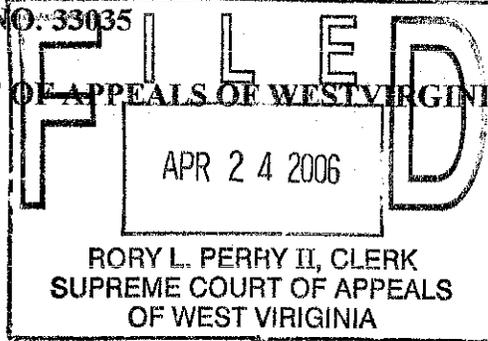


NO: 33035

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA,

Plaintiff below,  
Appellee,

vs.

APPEAL NO. 33035  
Appeal From Case No. 03-JD-8  
Appeal From Case No. 04-F-26

RONNIE ALLEN RUSH,

Defendant below,  
Appellant.

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FROM THE CIRCUIT COURT OF  
CALHOUN COUNTY, WEST VIRGINIA  
CASE NO. 03-JD-8  
CASE NO. 04-F-26

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APPELLANT'S BRIEF

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### United States Supreme Court Cases:

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*United State v. Powell*, 469 U.S.57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984).

### West Virginia Statutes:

West Virginia Code § 49-5-8(d)

West Virginia Code § 49-5-10(g)

West Virginia Code § 49-5-13

### West Virginia Cases:

*State ex rel Vandal v. Adams*, 145 W. Va. 566, 115 S.E.2d 489 (1960), overruled on other grounds, *State v. Marns*, 174 W. Va. 793, 329 S.E. 2d. 865 (1985).

*State v Ellsworth J.R.*, 175 W. Va. 64, 331 S.E.2d 503 (1985)

*State v. George Anthony W.*, 200 W. Va. 86, 488 S.E.2d 361 (1996)

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*State v Highland*, 174 W. Va. 525, 528, 327 S.E.2d 703, 706 (1985),

*State v Laws*, 162 W. Va. 359, 362, 251 S.E.2d 769, 772 (1978)

*State v Jones*, 193 W. Va. 378, 456 S.E.2d 459 (1995)

*State v Robert K. McL.*, 201 W. Va. 317, 496 S.E.2d 887 (1997),

*State v Sugg*, 193 W. Va. 388, 456 S.E.2d 469 (1995)

### Cases Cited from other States:

*Hughes v State*, 653 A.2d 241 (Del. 1994),

## I. PROCEEDINGS AND OPINIONS BELOW

Ronnie Rush was charged with two counts of First Degree Murder in Juvenile Delinquency action 03-JD-8. By Order dated the 18<sup>th</sup> of May, 2004, the Calhoun County Prosecutor's Motion to Transfer the case to adult status in the Circuit Court of Calhoun County was granted. A trial was started on Dec. 13, 2004 and concluded on Dec. 21, 2004. The jury returned a verdict of guilty to two counts of voluntary manslaughter, a lesser included offense of murder, aggravated robbery, and daytime burglary. The Defendant was sentenced to to forty (40) years in the penitentiary for the offense of Robbery, and two indeterminate sentences of fifteen (15) to forty (40) years in the penitentiary for the two offenses of Voluntary Manslaughter and ran the sentences consecutive to each other. A Motion for a New Trial was denied, as was a Motion for a Reduction of Sentence.

## II. STATEMENT OF THE CASE

On the night of May 14-15, 2003, two calls were received by Calhoun County 911, at 1:00 a.m. in the morning. The caller reported that two people had been shot. During the call, the caller stated that he had been at the scene of the shooting. (TR 410) It was later confirmed that the caller was Ronnie Rush, a sixteen (16) year old juvenile. (TR 414) Law enforcement officers responded to the scene, located on Little Bear Fork of Steer Creek, in Calhoun County, West Virginia. (TR 498) Upon their arrival, the officers discovered the bodies of two victims. (TR 504, 510)

After securing the scene, TFC D.P. Starcher of the West Virginia State Police instructed the Sheriff of Calhoun County and his Deputy to go to the home of Ronnie Rush and ask that he return to the scene of the crime. (TR 53) At 2:00 a.m., the officers

arrived at the Rush residence and asked that Ronnie Rush return to the scene with them. He agreed. (TR 444) They arrived back at the scene of the crime at 2:15 a.m. (TR 448) Upon their arrival, the Sheriff and his Deputy left Mr. Rush sitting in the back of their vehicle while they talked with Trooper Starcher. (TR 449) At 2:30 a.m., Trooper Starcher instructed the Sheriff's Deputy to perform a gun residue test on Mr. Rush. (TR 54) After the test was performed, Trooper Starcher informed Mr. Rush of his rights and conducted a tape-recorded interview. (TR 449) Mr. Rush was then placed into the back of a State Police Trooper's vehicle. (TR 471) At 3:30 a.m., Trooper Starcher woke Mr. Rush and took him into State Police Headquarters, Grantsville detachment. (TR 472) Trooper Starcher then proceeded to give Mr. Rush his Miranda warnings and then interviewed him for a second time. At the defendant's trial, Trooper Starcher testified that he was very suspicious of the Defendant's answers during this interview. Trooper Starcher also testified that Mr. Rush was not a suspect and could have left at any time. (TR 649-651)

At 6:00 a.m., First Sergeant Dale Fluharty Mirandized and questioned Mr. Rush. (TR 652) It was during this time Mr. Rush was threatened. He was told by Sgt. Fluharty that if he did not cooperate that "he was going to rip his fucking head off." (TR 168-174, 617) After that, Mr. Rush was placed back into Sergeant J.L. Cooper's office until 2:30 p.m. (TR 85) Five hours later, at 2:30 p.m., Mr. Rush was given a lie detector test by Sergeant K.M. Streyle. During the pre-interview session of the lie detector test, Mr. Rush requested counsel, and the lie detector test was halted. Sgt. Streyle told Sgt. Fluharty and Trooper Starcher that Mr. Rush wanted an attorney and the lie detector examination ended. The examination officially ended at 5:00 p.m. (TR 168-174, 620-622) Three

hours later, at 8:00 p.m., Mr. Rush was again Mirandized and interviewed. This time he was questioned by Sgt. Cooper. (TR 74) Sgt. Cooper questioned Mr. Rush for two hours until 10:00 p.m. (TR 94) Sgt. Cooper later stated that "if Sgt Fluharty and Trooper Starcher had told him that Ronnie had asked for a lawyer, then he would have never confronted him about the case." (TR 169-170) Trooper Starcher has denied that Sgt. Streyle informed him and Sgt. Fluharty that Mr. Rush wanted an attorney. (TR 655) Mr. Rush remained in Sgt. Cooper's office from 3:30 a.m. to 10:00 p.m. (TR 85)

At 10:00 p.m., twenty (20) hours after being in police custody, Mr. Rush was fed for the first time. (TR 698) At 11:00, twenty-one (21) hours after being in police custody, Ronnie Rush was finally brought before Magistrate Teresa Robinson. (TR 698)

Mr. Rush was charged with two counts of First Degree Murder in case number 03-JD-8. This case was subsequently transferred to the Circuit Court and adult status. A trial was held in Calhoun County on the blank day of blank, 2004. The jury returned a verdict of guilty to two counts of the lesser-included offenses of Voluntary Manslaughter and guilty to the offense of First Degree Robbery. At sentencing, the Court sentenced the Mr. Rush to forty (40) years in the penitentiary for the offense of Robbery, and two indeterminate sentences of fifteen (15) to forty (40) years in the penitentiary for the two offenses of Voluntary Manslaughter and ran the sentences consecutive to each other.

Mr. Rush made a motion to the Court for a new trial at sentencing, however, that motion was denied. Mr. Rush also made a motion to set aside the verdict on the First Degree Robbery charge. This motion was denied by the Court.

### **III. ASSIGNMENT OF ERROR**

The Petitioner assigns as error the following grounds:

1. The Circuit Court erred by abusing its discretion by denying the Defendant's motion to suppress his out of court statements because the State violated the Prompt Presentment Rule.
2. The Circuit Court erred by abusing its discretion and transferring the juvenile case to adult status.
3. The Circuit Court erred by abusing its discretion by allowing the State to use out of court statements that were coerced from the Defendant, at trial.
4. The Trial Court erred by abusing its discretion by denying the Defendant's motion to set aside the verdict on the issue of aggravated robbery due to insufficient evidence after the trial.
5. The Trial Court erred by abusing its discretion by refusing to transfer the case back to juvenile court when the charges elevating the case to adult status were dismissed at trial.
6. The Trial Court erred by abusing its discretion by not sentencing the Defendant as a juvenile.

#### IV. ARGUMENT

1. **The Court erred by abusing its discretion by denying the Defendant's motion to suppress his out of court statements because the State violated the Prompt Presentment rule.**

In *State of West Virginia v George Anthony W.*, 200 W.Va. 86, 488 S.E.2d 361 (1996), the Supreme Court of West Virginia held that West Virginia Code §49-5-8(d) requires that when a juvenile is taken into custody, he must immediately be taken before a referee, circuit judge, or magistrate, and if there is failure to do so, any confession obtained as a result of the delay will be invalid where it appears that the primary purpose of the delay was to obtain a confession from the juvenile. The statute also provides that the referee, judge, or magistrate shall inform the child of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation shall be made without the presence of a parent or counsel.

Further, the Court held that a juvenile who was sought out and placed in a police cruiser after the police obtained a statement implicating him in the murder and was then taken to the police station was in "custody" and, thus, was entitled under West Virginia Code Section 49-5-8(d) to immediately be taken before a juvenile referee, circuit judge, or magistrate.

In *State v Jones*, 193 W.Va. 378, 456 S.E.2d 459 (1995), the Supreme Court examined the circumstances under which the stop of a person for interrogation by the police was converted into a custodial detention. The Court held that controlling factors in determining a custodial detention were the length, duration, and purpose of the stop; the extent of the questioning; and the location of detention and interrogation. The Court also indicated that limited police investigatory interrogation was allowable when a suspect

was expressly informed that he was not under arrest, that he was not obligated to answer questions, and that he was free to leave.

According to syllabus point 3 of *State v Ellsworth J.R.*, 175 W.Va. 64, 331 S.E.2d 503 (1985), a confession obtained during a delay in presentment is invalid. This is true, even where *Miranda* rights have been given and waived. In this case, the Defendant was brought to the scene of the crime in the early hours of the morning by two police officers. The first questioning of Mr. Rush occurred at the scene of the crime by Trooper Doug Starcher. Trooper Starcher later testified that at the time of this questioning, he was suspicious of the Defendant's answers. Upon leaving the scene of the crime, the officers took the Mr. Rush to the State Police barracks. Mr. Rush was continuously questioned. He was not taken before a Magistrate 11:00 p.m. that evening. Mr. Rush was only fed once while at the barracks and was deprived of sleep.

It is clear, upon these cumulative factors, that Mr. Rush was in custody at the time his statements were given and his rights were violated by the failure of the police to take him promptly before a referee, judge, or Magistrate.

It is clear from a review of the evidence in this case that Mr. Rush could have believed that he was under arrest. The "prompt presentment" rule is invoked when the person, in this case the Defendant, reasonably believed that he was under arrest. Mr. Rush was picked up from his father's home at approximately 2:00 a.m., and taken to the scene of the crime by two police officers. Once he arrived at the scene of the crime, one of these police officers conducted a gun residue test on him. Trooper Starcher then took a statement from the Defendant at 3:30 a.m. Mr. Rush was then taken to the Grantsville

detachment of the State Police, where he remained until 8:00 p.m. that night. From the evidence presented, Mr. Rush could have reasonably believed that he was under arrest.

**2. The Court erred in abusing its discretion by transferring the juvenile case to adult status.**

West Virginia Code § 49-5-10(g) provides,

“The court may, upon consideration of the juvenile’s mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

6. The juvenile, who is at least fourteen years of age, has committed an offense of violence to a person which would be a felony if the juvenile was an adult;

In this case, the Defendant, Ronnie Rush, was sixteen (16) at the time of the alleged incident. By order entitled, “Findings of Fact, Conclusions of Law and Order Granting Motion to Transfer to Criminal Jurisdiction”, filed the 18<sup>th</sup> day of May, 2004, the Court held that Ronnie Rush should be tried as an Adult for the crimes of First Degree Murder. In this Order, the Court held that, “By previous Order, the court found by a preponderance of the evidence that the Ronnie Allen Rush was competent to stand trial. Following the determination that the Juvenile Respondent was competent to stand trial, the Petitioner filed a motion to transfer this action from juvenile jurisdiction to the criminal jurisdiction of this court.”

The Court found that there was probable cause to believe that Mr. Rush had committed the crime of murder, and therefore, transferred the case to adult status without further inquiry into other statutorily required factors, such as Mr. Rush’s mental and

emotional capacity, his education, family background, and other personal factors. In his findings of fact and conclusions of law, the Circuit Judge relied heavily on statements given by Mr. Rush the night of the incident, and throughout the next day.

In *State v George Anthony W.*, 200 W.Va. 86, 488 S.E.2d 361, the Supreme Court of West Virginia held that when the two juveniles were picked up by the police and questioned a lengthy time before being given the opportunity of a hearing, their statements were illegally obtained. More specifically, the Court held, "After examining the record, it is also clear to this Court that the decision to transfer the appellants to the jurisdiction of the circuit court from the jurisdiction of the juvenile court was based upon the confessions. Since the Court believes that the confessions and physical evidence were inadmissible, the decision of the circuit court transferring jurisdiction of the case was based upon improper evidence and must be reversed."

The issues at the heart of the *George Anthony W.* case are on point in this case and the same ruling should be applied.

**3. The Trial Court erred by abusing its discretion by allowing the State to use out of court statements at trial that were coerced from the Defendant.**

In Syllabus point 2 of *State v Sugg*, 193 W.Va. 388, 456 S.E.2d 469 (1995), the Supreme Court held that, "Where neither legal counsel nor the parents are present during interrogation, the greatest care must be taken by the trial court to assure that the statement of the juvenile is voluntary, in the sense not only that it was not coerced or suggested, but that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair."

In this case, Mr. Rush's rights were violated because neither his parents nor his attorney were present during any of his statements. Evidence presented demonstrated that Ronnie Rush's father was notified at some point; however, it was never proven that Mr. Rush, Sr. was given the opportunity to be present during the statements. Nor did Mr. Rush, Sr. ever sign any waiver allowing the police officers to question his son despite his own absence. During a hearing on the 16<sup>th</sup> day of April, 2004, Sgt. Dale Fluharty was asked by the Special Prosecutor, "Did Mr. Rush's parents know that he was at the detachment?" to which Fluharty answered, "I didn't speak to them directly." Then, the Prosecutor asked, "As far as you know.", and Fluharty answered, "It was my understanding that they did."

Mr. Rush did not knowingly and voluntarily waive his rights. The Supreme Court of Appeals of West Virginia has held that "The majority of jurisdictions, including West Virginia, rely on the totality of the circumstances test in deciding whether statements by a juvenile were given voluntarily, knowingly, and intelligently." *State v Laws*, 162 W.Va. 359, 362, 251 S.E.2d 769, 772 (1978).

In *State v Laws*, the Supreme Court recognized several factors that must be examined when determining the voluntariness of a juvenile confession. These factors include:

"1) age of the accused; 2) education of the accused; 3) knowledge of the accused as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and remain silent; 4) whether the accused is held incommunicado or allowed to consult with relatives, friends, or an attorney; 5) whether the accused was interrogated before or after formal charges had been filed; 6) methods used in interrogation; 7) length of interrogations; 8) whether the accused refused to voluntarily give statements on prior occasions; and

9) whether the accused has repudiated an extra judicial statement at a later date.”

Applying these circumstances to the present case, it is clear that Mr. Rush's statements were not voluntary. At the time of the interrogations, Mr. Rush was only sixteen (16) years of age. He is unable to read or write, and subsequent psychological evaluations demonstrated that Mr. Rush has a very low IQ. Mr. Rush was allowed to speak to his father on the telephone, but he did not speak to anyone else on the phone or in person. Nor did anyone attempt to contact him in person while he was at the State Police barracks. Mr. Rush was interrogated several times before formal charges were filed and before he was brought before the Magistrate. His first statement was given at approximately 3:30 a.m., and two subsequent statements were given throughout the early morning hours and into the next afternoon. At no time in between these statements did he return to his home or have any physical contact with anyone other than police officers. Furthermore, there was no evidence that the police officers requested the presence of Mr. Rush's parents at the police barracks while their son was being interrogated.

In this case, evidence demonstrates that Mr. Rush was a suspect in the murders prior to being returned to the scene of the crime. More specifically, Trooper Doug Starcher testified at trial that prior to the 911 phone call from Ronnie Rush, he had heard some information that Mr. Rush was up to something. Furthermore, once Mr. Rush had been escorted to the scene of the crime by two police officers, Trooper Starcher instructed one of the officers, Carl Ballangee, to conduct a gun residue test on the Defendant. This was prior to any statements given by Mr. Rush.

Trooper Starcher further testified at trial that he took the Defendant, Ronnie Rush, to the Grantsville detachment of the State Police upon the request of Trooper Fluharty.

Trooper Jeff Cooper also testified on cross-examination that Ronnie Rush was, in fact, a suspect while he was at the Grantsville detachment. Specifically, defense counsel asked, "Was he a suspect while he was at the Detachment?", and Trooper Cooper replied, "Yes, ma'am." (Tr. of preliminary hearing 03-JD-8, p. 49)

During testimony taken during a hearing dated the 16<sup>th</sup> day of April, 2004, Karl Streyle, an officer with the State Police, testified that during his three hour meeting with the Defendant at the Grantsville State Police detachment, Ronnie Rush said to him, "What Ronnie had told me was that First Sergeant Fluharty told him that if he didn't start talking, Ronnie's exact words were, 'he was going to rip his fucking head off.'" (Tr. 4/16/04, p. 188). Furthermore, Streyle testified that Sgt. Fluharty did not deny these allegations when Streyle questioned about them. This demonstrates that coercion was involved in the statements taken at the Grantsville detachment of the State Police

**4. The Trial Court erred by abusing its discretion by denying the Defendant's motion to set aside the verdict on the issue of aggravated robbery due to insufficient evidence after the trial.**

In this case, the jury rejected the State's charge of First Degree Murder of Warden Groves. The jury found Ronnie Rush guilty of Voluntary Manslaughter. The jury was instructed on the Felony Murder Doctrine but plainly rejected this theory. The jury also found the Defendant guilty of Armed Robbery or Robbery in the First Degree. These charges are inconsistent. Normally an appellate court will not review a claim of inconsistent jury verdicts. *United State v. Powell*, 469 U.S.57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984). However, in *State v. Hall*, 174 W.Va. 599, 328 W.E.2d 206 (1985), the West Virginia Supreme Court of Appeals found (quoting *Powell*):

Nothing in this opinion is intended to decide the proper resolution of a situation where a defendant is convicted of two crimes, where a guilty verdict on one count logically excludes a finding of guilt on the other.

The insufficiency of the Armed Robbery count was not argued at the close of the trial because, if the jury had found First Degree Murder and First Degree Robbery under a Felony Murder theory then the two verdicts are consistent.

However, the jury in reaching a verdict of Voluntary Manslaughter, rejected a Felony Murder theory. It is logical to conclude that the jury found that the Voluntary Manslaughter occurred then the intent to steal took place after the killing. The problem is that any Robbery involves the taking of property from the victim by force or intimidation or fear of injury. First Degree Robbery adds the use of a weapon to cause the injury or fear.

If the victim in this case was already dead (under Voluntary Manslaughter) when Mr. Rush took the property, the victim was in no way able to be intimidated. In other words the larceny was not committed "in the presence of the victim." Robbery retains its common law definition. *State ex rel Vandal v. Adams*, 145 W.Va. 566, 115 S.E.2d 489 (1960), overruled on other grounds, *State v. Manns*, 174 W.Va. 793, 329 S.E. 2d. 865 (1985). Mr. Rush maintains that the evidence under these conditions does not support a First Degree Robbery or a Robbery of any type.

5. **The Trial Court erred by abusing its discretion by refusing to transfer the case back to juvenile court when the charges elevating the case to adult status were dismissed at trial.**

In *State v Robert K. McL.*, 201 W.Va. 317, 496 S.E.2d 887 (1997), the Supreme Court of Appeals held that the circuit court may consider personal factors and to, in its discretion, return a child to juvenile jurisdiction. More specifically, the Court held, "Put another way, we believe that a statutory scheme which entirely divests and deprives a circuit court of its ability to meaningfully consider and weigh personal factors going to the suitability and amenability of a juvenile for rehabilitative purposes of the court's juvenile jurisdiction, and which ascribes such responsibilities to the standardless and unreviewable discretion of a prosecuting attorney, might violate the juvenile's constitutional guarantees of equal protection and due process of law."

Further, in the *State v Robert McL.*, the Supreme Court of Appeals of West Virginia cites *Hughes v State*, 653 A.2d 241 (Del. 1994), to demonstrate a similar view of the role of courts the juvenile/adult jurisdiction determination. In *Hughes*, the Supreme Court of Delaware found a Delaware statute unconstitutional that precluded all judicial review of the appropriateness of adult jurisdiction for a minor charged with serious offenses. Specifically, the Delaware Court held that a "reverse amenability" hearing was constitutionally required to allow a juvenile to present evidence tending to show that he or she is amenable to the rehabilitative functions of juvenile jurisdiction.

The Circuit Court Judge in this case abused his discretion by not considering both personal and individual factors of Mr. Rush that could show he was amenable to the rehabilitative functions of juvenile jurisdiction. The Court also failed to consider Mr.

Rush's age, mental capacity, educational background, family situation, and circumstances surrounding the deaths of the victims in this case.

Secondly, the First Degree Murder charges were the basis of the transfer from juvenile to adult status. The jury rejected the First Degree charges and found the Defendant guilty of two counts of Voluntary Manslaughter. Voluntary Manslaughter charges would not have been proper charges upon which to transfer the case to adult status. Therefore Juvenile's Due Process rights were violated. If Mr. Rush had been properly charged with the crimes upon which he was convicted, the transfer would have never occurred and Mr. Rush would have remained under juvenile jurisdiction.

**6. The Trial Court erred by abusing its discretion by not sentencing the Defendant as a juvenile.**

In *United States v Mason*, 284 F.3d 555 (4<sup>th</sup> Cir. 2002), the United States District Court for the Southern District of West Virginia held that, "A juvenile convicted under adult jurisdiction in West Virginia is not automatically sentenced as an adult."

Further, the Court held, "We recognized this statutory provision in *State v Highland*, 174 W.Va. 525, 528, 327 S.E.2d 703, 706 (1985), stating that:

[T]he legislature has provided at least three alternatives to a sentencing court for the proper disposition of [a child who has been convicted of an offense under the adult jurisdiction of the circuit court] . . . the court may, 'in lieu of sentencing such person as an adult,' make its disposition under the section 49-5-13 provisions for treatment of juveniles adjudged delinquent.

Thus, *W.Va. Code 49-5-13* [1995] explicitly recognizes a circuit court's continuing ability to return a child to its juvenile jurisdiction [FN6] - - and provides that the circuit court, after the adjudicatory process of the court's adult

jurisdiction is completed, may determine that a juvenile should be returned to the juvenile jurisdiction of the court. While the statute does not speak to what matters may be considered by the court in making such a determination, we believe that, consistent with our cases, the court is empowered to consider a full range of personal factors in making such a determination.

The Court further held, "In short, under West Virginia Code Section 49-5-13, a juvenile convicted in adult court may, in the court's discretion, be sentenced as a juvenile. Accordingly, the Circuit Court Judge abused his discretion by not sentencing the Defendant as a juvenile in this case. There is no indication that the Circuit Court Judge considered any personal factors prior to sentencing the Defendant.

During sentencing, the Circuit Court Judge addressed Mr. Rush's request to be sentenced as a juvenile by stating that "The Court rejects it based on the fact that the seriousness of the crimes would be unduly depreciated by this sort of treatment of the defendant." The Circuit Court Judge went on to say that, "But more importantly, I'm rejecting it because Ronnie Rush has refused to accept any responsibility whatsoever for his crime. . . . And absence of remorse and absence of the acceptance of responsibility, I think, is the first step toward meaningful rehabilitation and meaningful success of the youthful offender program, without which, it seems to me, that the disposition would be doomed to failure. So that is rejected." (Tr. Sentencing p. 48)

There is no evidence that the Judge took into consideration any other personal factors in making the decision, such as Mr. Rush's mental capacity, to which evidence had been presented demonstrating that he was borderline mentally retarded. There was no evidence that the Court took into consideration the Defendant's familial background, which also appeared to be very troublesome. The Court also only made a cursory

investigation into the possibility of rehabilitation of the Defendant. Therefore, Court did not meet its obligation to consider a full range of personal factors when deciding whether a juvenile should be sentenced as a juvenile or an adult.

**PRAYER FOR RELIEF**

WHEREFORE, the Petitioner respectfully prays that this Honorable Court reverse the decisions of the Calhoun County Circuit Court and reverse the conviction. If reversal is not possible, the Appellant asks this Court to reverse and remand this case for a new trial and further prays for such relief as this Honorable Court deems appropriate.

Dated: April 20, 2006

Respectfully submitted,

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Appellant,  
By Counsel.



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NO. 33035

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**STATE OF WEST VIRGINIA,**

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**APPEAL NO. 33035  
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**FROM THE CIRCUIT COURT OF  
CALHOUN COUNTY, WEST VIRGINIA  
CASE NO. 03-JD-8  
CASE NO. 04-F-26**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of April, 2006 I served the foregoing "Appellant's Brief" upon Counsel for the State of West Virginia via United States Mail to the individual listed below:

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