

33203

IN THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

STATE, EX. REL, STEPHANIE SUE GIBSON

PETITIONER,

vs.

CASE No. BELOW: 05-F-80

THE HONORABLE JOHN S. HRKO  
WYOMING COUNTY CIRCUIT JUDGE,  
AND G. TODD HOUCK, PROSECUTING ATTORNEY  
FOR WYOMING COUNTY, WEST VIRGINIA

RESPONDENTS.

PETITION FOR WRIT OF PROHIBITION TO ENFORCE PLEA AGREEMENT  
AND PROHIBIT A TRIAL OF PETITIONER

NOW COMES PETITIONER, Stephanie Sue Gibson, by and through counsel, Wilbert A. Payne, and petitions this Honorable Court for issuance of a Writ of Prohibition to Order the Circuit Judge of Wyoming County, John S. Hrko and the Prosecuting Attorney of Wyoming County, G. Todd Houck, proceeding with Indictment Number 05-F-80 below and to enforce the plea agreement entered into by the Defendant and the State of West Virginia by its Prosecuting Attorney, G. Todd Houck. This matter is set for trial on October 10, 2006 before the said Honorable John S. Hrko. The Petitioner is currently confined in the Southern Regional Jail in Beaver, West Virginia after being denied bond by the said Judge as a flight risk by Order filed on September 21, 2006.

On August 21, 2006, the Co-Defendant, Billy Gibson was set to

begin his trial in the Circuit Court of Wyoming County on the charges contained in Indictment 05-F-91. The Defendant, Billy Gibson, was indicted on the charges of Malicious Wounding; Burglary and Aggravated Robbery. The Petitioner herein is a Co-Defendant and the wife of Defendant, Billy Gibson, and is charged with accessory in the commission of the offenses of Burglary; Aggravated Robbery and Malicious Wounding. The State and Defendant, Stephanie Sue Gibson's, Counsel agreed for her to testify against Billy Gibson in exchange for immunity from prosecution of her on Indictment Number 05-F-80. The Prosecutor informed this counsel that Billy Gibson was to wave any spousal privilege at trial. The State of West Virginia subpoenaed the Defendant/Petitioner, Stephanie Sue Gibson, to appear and testify for the State against the Defendant, Billy Gibson on August 21, 2006 pursuant to the agreement. On that date the Defendant, Stephanie Sue Gibson, and this Counsel met with the State Prosecuting Attorney, G. Todd Houck and were informed again that he was granting Mrs. Gibson immunity in exchange for her testimony. During this meeting which took place during a break in jury selection for the trial of Billy Gibson the prosecutor reviewed her anticipated testimony. Jury selection thereafter was suspended until August 23, 2006 when suddenly the Defendant, Billy Gibson, decided to enter a plea to count three of the Indictment with count one and two being dismissed.

It is the position of the Defendant, Stephanie Sue Gibson, that Billy Gibson sudden willingness to enter into a plea agreement

was motivated in large part by Stephanie Sue Gibson's anticipated testimony. Simply stated, it is the Petitioner's belief that the State used the threat of Stephanie Sue Gibsons' pending testimony to force a plea from the Defendant, Billy Gibson.

Upon securing the plea from Billy Gibson, the State has reneged on its promise of immunity, refused to dismiss the charges against the Petitioner and are preparing to try her on the full indictment, to the significant detriment of this Petitioner.

Your Petitioner is entitled to a dismissal of the case below due to the standards set forth in **State v. Wayne** 162 W.Va. 41; 245 S.E.2d 838 Syllabus Point 1 wherein the Court held "[s]pecific performance of a plea bargain is an available remedy only when the party seeking it demonstrates that he has relied on the agreement to his detriment and cannot be restored to the position he held before the agreement." The lower Court in this case failed to enforce the plea bargain agreement much to the detriment of Mrs. Gibson and thus the Petitioner's case requires an extraordinary remedy.

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STATEMENT OF THE CASE

Your Petitioner was charged with accessory in the commission of the offenses of Burglary; Aggravated Robbery and Malicious Wounding as a principal when her husband, Billy Gibson, burglarized the home of Lancaster Webster on September 2, 2005 and severely beat and robbed him. The state alleged that she was the driver and look out for Billy Gibson in the commission of these crimes. On or about September 9, 2005, the Petitioner was arrested and gave a statement implicating Billy Gibson as the perpetrator of the crime based on his admissions to her. The Petitioner in her statement absolved herself of the crime and gave an alibi. The Petitioner's bond was set at \$250,000.00 and she was remanded to jail.

On September 29, 2005, the Petitioner's Preliminary hearing was held and probable cause was found. On October 3, 2005, an indictment was returned against the Petitioner. On or about October

12, 2005 the state moved to revoke her bond. On October 13, 2005, the Motion to revoke her bond was granted by the Honorable John S. Hrko. Petitioners' trial was set for November 28, 2005 and continued on motion of the Petitioner's counsel.

On January 10, 2006, the Petitioner pled guilty to some misdemeanor charges unrelated to the indictment and was sentenced to six months in jail. On January 20, 2006, the Petitioner was granted bond in the amount of \$125,000.00 upon her motion.

The trial of the Petitioner was set to begin on June 12, 2006. Prior to the start of Petitioner's trial, the State agreed to set bond for Petitioner upon the condition that she enter Pine Haven Homeless Shelter and take drug counseling, drug screening and to inform counsel if she leaves the shelter of her new residence immediately. This was done as a result of Petitioner's trial being set prior to the trial of Billy Gibson.

Sometime in the month of July 2006, the Petitioner was dismissed from Pine Haven and failed to inform this counsel of her new location. She did stay in telephonic communication with counsel. Based upon the Petitioner's failure to notify counsel of her residence, the State issued an arrest warrant. On or about August 11, 2006, the Petitioner voluntarily returned to jail. Billy Gibson's trial was set for August 21, 2006 and the State Attorney called Petitioner's Counsel with his intention to offer full immunity in exchange for her testimony against Billy Gibson.

On August 21, 2006, the jury selection in Billy Gibson's trial began. On August 23, 2006, Billy Gibson entered into a plea agreement wherein he pled guilty to count three of malicious wounding and the remaining counts of the indictments would be dismissed. On the same day Billy Gibson was sentenced to two (2) years to ten (10) years. The Petitioner was remanded to jail.

On September 8, 2006, Petitioner appeared in Court for a status hearing. Petitioner, by counsel demanded that the State honor its promise of immunity and dismiss the indictment, which the State refused. The Petitioner then requested a bond which was denied pending pretrial motions which were set for September 22, 2006. A trial date was set for October 10, 2006. On September 22, 2006, the Petitioner requested that the Honorable John S. Hrko enforce the plea bargain between the State and this Petitioner. The request was denied and the Petitioner was remanded to jail awaiting the trial of this matter on October 10, 2006.

#### JURISDICTION

This petition is presented pursuant to West Virginia Code §53-1-1 (1923) (Repl. Vol. 2000)

#### Issue

Whether the Circuit Court committed error by failing to enforce the Plea Bargain Agreement between the Petitioner and the

State of West Virginia granting the Defendant Immunity from Prosecution in Indictment 05-F-80 even though she didn't testify due to the sudden plea of Billy Gibson.

#### ARGUMENT

The appropriate legal standards to be applied in this case are stated in *State v. Wayne* 162 W.Va. 41; 245 S.E.2d 838 (1978) "While we recognize a plea bargain agreement may be specifically enforced in some instances, *Brooks v. Narick*, W. Va., 243 S.E.2d 841 (1978), that remedy is not available unless the party seeking specific performance demonstrates he has relied on the agreement to his detriment and cannot be restored to the position he held before the agreement. However, mere negotiation cannot be transformed into a consummated agreement merely by an exercise of the defendant's imagination. While we do not require that a plea bargain agreement be written, although that is the far better course, we do require substantial evidence that the bargain was, in fact, a consummated agreement, and not merely a discussion."

In the instant case, the Petitioner, Stephanie Sue Gibson, was to testify against her Co-Defendant under an Immunity Agreement and was to be released from jail after her testimony. The Defendant, Stephanie, was subpoenaed by the Prosecuting Attorney to appear for the sole purpose of testifying in the trial of the co-defendant on both the 21<sup>st</sup> and 23<sup>rd</sup> of August 2006. However, prior

to testifying against the co-defendant he entered a plea. Since the Defendant, Billy Gibson, pled guilty as a result of the pending testimony of Petitioner, Stephanie Sue Gibson, the State of West Virginia has refused to complete the plea bargaining agreement with the Defendant by releasing her from jail and dismissing the charges against her.

It is clear from the facts and circumstances including the actions of the State that there was an agreement and not merely a discussion to enter into a plea. It is also clear that the Petitioner relied on this agreement by appearing and discussing with the Prosecuting Attorney her testimony in reliance that she was going to be released and not tried on her indictment.

The Petitioner was not given the opportunity to testify because Billy Gibson entered a sudden plea at the beginning of his trial. The Petitioner is currently in jail awaiting trial and cannot possibly be placed in the same position as she was waiting to testify against Billy Gibson on behalf of the Prosecutor.

In *Brooks v. Narick*, W. Va., 243 S.E.2d 841 (1978) the Court held "A defendant cannot compel performance of a plea bargain agreement unless he enters a plea of guilty or otherwise acts to his substantial detriment in reliance on the agreement." In the case at hand the Petitioner in reliance on the agreement met with the Prosecutor and discussed in detail the circumstances surrounding the crime and her involvement or lack of involvement in

the crime all to her substantial detriment. The State informed the Defendant, Billy Gibson, that the Petitioner was present at his trial on August 21, 2006 to testify against him. The Petitioner gave the Prosecutor a witness discovered by her defense team that would substantially incriminate the Defendant, Billy Gibson, and would have provided her an alibi witness. Even with these efforts the State is persisting in its desire to go forward to prosecute this Petitioner. In reality if this matter was to be tried, she could receive more time than the principal in this crime, Billy Gibson, much to her detriment.

It cannot be argued that testifying against one's spouse is a positive experience. To the contrary, the difficult decision to cooperate fully with the Prosecutor, will forever alter the relationship between the Petitioner and her spouse. The mere fact that the Petitioner, did not render the testimony does not negate the obvious detriment to her of giving the statement and appearing in Court to face her spouse and to offer incriminating evidence against him. Your Petitioner, Stephanie Sue Gibson, acted to her detriment in reliance on the State's guarantee of immunity. The mere fact that they were able to benefit from the anticipated testimony in securing a plea should not divest Mrs. Gibson being punished twice for her cooperation and should therefore not be allowed.

Accordingly, this Petitioner implores this Honorable Court to

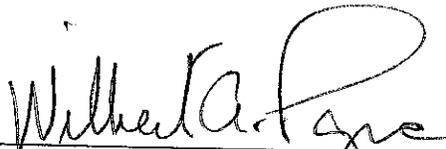
issue a Writ of Prohibition against the Wyoming Circuit Judge and the Prosecuting Attorney from trying her on Indictment 05-F-80 and enforce the agreement entered into by the State and this Petitioner thereby releasing her from jail.

**RELIEF SOUGHT**

Wherefore, Petitioner prays that her Petition for Writ of Prohibition be accepted, that this Honorable Court review the record below and enter a writ prohibiting the Respondents, from trying the Petitioner on Indictment 05-F-80 on October 10, 2006.

Respectfully Submitted by  
Stephanie Gibson

By Counsel

  
\_\_\_\_\_  
Wilbert A. Payne, # 2843  
Attorney at Law  
340 South Fayette Street  
Beckley, WV 25801

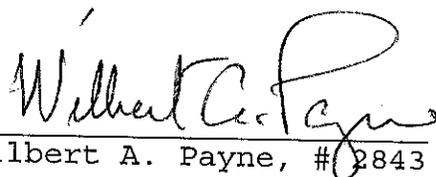
**CERTIFICATE OF SERVICE**

I certify that I have served the attached Petition for Prohibition upon the following persons below by delivering a true copy thereof by First Class Mail, postage prepaid this the Day of September 2006.

The Honorable John S. Hrko  
Wyoming County Courthouse  
P.O. Box 581  
Pineville, West Virginia 24874

G. Todd Houck  
Prosecuting Attorney For Wyoming County  
P.O. Box 462  
Pineville, West Virginia 24874

Honorable Darrell McGraw  
Office of the Attorney General  
West Virginia State Capitol  
Building 1, Room 26-E  
Charleston, WV 25305



Wilbert A. Payne, #2843  
Attorney at Law  
340 South Fayette Street  
Beckley, WV 25801

List of Exhibits

Order of September 8, 2006

# Exhibit

**IN THE CIRCUIT COURT OF WYOMING COUNTY  
WEST VIRGINIA**

**STATE OF WEST VIRGINIA**

**VS**

**CASE NO. 05-F-80**

**STEPHANIE GIBSON,**

**DEFENDANT.**

**ORDER**

This 8th day of September, 2006 came the State of West Virginia by its Prosecuting Attorney, G. Todd Houck, the defendant, Stephanie Gibson, in person and by counsel, Wilbert Payne, pursuant to a hearing having been scheduled for Status Hearing in this matter.

Counsel for defendant moved the Court to reduce bond in this matter. State objected to said motion.

After argument of counsel and due consideration of the Court, it is hereby **ORDERED**, Motion for Bond Reduction is hereby **DENIED** due to defendant being a flight risk. The defendant is remanded to the Southern Regional Jail pending trial in this matter.

It is further **ORDERED**, a hearing will be scheduled on  
September 22, 2006 at 1:00 p.m. for Pre-Trial Motions. Trial in this  
matter will be set for October 10, 2006 at 9:00 a.m. Objections by  
Counsel for defendant are hereby noted.

DATE: SEP 21 2006

ENTER:

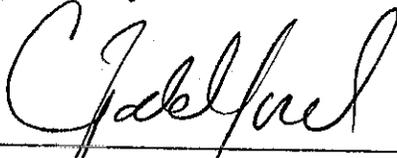
  
\_\_\_\_\_  
**JUDGE**

A TRUE COPY, ATTEST.  
DAVID "BUGS" STOVER, CLERK

This the 21 day of Sept, 2006

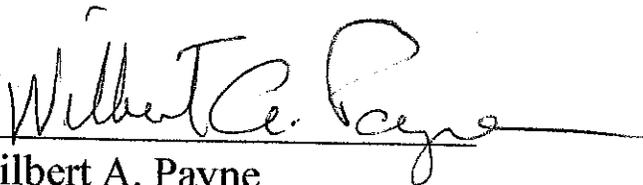
By: D. McNeill  
Deputy.

Prepared by:



G. Todd Houck  
Prosecuting Attorney

Read and Approved by:



Wilbert A. Payne  
Counsel for Defendant

D:\My Files\Home Conf. Rev\order denying bond reduction.wpd