

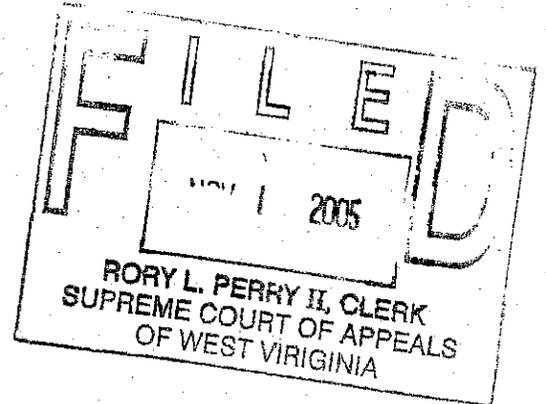
052389

IN THE SUPREME COURT OF APPEALS, IN THE STATE OF WEST VIRGINIA

LILLIE MAE TRAIL
Petitioner in state retention.

vs.

JAMES IELAPI
Warden, Pruntytown Correctional Center
Respondent.



RE: criminal case NO. 97-F-28
Civil Action NO. 2:05-0846

WRIT OF PROHIBITION BY CUMULATIVE CAUSE, FOR THE REQUIRMENT
OF EXTRAORDINARY REMEDY FAVORABLE TO JUSTICE.

AUTHORITIES RELIED UPON

- (1) Lawyer Disciplinary Board v. Cecelia G. Jarrell at cite as 523 S.E.2d. 558, 560 (W.VA. 1999)
- (2) SKINNER VS. DOSTERT at cite as 278, S.E.2d., 624 (W.VA. 1981) Judicial code of Ethics, Canon 3.
- (3) JUDITH R. VS. HEY at cite as 185 W.VA. 117, 405 S.E.2d. 447 (1990)
- (4) Const. Art 3, § 17; U.S.C.A. Const. Amend. 14
- (5) EWING VS. HAAS, at cite as 232 VA. 215, 111 S.E. (1922).
- (6) PEACHER VS. SENCINDIVER, at cite as, 160 W.VA. 134, 233 S.E.2d., 425 (1977).
- (7) HANLEY VS. HEY, at cite as, 163 W.VA., 103, 255 S.E.2d. 354 (1979).
- (8) BROADY VS. COM., 16 VA. App. 281, 429, S.E.2d. 468 (1993).
- (9) see state EX REL. CONFORTI VS. WILSON ai cite as 506 S.E.2d. 58 (W.VA. 1998)
- (10) PAIGE VS. CANADY aicite as 475 S.E.2d. 154 (W.VA. 1996).
- (11) DUFFIELD VS. CHARLESRON AREA MEDICAL Inc., at cite as- 503 F.2d. 512 (4th. Cir. 1974).

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COMES NOW, LILLIE MAE TRAIL petitioner Pro Se, and submits to this HIGHLY AND MOST HONORABLE COURT, by the imposition of this said Writ of Prohibition by Cumulative Cause, for the Requirement of Extraordinary Remedy Favorable to Justice, and PRAYS this Court to take action, and Grant the relief sought by the petitioner Pro Se, on the basis of the following argumentation.

The petitioner was convicted of first-degree murder in a jury trial held in October 1997, in the circuit court of Lincoln county, West Virginia, the Honorable Jay M. Hoke presiding.

The petitioner was initially charged with first-degree murder, by the aiding and abetting one Gregory Whittington (her nephew), in the shooting of her husband of thirtysix (36) years, Lawrence Chester Trail, in an indictment issued in the January 1995 term of the court by a grand jury sitting in Lincoln county.

This indictment was dismissed upon an order dated of October 7 1996, by the presiding circuit Judge, on the basis of the prosecutions failure to comply with numerous orders from the court, in regards to the relinquishment of any of the discovery material to the defense for over sixteen (16) months.

A second indictment on the same charge was subsequently obtained, whereupon this indictment was also dismissed on the grounds that the same prosecutor had fraudulently withheld informations from the grand jury regarding the credibility of the only and sole witness against the petitioner in this case.

A third indictment was then brought by the grand jury in Lincoln county, again alleging the petitioner had committed first-degree murder, and it was at this point the petitioner was tried before a jury in the circuit court of Lincoln county, with the Honorable Judge Hoke presiding, on October 6-23, 1997. On October 27, 1997, the petitioner was sentenced to life in prison with NO mercy.

The petitioner seeks prohibition from the Lincoln county Circuit court by the contention, that on two (2) separate occasions of three (3) separate indictments for the same initial charge, the presiding circuit Judge dismissed two (2) of the initial indictments WITHOUT PREJUDICE, arguing numerous problems associated with the under-staffing of the administrative and clerical personal, there at the courthouse. According to the rhetoric in both dismissal Orders issued, these alleged problems were to include that of the prosecutions office as well.

It is now apparent, that the conditions to the circumstances alleged then by the presiding circuit Judge, are now by far more complex, as to the degree of obscurity associated with the (participation) in preference, to the Prosecution against the petitioner by the presiding circuit Judge, and in this indicating in propensity the perpetual ability to continually display a degree of PREJUDICE yielding to the petitioner, at the convenience of the court.

The petitioner contends, that in a decision prescribed in a disciplinary hearing in (1999), involving the first prosecutor in this case, this Superior Court to the circuit court, and the Hearing Panel Subcommittee of the West Virginia Lawyer Disciplinary Board established and ultimately determined, that the presiding circuit Judge in this case, from the commencement of the proceedings, "felt compelled to try to do the prosecutors job for her", in lieu of the prosecutors inexperience to perform, and uphold the judicial function within the jurisdiction of the prosecuting attorney's office.
see Lawyer Disciplinary Board VS. Cecelia G. Jarrell at cite- 523 S.E. 2d. 558,560 (W. VA. 1999)

The petitioner contends, that in this matter, the elements of jurisdiction and legitimate powers are indeed a point of convergence, in that the trial court comprised both of these issues in its determination upon its discretion, by failing to put on notice, of its own assistance and participation in the prosecution of the petitioner to any degree what so ever, in both of the dismissal orders adjudicated at the time.

It is the contention of the petitioner, that the court supposedly, is an independent Judicial office, and that in our adversarial system of Jurisprudence, it is the Judge who is NOT a party, but is the Referee. see SKINNER VS. DOSTERT at cite 278 S.E.2d., 624 (W.VA. 1981). Judicial code of ethics, canon 3.

That for a Judge to participate as an adversary denies to the people one fundamental element of Due Process; the right to an unbiased tribunal. Const. Art 3 § 17; U.S.C.A. Const. Amend. 14.

The petitioner contends, that on February 1, 1995, the prosecuting attorney for the state Ms. Jarrell, instructed and directed a Ms. Kim McCoy, her secretary, to contact the presiding circuit Judge, in a capital murder case, to inquire of a course of action, that could possibly be taken as to a true question of law against the petitioner.

According to the testimony before the West Virginia Hearing Panel Subcommittee of the Lawyer Disciplinary Board, the presiding circuit Judge did in fact provide recommendations and advice to the prosecution team, that inevitably became revealed to the prosecutor, who was against the petitioner for over a year and a half in this case.

see DISCIPLINARY BD. VS. JARRELL, at cite as 523 S.E.2d. 552 (W.VA. 1999).

The petitioner contends, that when this first prosecutor in this case was in absolute need to recuse herself from the entire matter of this case, due to enormous improprieties associated with ethical measures of procedure, the court erred in its accuracy by NOT granting such action to the prosecutor, when it was apparent to the court at the time, that a degree of usurpation did in fact exist, but chose NOT to employ the disqualification as requested by the prosecutor, in lieu of the courts own participation in the prosecution of the petitioner. This brings into question the element of Jurisdiction, in that the court was in acknowledgment at the time, of the perplexities circumferential to its own involvement in the prosecution against the petitioner, whereby demonstrating a degree of enormous bias and prejudice reversionally to the petitioner. see JUDITH R. VS. HEY, 185 W.VA.117, 405 S.E.2d 447 (1990).

The petitioner further contends, that the issue of bias became personal, and NOT judicial from the presiding circuit Judge in this case, when the trial Judge held to his own imminence, by arbitrarily failing to recuse himself from the entire matter, at the time of the second dismissal order, for his participation, and aid of any degree to counsel for the prosecution against the petitioner. Whereupon the condition in question now, becomes that of Legitimate powers by which is NOT a simple abuse of discretion.

see EWING VS. HAAS, 132 VA. 215, 111 S.E. (1922)

see PEACHER VS. SENCINDIVER, 160 W.VA. 134, 233 S.E.2d.425 (1977) see HANLEY VS. HEY 163 W.VA. 103, 255 S.E.2d.354 (1979)

The petitioner contends this to be a highly relevant issue, in lieu of the informations known at the time by the presiding circuit Judge, in that the court was engaged in the constructions to any degree, of the obligatory duties outside its own jurisdiction, and over the boundaries into the jurisdiction of the prosecutions judicial function, That the issue of legitimate powers is brought into light by reason of the presiding circuit Judge arbitrarily failing to recuse himself, at the time of the second dismissal order in this said case.

It is the expectation of the petitioner, that a trial Judge should give consideration to the Canons of Judicial conduct, which provide that a Judge must disqualify himself in any proceeding in which his impartiality MIGHT be questioned. see BROADY VS. COM., 16 VA. App. 281, 429 S.E.2d. 468 (1993).

Whereupon it is by cause of both jurisdiction and legitimate powers, that the petitioner has been damaged and prejudiced by the inferior court of Lincoln county, and Prays this MOST HONORABLE court to restrain any further action of any post conviction matters from the lower court. see, state EX REL. CONFORTI VS. WILSON at cite as 506 S.E.2d. 58 (W.VA. 1998).

The petitioner contends, in lieu of the characterizations of the issues in this matter, the prosecution became captured by the court throughout the entire course of the proceedings, and the potentiality to indicate the extension of these circumstances do in fact still exist.

The petitioner seeks to restrain the trial court in this matter, from any abuse of its legitimate powers, rather than to challenge its jurisdiction. Moreover, the petitioner will Pray this MOST HONORABLE court to review the particular facts,

as so stated herein, to determine an adequate remedy favorable to justice, and make available by extraordinary cause to issue the prohibition to the lower tribunal, as the sought relief by the petitioner pro se.
see PAIGE VS. CANADY at cite as 475 S.E.2d. 154 (W.VA. 1996).

Suggestively, the petitioner takes opportunity to bring to remembrance the intense investigation being conducted, and the arrest of the Lincoln county circuit clerk, by the Federal Government, that suggest such frail conditions may cause hindrance to the ability of the petitioner to seek a timely remedy to the matter of Habeas Corpus relief sought in this case.

Nevertheless, these extraordinary circumstances stated herein, have been kept in secrecy from the petitioner by all those concerned in the matter, to include former counsel for the petitioner until very recently, whereby cause, the petitioner came upon this information by surprise of her own investigation into the complete matter. It is by this reason, of the untimely introduction of these said issues, whereupon the petitioner will PRAY this HIGHLY AND MOST HONORABLE COURT to take into consideration in its examination in approbation to this matter, and NOT egress by the disqualification to its reasoning. see DUFFIELD VS. CHARLESTON AREA MEDICAL Inc. 503 F.2d. 512 (4th. Cir. 1974).

WHEREFORE AND SINCE, the petitioner is hereby remediless,
and by the means of this said WRIT OF PROHIBITION BY CUMULATIVE CAUSE, FOR THE REQUIRMENT OF EXTRAORDINARY REMEDY FAVORABLE TO JUSTICE, she Humbly Prays, in supplication of this matter before this HONORABLE COURT, to grant the relief sought by the petitioner stated herein, to this matter.

The petitioner respectfully Prays any other relief this court so deems Just and Proper.

Respectfully Submitted


LILLIE MAE TRAIL PRO SE.

CERTIFICATE OF SERVICE

I, LILLIE MAE TRAIL, petitioner Pro Se stated herein, now in the custody of the state of West Virginia, do hereby certify that I have served a true and exact copy of the foregoing petition FOR WRIT OF PROHIBITION BY CUMULATIVE CAUSE, FOR THE REQUIREMENT OF EXTRAORDINARY REMEDY FAVORABLE TO JUSTICE, upon the following by mailing a copy in the U.S. Postal Service on this the 31st day of OCTOBER 2005.

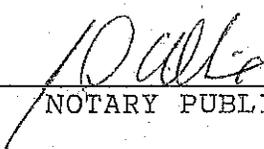
THE SUPREME COURT OF APPEALS
STATE CAPITOL ROOM NO. E-317
1900, KANAWHA BLVD. EAST
CHARLESTON, W.VA. 25305.

LINCOLN COUNTY CIRCUIT COURT
OFFICE OF THE CLERK
HAMLIN W. VA. 25523

LINCOLN COUNTY PROSECUTING ATTORNEY
LINCOLN COUNTY COURTHOUSE
HAMLIN, W. VA. 25523


LILLIE MAE TRAIL Pro Se.

IN THE STATE OF WEST VIRGINIA, COUNTY OF TAYLOR, THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 31st DAY OF OCTOBER 2005 BY LILLIE MAE TRAIL
MY COMMISSION EXPIRES 7/4/11


NOTARY PUBLIC

