

In the Circuit Court of Jackson County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-18-2020-F-33
Judge Lora Dyer

JASON SWINDLER,
Defendant

Order - Resentencing

On May 11, 2023, came the State of West Virginia, by its Prosecuting Attorney, David Kyle Moore; the Defendant, in person and by counsel, Ronald Walters, Jr.; and Stephen Frum, Probation Officer, for hearing on the Defendant's *Motion to Resentence for Purpose of Appeal*.

Prior to hearing, the Defendant filed a *Motion to Resentence for Purpose of Appeal*.

Whereupon, the Court heard arguments from parties on the Defendant's *Motion to Resentence for Purpose of Appeal*. The State did not object to the motion. Accordingly, the Court takes judicial notice of the sentencing hearing held on October 4, 2022, and order entered on November 18, 2022, and adopts and incorporates the order therein and does **ORDER** the same, in its entirety, as what was ordered on October 4, 2022.

Prior to hearing, the Defendant filed multiple handwritten motions in this case, to-wit: a Motion for Acquittal or Mistrial, a Motion for Mistrial, a Motion for Transcript, and a Motion for Release from Custody. Counsel for the Defendant did state that after consultation with the Defendant, the Defendant no longer wishes to proceed in arguing those Motions.

Whereupon, the Court heard arguments and objections from both parties as noted on record, for the Motion for Acquittal or Mistrial. The Court **DENIED** the motion, preserving the Defendant's objections and exceptions thereon.

Whereupon, the Court heard arguments and objections from both parties as noted on

record, for the Motion for Mistrial. The Court **DENIED** the motion, preserving the Defendant's objections and exceptions thereon.

Whereupon, the Court heard arguments of both parties as noted on record, for the Motion for Transcript. The Court **DENIED** the motion at this time, preserving the Defendant's objections and exceptions thereon and **NOTING** that the Defendant has the right to obtain said transcripts for appellate purposes.

Whereupon, the Court heard arguments from parties on the Defendant's Motion for Release from Custody. The Court **DENIED** the motion at this time, both parties agreeing that this Motion was an appellate issue after obtaining rulings on the other Motions.

Whereupon, the Court did address counsel for the Defendant, and did thereby determine that the Defendant and his counsel did have an opportunity to participate in the pre-sentence investigation. The Court further determined that the parties did have an opportunity to read and discuss the pre-sentence investigation report, which was made available to the State and the Defendant pursuant to Rule 32(b) of the West Virginia Rules of Criminal Procedure. The State and the Defendant, by counsel, did then each have an opportunity to advise the Court of any corrections, additions, or objections to the pre-sentence investigation report. The Court did thereafter determine that there were no unresolved objections to said pre-sentence investigation report, and **ORDERED** the report filed, without objection.

The Court then afforded counsel for the Defendant the opportunity to speak on behalf of the Defendant. The Court addressed the Defendant personally, and permitted the Defendant to make a statement in his own behalf. The Defendant was further permitted an opportunity to present any additional information or to call witnesses in mitigation of punishment. The Court also heard from the State, the State being permitted to provide recommendations to the Court as noted on the record.

Thereafter, the Court did proceed to pronounce the sentence of law against the

Defendant, and nothing being offered or alleged in delay of judgment, the Court sentences the Defendant as follows:

1. For the offense of “**Breaking and Entering**,” a felony offense as charged in Count 1 of the Indictment of 20-F-33, the Defendant being convicted by jury of the same, it is **ORDERED** that the Defendant be committed to the custody of the Commissioner of the Division of Corrections for confinement in the penitentiary for a period of not less than 1 year nor more than 10 years, therein to be safely kept and treated in all respects in accordance with the law.

2. For the offense of “**Grand Larceny**,” a felony offense as charged in Count 2 of the Indictment of 20-F-33, the Defendant being convicted by jury of the same, it is **ORDERED** that the Defendant be committed to the custody of the Commissioner of the Division of Corrections for confinement in the penitentiary for a period of not less than 1 year nor more than 10 years, therein to be safely kept and treated in all respects in accordance with the law.

3. For the offense of “**Destruction of Property**,” a misdemeanor offense as charged in Count 3 of the Indictment of 20-F-33, the Defendant being convicted by jury of the same, it is **ORDERED** that the Defendant be committed to the custody of the Regional Jail Authority for confinement in the regional jail for a period of one year, therein to be safely kept and treated in all respects in accordance with the law.

4. For the offense of “**Grand Larceny**,” a felony offense as charged in Count 4 of the Indictment of 20-F-33, the Defendant being convicted by jury of the same, it is **ORDERED** that the Defendant be committed to the custody of the Commissioner of the Division of Corrections for confinement in the penitentiary for a period of not less than 1 year nor more than 10 years, therein to be safely kept and treated in all respects in accordance with the law.

5. For the offense of “**Breaking and Entering**,” a felony offense as charged in Count 5 of the Indictment of 20-F-33, it is **ORDERED** that the Defendant be committed to the

custody of the Commissioner of the Division of Corrections for confinement in the penitentiary for a period of not less than 1 year nor more than 10 years, therein to be safely kept and treated in all respects in accordance with the law.

6. For the offense of “**Destruction of Property**,” a misdemeanor offense as charged in Count 7 of the Indictment of 20-F-33, it is **ORDERED** that the Defendant be committed to the custody of the Regional Jail Authority for confinement in the regional jail for a period of one year, therein to be safely kept and treated in all respects in accordance with the law.

7. For the offense of “**Breaking and Entering**,” a felony offense as charged in Count 8 of the Indictment of 20-F-33, it is **ORDERED** that the Defendant be committed to the custody of the Commissioner of the Division of Corrections for confinement in the penitentiary for a period of not less than 1 year nor more than 10 years, therein to be safely kept and treated in all respects in accordance with the law.

8. For the offense of “**Attempt to Commit a Felony**,” a felony offense as charged in Count 9 of the Indictment of 20-F-33, it is **ORDERED** that the Defendant be committed to the custody of the Commissioner of the Division of Corrections for confinement in the penitentiary for a period of not less than 1 year nor more than 3 years, therein to be safely kept and treated in all respects in accordance with the law.

9. For the offense of “**Destruction of Property**,” a misdemeanor offense as charged in Count 10 of the Indictment of 20-F-33, it is **ORDERED** that the Defendant be committed to the custody of the Regional Jail Authority for confinement in the regional jail for a period of one year, therein to be safely kept and treated in all respects in accordance with the law.

10. It is **ORDERED** that each sentence imposed in Paragraphs one (1) through nine (9) herein be served **CONSECUTIVE** to each other.

11. For the offense of “**Grand Larceny**,” a felony offense as charged in Count 6 of the Indictment of 20-F-33, the Court does hereby **ADOPT** the State’s recommendation to apply

the Defendant's recidivist conviction to the Defendant's conviction of "**Grand Larceny**," a felony offense as charged in Count 6 of the Indictment in 20-F-33, and does hereby **ORDER** the Defendant's conviction of Grand Larceny as charged in Count 6 of the Indictment **ENHANCED**, pursuant to the jury verdict and W. Va. Code § 61-11-18, and does hereby **ORDER** that the Defendant be committed to the custody of the Commissioner of the Division of Corrections for life.

12. It is **ORDERED** that the sentence referred to in Paragraph 11 of this Order be run **CONCURRENT** to the sentenced referred to in Paragraphs one (1) through nine (9) herein.

13. It is **ORDERED** that the Defendant be given credit for time served in connection with these offenses for any time spent in actual custody. It is further **ORDERED** that all credit for time served first be applied to the misdemeanor sentences imposed in Paragraphs three (3), six (6), and nine (9) herein.

14. The Court **ORDERED** the Defendant to pay a fine in the amount of One Hundred Dollars (\$100.00) for Count 2, One Hundred Dollars (\$100.00) for Count 4, and One Hundred Dollars (\$100.00) for Count 6.

15. The Court **ORDERED** the Defendant to pay the costs of this action.

The Court then advised the Defendant of his right to appeal, including the timeframe under which the Defendant must file his appeal, and that the Defendant would have the right to have his attorney re-appointed to represent him in such an appeal. The Court **ORDERED** the Circuit Clerk to furnish the Defendant with a written statement of the Defendant's post-conviction rights. The Defendant was further advised of his right to file a motion for reconsideration of sentence.

The Defendant is **REMANDED** to the custody of the Division of Corrections for execution of sentence. The Jackson County Sheriff's Department, or his designee, is hereby **ORDERED** to either transport or arrange for the transportation of the Defendant into the

custody of the Division of Corrections.

The Clerk of this Court is hereby **ORDERED** to provide a certified copy of this order to:
(1) David Kyle Moore, Prosecuting Attorney; (2) Ronald Walters, Jr., Counsel for the Defendant;
(3) Stephen Frum, Probation Officer; (4) Sheriff of Jackson County; (5) South Central Regional
Jail; and (6) West Virginia Division of Corrections.

All of which is accordingly **ORDERED**.

ENTERED this the 1st day of June, 2023.

s/Lora A. Dyer

The Honorable Lora A. Dyer
Circuit Court Judge
5th Judicial Circuit of West Virginia

Prepared by:

/s/ David Kyle Moore

David Kyle Moore (W.Va.#12232)
Prosecuting Attorney

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.