

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

2006 DEC 28 PM 2:36

82

STATE OF WEST VIRGINIA,

DOHALE WRIGHT, CLERK  
PUTNAM COUNTY CIRCUIT COURT

v.

///

Indictment No. 29, Case No. 05-F-126  
(N. Edward Eagloski, II, Judge)

JOSHUA C. WEARS.

**SENTENCING ORDER**

On the 21<sup>st</sup> day of December, 2006 came the defendant, Joshua C. Wears, in person and by Thomas H. Peyton, his counsel. Came also the State of West Virginia by Larry Frye, Assistant Prosecuting Attorney for Putnam County, West Virginia; Brenda Shrader, Probation Officer for Putnam County, West Virginia; and Kathy J. Davis, Official Court Reporter, who made a record of the proceedings had herein. All parties were present for a hearing for the acceptance of the defendant prior plea and a sentencing hearing in the above-styled felony matter.

Whereupon, the Court noted receipt of the Pre-sentence Investigation Report prepared by the Putnam County Probation Department pursuant to *W. Va. Code §62-12-7*. The Court then inquired of counsel for the defendant pursuant to Rule 32(c)(3)(A) of the West Virginia Rules of Criminal Procedure whether he had received and reviewed the Pre-sentence Investigation Report, and whether he had reviewed the Pre-sentence Investigation Report with the defendant, to which counsel responded in the affirmative. The Court then inquired of counsel for the defendant pursuant to Rule 43.01 of the West Virginia Trial Court Rules and Rule 32 of the West Virginia Rules of Criminal Procedure whether there were any objections to said report, to which counsel responded in the negative.

Whereupon, the Court then informed the parties that the Court does hereby ACCEPT the defendant plea of to the felony offense of Sexual Assault in the Third Degree as Contained in Count Three (3) of Indictment No. 29 of the above-styled felony Indictment tendered unto the Court on the 30<sup>th</sup> day of October, 2006.

The Court then afforded counsel for the defendant an opportunity to speak on behalf of the defendant pursuant to Rule 32(c)(3)(B) of the Rules of Criminal Procedure, and counsel for the defendant moved that the defendant be placed on home confinement.

The Court then addressed the defendant personally to determine whether the defendant desired to make a statement and to present any information in mitigation of sentence pursuant to Rule 32(c)(3)(C) of the Rules of Criminal Procedure.

The Court then inquired of counsel for the State an opportunity to address the Court prior to the imposition of sentence pursuant to Rule 32(c)(3)(D).

Nothing further being offered in delay of judgment following the defendant's conviction of the felony offense of Sexual Assault in the Third Degree as contained in Count Three (3) of the above-styled felony indictment, it was considered and ORDERED by the Court that the defendant, Joshua C. Wears, be confined in the Penitentiary of this State at Mount Olive, or such other facility as the Commissioner of Corrections may designate, for a term of not less than one (1) year nor more than five (5) years. It was further ORDERED that the defendant shall receive credit for time served on said sentence in the amount of Two Hundred Sixteen (216) days in connection with the above-styled matter. The Court then noted the objection of the defendant as to the amount of credit for time served.

**Count Three (3)**

**Sexual Assault in the Third Degree**

Conviction Date: December 21, 2006  
Method of Conviction: Plea of Guilty  
Date of Sentencing: December 21, 2006  
Sentence: NLT 1 NMT 5 years in the State Penitentiary  
Credit for time served: Two Hundred Sixteen (216) days  
Effective sentencing date: May 20, 2006

It was further ORDERED that the defendant shall be responsible for the payment of any cost of medical, psychological or psychiatric treatment of the victim, B.D., pursuant to *W.Va. Code* §61-8B-13.

It was further ORDERED that upon the defendant's release from incarceration in connection with the above-styled matter, that the defendant shall be placed on supervised release for a period of ten (10) years. The terms are set forth in a separate order by this Court.

It was further ORDERED that the defendant shall pay the amount of expense associated with his court appointed attorney, or up to One Thousand Dollars (\$1,000.00), whichever is less. It was further ORDERED that the costs of his court appointed attorney shall be taxed a costs in this matter. It was further ORDERED that the defendant shall pay the costs of these proceedings as assessed by the Clerk of this Court, and the State shall have judgment for said costs. together with any applicable statutory interest, from December 21, 2006.

It was further ORDERED that the defendant shall have no contact with the victim, B.D., or with his co-defendant, Lonzo E. Smith. It was further ORDERED that the defendant shall undergo testing for HIV, and the results of said testing shall be sent to the Court for filing with the Clerk of the Court. It was further ORDERED that counsel for the State shall be informed of the results of the HIV testing so the victim may be contacted and informed of the results.

Whereupon, the Court informed the defendant of his right to appeal to the West Virginia Supreme Court of Appeals the findings and rulings of this Court.

It was further ORDERED that a copy of this Order be sent to the following individuals or entities. It was further ORDERED that any party with an objection to this Order shall contact the Court within five (5) judicial days of receipt of this Order.

Thomas H. Peyton, Esquire  
PEYTON LAW OFFICE  
2801 First Avenue  
Nitro, West Virginia 25143

Brenda Sharder  
Probation Officer for Putnam County  
Putnam County Probation Department  
Putnam County Judicial Building  
Second Floor  
3389 Winfield Road  
Winfield, West Virginia 25213

Western Regional Jail  
One O'Hanlon Place  
Barboursville, West Virginia 25504

Department of Corrections  
112 California Avenue  
Room 300  
Charleston, West Virginia 25305

The Office of the Prosecuting Attorney  
Putnam County Judicial Building  
Second Floor  
3389 Winfield Road  
Winfield, West Virginia 25213

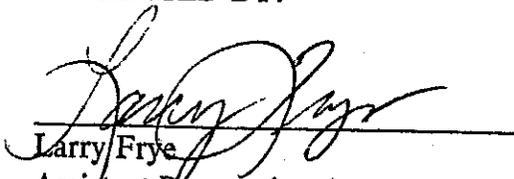
ENTER: DECEMBER, 28, 2006

N. Edward Eagloski  
N. EDWARD EAGLOSKI, II, JUDGE

Page 4 of 5

STATE OF WEST VIRGINIA  
COUNTY OF PUTNAM, SS:  
I, Donald A. Wright, Clerk of the Circuit Court  
of said County and in said State, do hereby certify  
that the foregoing is a true copy from the records of  
said Court.  
Given under my hand and the seal of said Court  
this 2 day of Jan 2007  
Donald A. Wright Clerk  
Circuit Court  
Putnam County, W. Va.

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Larry Frye", is written over a horizontal line.

Larry Frye  
Assistant Prosecuting Attorney  
Office of the Prosecuting Attorney  
Putnam County Judicial Building  
Second Floor  
3389 Winfield Road  
Winfield, West Virginia 25213  
(304) 586-0205  
West Virginia State Bar No. 5885