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IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

CIRCUIT CLERK

v.

DREU FERGUSON, JR.,
Defendant.

Case No. 03-F-57
Judge, David W. Nibert

ORDER

On this the 4th day of December, 2006, came the State by Mark G. Sergent, Special Prosecuting Attorney in and for this County and State, and came the Defendant in person, and by counsel, Teresa Monk and Drew Patton for post trial motions.

Whereupon, the Defendant objected to the Court not setting bond in this case.

The Court RULED that a firearm has been used in the commission of the offense in this case. The Court took the defendants motion for bond under advisement.

The Defendant argued previously filed motion for a new trial in this case. The State opposed the Defendants motion for a new trial. The Court DENIED the Defendants motion for a new trial.

The Court RULED that the evidence complained of in the Defendants motion in paragraphs 2a and 2b were proper evidence under exceptions to the hearsay Rule of Evidence and the motion is denied upon these grounds.

The Court RULED that the evidence complained of in the Defendants motion in paragraph 2c, that the Defendant was under no promises or threat and that the Defendant was aware of his right to remain silent and his right to counsel under Miranda rights and the evidence was admissible and that motion is denied upon these grounds.

The Court RULED on the error complained of in the Defendants motion in paragraph 2 d,e,f,g that the Court acted as a gate keeper only as to lawful evidence being presented to the jury. The Court had reviewed a draft transcript of Dr. Timothy Sarr's to determine whether his testimony met the requirements of the diminished capacity defense. The Court advised the jury to disregard the testimony of Dr. Sarr, Janice Blake and Dr. Ralph Smith, because diminished capacity was not testified to by Dr. Sarr and the Motion is denied on these grounds.

The Court **DENIED** the Defendants motion for a new trial.

The Defendant moved to have the Court proceed with sentencing in this case.

The Defendant on the record waived his right to the preparation of a pre-sentence report.

The Court then proceeded with the sentencing phase in this matter. The Court then afforded counsel for the Defendant the opportunity to speak on behalf of the Defendant and addressed the Defendant personally and asked him if he wished to make a statement in his own behalf and/or to present any information in mitigation of punishment. The Defendant did address the Court personally. The State of West Virginia addressed the Court in aid of sentencing and asked for the maximum sentence in this case. Yvonne Freas, a member of the victims family did address the Court in aid of sentencing.

Thereafter, the Court then demanded of the Defendant if anything he had or knew to say why the Court should not proceed to pronounce the sentence of the law against him, and nothing being offered or alleged in delay of judgment, the Court sentences the Defendant as follows:

For the Defendants conviction for the offense of Voluntary Manslaughter, a felony, a lesser included as charged in Count 1 of the Indictment in this case, The Court **ORDERS** the be placed into the custody of the Commissioner of the West Virginia Department of Corrections to therein to be safely kept and in all respects in accordance with the law to serve a definite term of fifteen years with, credit for time served in the amount of One thousand One Hundred and Ninety Seven (1197) days.

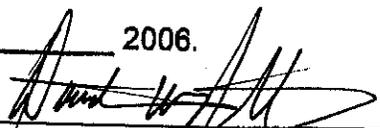
The Court **ORDERS** that the Defendant is to pay the cost of this action.

The defendant's counsel reviewed with the defendant a statement of post-conviction rights. The defendant signed the post-conviction rights statement and it is thereby lodged in the file as evidence that defendant has been so advised of his post-conviction rights. The Court notes that defendant was personally present throughout all stages of proceedings.

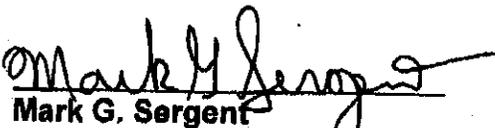
The Clerk of this Court shall send attested copies of this Order to (1) Mark G. Sargent, Prosecuting Attorney; (2) Teresa Monk, counsel for the Defendant; (3) Drew Patton; (4) W. Va. Department of Corrections; (5) Central Regional Jail.

All of which is accordingly, **ADJUDGED** and **ORDERED**.

ENTERED this the 5th day of December 2006.


David W. Nilbert
Judge, Fifth Judicial Circuit
12-04-2006 03-F-57

Prepared by:


Mark G. Sergent
Prosecuting Attorney

Entered in C.O.B. No. _____ Page _____
this _____ day of _____, 20__

Entered in ^{CR} C.O.B. No. _____ Page _____
this 7 day of Dec, 2006

Beverly Greathouse
Kathryn Brandenstein