors to protect election integrity and honor the public's "legitimate and valid" interests. *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973).

The Respondent Judge mistakenly thought it could take this flawed path because it believed this code provision was "vague with respect to its application in misdemeanor cases." App. 14-15. But "[i]n the absence of any specific indication to the contrary, words used in a statute will be given their common, ordinary and accepted meaning." Syl. pt. 5, *W. Va. Auto.*, __ W. Va. ___, 913 S.E.2d 534 (internal quotation marks and citations omitted). And West Virginia Code § 3-9-24

states clearly its applicability to "any crime or offense under any provision of this chapter," meaning Chapter 3. W. Va. Code § 3-9-24. "Any crime or offense" obviously covers *all* offenses in Chapter 3, most of which are misdemeanors. After all, "[i]n common parlance, the adjective 'any' refers to 'all.'" *United Bank, Inc. v. Stone Gate Homeowners Ass'n, Inc.*, 220 W. Va. 375, 380, 647 S.E.2d 811, 816 (W. Va. 2007). This language—written in the broad terms imaginable—is not vague. So the Respondent Judge should have given the statute its plain meaning: "Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation." Syl. pt. 3, *W. Va. Auto.*, __ W. Va. ___, 913 S.E.2d 534 (quoting syl. pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (W. Va. 1970)).

The circuit court's choice to erase the language and force of Section 3-9-24 is another clear error of law necessitating a writ of prohibition.

3. The Respondent Judge clearly erred in concluding that the 2002 amendment to Section 61-11-9 trumped all else.

The Respondent Judge purported to apply the "general rule … that the statute [that] is last in time prevails as the most recent expression of the legislative will." Syl. pt. 2, *Stamper,* 191 W. Va. 297, 445 S.E.2d 238; Syl. pt. 2, *State ex rel. Dept. of Health and Hum. Res. v. W. Va. Public Emps. Ret. Sys.,* 183 W. Va. 39, 393 S.E.2d 677 (W. Va. 1990). But this idea only applies when "several statutory provisions cannot be harmonized." *Visitation of Cathy L.(R.)M. v. Mark Brent R.*, 217 W. Va. 319, 324, 617 S.E.2d 866, 871 (W. Va. 2005) (quoting syl. pt. 2, *W. Va. Public Emps. Ret. Sys.*, 183 W. Va. 39, 393 S.E.2d 677). As shown above, they could be. So rather than *properly* applying this canon of construction, the Respondent Judge effectively concluded that a 2002 amendment to Section 61-11-9 impliedly repealed Section 3-9-24 as to misdemeanors. Yet "[r]epeal of a statute by implication is not favored in law." Syl. pt. 1, *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (W. Va. 1960). Thus, "the implication of repeal must

be clear, necessary, irresistible, and free from reasonable doubt." *Russell v. Town of Granville*, 237 W. Va. 9, 12, 784 S.E.2d 336, 339 (W. Va. 2016) (cleaned up).

Nothing "clear, necessary, irresistible, and free from reasonable doubt" can be found in the 2002 amendment that would repeal or otherwise trump Section 3-9-24. Before 2002, Section 61-11-9 contained an express three-year statute of limitations for petit larceny, which arguably clashed with a separate section prescribing the requirements for an indictment for petit larceny that in turn referred to a *one*-year statute of limitations. The bill history of the amendment, introduced as House Bill 4044 in 2002, was titled "Correcting a section of the code concerning the bringing of an indictment for petit larceny." *House Bill 4044: Bill Status – 2002 Regular Session*, W. VA. LEGISLATURE, https://bit.ly/43QbDQb (last visited June 6, 2025). Moreover, the introduction notes that the bill was procured to "correct[] the inconsistency concerning the bringing of an indictment for petit larceny that exists with [West Virginia] Code § 61-11-9 which provides for a three-year exception to the misdemeanor offense of petit larceny *vis a vis* the usual one-year statute of limitations for other misdemeanor offenses." H. B. 4044, 2002 Leg., Reg. Sess. (W. Va. 2002) (as introduced, Jan. 16, 2002), *available at* https://bit.ly/3HsptRf. The title and introduction of the amendment indicates that its purpose was *not* to nullify West Virginia Code § 3-9-24 or to bring *all* misdemeanor statute of limitations under the scope of West Virginia Code § 61-11-9, despite the existence of other statutes with explicitly different limitations. Instead, the amendment was specifically intended to clarify the statute of limitations for petit larceny alone.

The Respondent Judge failed to consider the actual content and purpose of the amendment to West Virginia Code § 61-11-9 and made erroneous assumptions concerning the Legislature's intentions. But "[t]he Legislature, when it enacts legislation, is presumed to know its prior enactments." Syl. pt. 6, *Murrell B. v. Clarence R.*, 242 W. Va. 358, 836 S.E.2d 9 (W. Va. 2019)

(internal quotation marks and citations omitted). Thus, courts must presume that the Legislature was well aware of the five-year statute of limitations found in Section 3-9-24 when amending Section 61-11-9 in 2002. It pointedly chose to do nothing with Section 3-9-24. Courts must thus presume that the Legislature chose to limit its amendment to petit larceny alone and that it chose not to delete or alter any other aspect of any other statutes of limitation that apply to specific misdemeanors.

With that appropriate perspective, the circuit court's "later over the earlier rule" falls apart. West Virginia Code § 3-9-24 was first enacted in 1908, and amended in both 1963 and 1978. Before the Legislature's extremely limited 2002 amendment, the last amendment of West Virginia Code § 61-11-9 occurred in 1882. Not only was Section 3-9-24 enacted *after* Section 61-11-9 in 1908, but it was also amended twice since then, in 1963 and in 1978. Again, courts must presume the Legislature is aware of all its prior enactments; not once in the near century that the two statutes co-existed did the Legislature nullify or change its stance that election law violations should have a different statute of limitations than general misdemeanors. Thus, the court's reliance on which statute was last amended here is erroneous as a matter of law.

Nor does the Respondent Judge's reliance on syllabus point 2 of *Stamper* lend validity to its findings. In *Stamper*, the Court engaged in a lengthy discussion of the applicable legislative enactments and amendments. 191 W. Va. at 300-02, 445 S.E.2d at 241-43. Again, had the Respondent Judge engaged in any real assessment here, he would have found that the 2002 amendment was a single-purpose amendment—to change the petit larceny statute of limitations to one year. Had the Legislature intended the sweeping nullification of other statutory limitation periods for misdemeanor the circuit court attributed to it in this case, it knew how to accomplish that task.

Likewise, the Respondent Judge was wrong to rely on *Wiley v. Toppings*, as that case dealt with a certified question surrounding two conflicting definitions added to the same statutory provision during the 1994 legislative session. 210 W. Va. 173, 174, 556 S.E.2d 818, 819 (W. Va. 2001). Applying this temporal amendment rule in such a situation makes sense, because the Legislature passed two juxtaposed definitions for the exact same code provision during the same Legislative session. The Legislature's intent for the second definition to supersede the first is relatively clear there (and the notion of implied repeal is not implicated). But this case is profoundly different. The most recently amended statute, Section 61-11-9, was amended for reasons having nothing to do with the provisions of Section 3-9-24 let alone to nullify it. And, the statutes at issue here have coexisted for decades, not simply the period of the same legislative session.

Thus, the court's reliance on this rule of construction without any analysis was unjustified and incorrect as a matter of law here, and a writ should lie.

C. The final two *Hoover* factors also favor issuance of a writ.

While the State cannot maintain that the Respondent Judge is often repeating the clear legal error here, the Judge's failure to properly analyze and apply the rules of statutory construction represents a disregard for procedural and substantive law. Moreover, this is a case of first impression, as no West Virginia case has analyzed how these two statutes of limitation coexist.

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.

CONCLUSION

The State respectfully requests the Court to enter a writ of prohibition preventing the circuit court from enforcing its order dismissing the charges against Respondents King and Maynard.

STATE OF WEST VIRGINIA,
By Counsel

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VERIFICATION

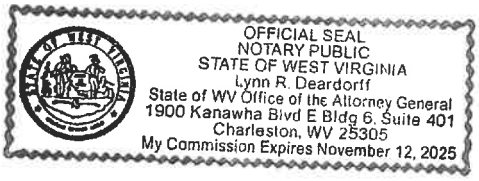
State of West Virginia, Kanawha County, to-wit:

I, Andrea Nease, Deputy Attorney General and counsel for the Petitioner named in the foregoing ***Petition for a Writ of Prohibition***, being duly sworn, state that the facts and allegations contained in the Petition are true, except insofar as they are stated to be on information, and that, insofar as they are stated to be on information, I believe them to be true.

Andrea Nease

Taken, sworn to, and subscribed before me this 6th day of June, 2025

[SEAL]



Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 25-_____

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

v.

HONORABLE JAMES YOUNG, Judge of the Circuit Court of Wayne County, sitting by special assignment in Cabell County, JAN HITE KING, Defendant below, and KIMBERLY MAYNARD, Defendant below,
Respondents.

CERTIFICATE OF SERVICE

I, Andrea Nease, do hereby certify that on the 6th day of June, 2025, I served a true and accurate copy of the foregoing **Petition for a Writ of Prohibition** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

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and via U.S. mail, postage prepaid, addressed as follows, to non-efiling participants:

Hon. James Young
Wayne Co. Courthouse
P.O. Box 68
Wayne, WV 25570
Respondent Judge

Jan Hite King
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Respondent/Defendant below

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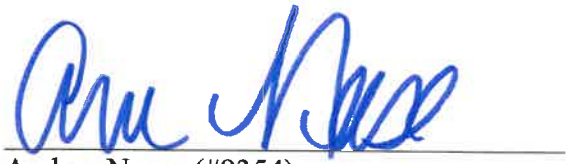

Andrea Nease (#9354)
Deputy Attorney General