

In the Circuit Court of Harrison County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-17-2023-F-36
Judge Thomas A. Bedell

JAMES DEE MCKINNEY AKA
1227,
Defendant

Order Denying Defendant's Motion for New Trial and Post Verdict Judgment of Acquittal / Order Sentencing Defendant and Committing Defendant to Division of Corrections

On the 2nd day of November, 2023, came the State of West Virginia by James Armstrong, Assistant Prosecuting Attorney for Harrison County, West Virginia, and came also the defendant, James Dee McKinney, in custody of North Central Regional Jail, and by his counsel, Ryan Shreve, Esquire, Deputy K.D. Wariner of the Harrison County Sheriff's Department, Heidi Leaseburge, Adult Probation Officer, Deputy J.M Kennedy and Detective J.L. Cumberledge of the Harrison County Sheriff's Department and the Honorable Thomas A. Bedell, presiding. All parties were present for a post-trial motions/sentencing hearing in this matter.

Whereupon, the Court reviewed the procedural history of the above captioned matter for the record.

Thereupon, the Court acknowledged receipt of the Presentence Investigation Report dated September 14, 2023 prepared by Heidi Leaseburge, Adult Probation Officer, the Drug and Alcohol Assessment Report dated October 4, 2023 prepared by Rebecca Keller, Case Manager Harrison County Day Report Center and the Home Incarceration Report dated October 17, 2023, prepared by Andrew Valentine, Home

Incarceration Officer.

Thereupon, the court inquired of the respective parties of whether they had received and reviewed the aforementioned reports and whether there were any correction or objections to the same and, hearing none, this Court **ORDERED** the Presentence Investigation Report, Drug and Alcohol Assessment and Home Incarceration Report filed and made a part of the record in this case.

Thereupon, the Court acknowledged receipt of the Defendant's Motion for Post Verdict Judgment of Acquittal and Motion for New Trial and the State's Response thereto and thereafter heard from the respective parties in regard to Defendant's Motion. After considering the argument of counsel, relevant facts and applicable law, this Court did **ORDER** that Defendant's Motion for Post Verdict Judgment of Acquittal and Motion for New Trial be denied for the reasons set forth in the State's Response to Defendant's Motion.

Thereupon, the Court addressed restitution in this matter and counsel for the State and defendant advised there was no restitution owed.

Thereupon, the Court advised the defendant that under West Virginia Code §61-11-18 when any person is convicted of an offense and is subject to confinement in the state correctional facility and it is determined that such person has been before convicted in the United States of a crime punishable by confinement in a penitentiary, i.e., a felony, the Court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the sentence to be imposed is an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence. Further, the Court advised that when it is determined that such person shall have twice before been convicted in the United States of a crime

punishable by confinement in a penitentiary, i.e., a felony, the person may be sentenced to confinement to the state correctional facility for life.

The defendant, thereupon, informed the Court that he was aware and understood the aforesaid enhanced penalties.

Thereupon, counsel for the State addressed the Court as to sentencing in this matter.

Thereupon, counsel for the defendant addressed the Court as to sentencing in this matter.

Thereupon, the Court advised the defendant of his right of allocution, and the defendant, James Dee McKinney, addressed the Court relative to sentencing in this matter.

WHEREUPON, nothing further being offered in delay of judgment herein pursuant to defendant's conviction of the felony offense of First Degree Robbery as charged in Count Five of the Indictment in this case, this Court did **ORDER** that the defendant, James Dee McKinney, be committed to the custody of the Commissioner of the West Virginia Department of Corrections for a determinate period of thirty (30) years from August 22, 2022, with credit for four hundred thirty-eight (438) days previously served.

WHEREUPON, nothing further being offered in delay of judgment herein pursuant to defendant's conviction of the felony offense of First Degree Robbery as charged in Count Six of the Indictment in this case, this Court did **ORDER** that the defendant, James Dee McKinney, be committed to the custody of the Commissioner of the West Virginia Department of Corrections for a determinate period of thirty (30) years with said sentence to run consecutive to the sentence imposed for Count Five.

WHEREUPON, nothing further being offered in delay of judgment herein

pursuant to defendant's conviction of the felony offense of Possession of a Firearm by Person Prohibited From Possessing Firearm as charged in Count Seven of the Indictment in this case, this Court did **ORDER** that the defendant, James Dee McKinney, be committed to the custody of the Commissioner of the West Virginia Department of Corrections for a determinate period of five (5) years with said sentence to run consecutive to the sentence imposed for Count Six.

WHEREUPON, nothing further being offered in delay of judgment herein pursuant to defendant's conviction of the felony offense of Presentation of a Firearm During Commission of a Felony as charged in Count Eight of the Indictment in this case, this Court did **ORDER** that the defendant, James Dee McKinney, be committed to the custody of the Commissioner of the West Virginia Department of Corrections for a determinate period of ten (10) years with said sentence to run consecutive to the sentence imposed for Count Seven.

This Court did **FIND** that the sentences imposed in this matter are appropriate due to the following factors: Defendant's lengthy criminal history; defendant having previously committed felony crimes of violence; defendant's lack of remorse and acceptance of responsibility; defendant's repeated failure to appear at required proceedings in other jurisdictions; the presence of outstanding warrants against defendant from other jurisdictions; defendant's prior failure to abide by the terms of alternative sentencing; the violent nature of the offenses for which defendant was convicted in this matter; defendant's intimidation of witnesses in this matter; and the fact that State did not prosecute defendant as a recidivist despite him being eligible for a lifetime recidivist prosecution.

It is further **ORDERED** that no fine shall be assessed against the defendant based upon the defendant's social-economic status.

It was further **ORDERED** that the defendant, James Dee McKinney, shall pay the costs of these proceedings. Said costs shall be paid to the Clerk of this Court within one (1) year from his ultimate release from the penitentiary, either by discharge of his sentence or by parole and the State of West Virginia shall have a judgment against the defendant for the amount of said costs.

Thereupon, the Court advised the defendant of his rights with respect to appeal and **ORDERED** counsel for the defendant to also advise and explain the defendant of said appeal rights.

COUNT FIVE - FIRST DEGREE ROBBERY

TERM: 30 YEARS

CONVICTION DATE: SEPTEMBER 14, 2023
SENTENCE DATE: NOVEMBER 2, 2023
EFFECTIVE SENTENCE DATE: AUGUST 22, 2022

COUNT SIX – FIRST DEGREE ROBBERY

TERM: 30 YEARS

CONVICTION DATE: SEPTEMBER 14, 2023
SENTENCE DATE: NOVEMBER 2, 2023
EFFECTIVE SENTENCE DATE: TO RUN CONSECUTIVE WITH
COUNT FIVE

COUNT SEVEN - POSSESSION OF A FIREARM BY PERSON PROHIBITED FROM POSSESSING FIREARM

TERM: 5 YEARS

CONVICTION DATE: SEPTEMBER 14, 2023
SENTENCE DATE: NOVEMBER 2, 2023
EFFECTIVE SENTENCE DATE: TO RUN CONSECUTIVE TO COUNT SIX

**COUNT EIGHT - PRESENTATION OF A FIREARM DURING COMMISSION OF A
FELONY
TERM: 10 YEARS**

CONVICTION DATE:	SEPTEMBER 14, 2023
SENTENCE DATE:	NOVEMBER 2, 2023
EFFECTIVE SENTENCE DATE:	TO RUN CONSECUTIVE TO COUNT SEVEN

It was further **ORDERED** that the Clerk of this Court transmit a copy of this Order, duly certified, to the following:

James Armstrong, Esq.
Assistant Prosecuting Attorneys
Third Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

Ryan Shreve Esq.
PO Box 1645
Morgantown, WV 26507

Harrison Count Probation Office
Sixth Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

North Central Regional Jail
and Correctional Facility
1 Lois Lane
Greenwood, West Virginia 26415

West Virginia Division of Corrections
1409 Greenbrier Street
Charleston, West Virginia 25305

/s/ Thomas A. Bedell
Circuit Court Judge
15th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

SUBMITTED BY:

APPROVED AS TO FORM BY:

/s/ James Armstrong
JAMES ARMSTRONG
Assistant Prosecuting Attorney
State Bar Identification No. 8773

RYAN SHREVE
Counsel for Defendant
State Bar Identification No.13046