

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

JAMES BLAINE WALDRON,

PETITIONER,

VS.

CIVIL ACTION NUMBER 06-C-54-S

**TOM SCOTT, SOUTHWESTERN REGIONAL JAIL ADMINISTRATOR,
JIM RUBENSTEIN, COMMISSIONER, and
WEST VIRGINIA DIVISION OF CORRECTIONS,**

RESPONDENTS

**MEMORANDUM OPINION ORDER DENYING PETITIONER'S
WRIT OF HABEAS CORPUS**

The Petitioner, by and through his counsel, Jason R. Grubb, has filed an Amended Petition for Writ of Habeas Corpus pursuant to W. Va. Code § 53-4a-1. The Petitioner asserted six grounds in his Petition: 1) State's Knowing Use of Perjured Testimony; 2) Unfulfilled Plea Bargain; 3) Ineffective Assistance of Counsel; 4) Refusal to Turn Over Witness Notes After Witness Has Testified; 5) Constitutional Errors in Evidentiary Rulings; and 6) Instructions to the Jury. The Court, after reviewing Petitioner's grounds for relief, reviewing Petitioner's entire file, and the Court's own independent research is of the opinion that no relief should be granted as to this Petition. The Court bases its opinion on the following conclusions of law and findings of fact:

Waldron was tried and convicted of Voluntary Manslaughter on May 7, 2004. Waldron was represented by Charles Mullins, II. Special Prosecutor, Fred J. Giggenbach, Jr. represented the State. On July 14, 2004, Waldron was sentenced to seven years of confinement in the State

penitentiary and was ordered to pay ½ of the victim's funeral bill of \$3,084.52. Then, at the recidivist hearing held on September 30, 2004, the Court sentenced Waldron to an additional five (5) years of confinement in the State penitentiary to run consecutively with his seven-year sentence. Waldron appealed his conviction in May of 2005. The West Virginia Supreme Court of Appeals affirmed the McDowell County Circuit Court's ruling on November 30, 2005. On March 10, 2006, Waldron filed a Petition for a Writ of Habeas Corpus Ad Subjiciendum claiming to be indigent and requesting appointment of counsel. By Order dated April 19, 2006, the Court appointed the Jason R. Grubb, Esq., to represent Waldron in this matter. On June 1, 2006, Waldron, through his counsel Jason R. Grubb, filed an Amended Petition for Writ of Habeas Corpus, Ad Subjiciendum, where he alleged six grounds for relief. Significantly, four of these grounds, with the exception of State's knowing use of perjured testimony and ineffective assistance of counsel, had been raised on appeal and found non-meritorious by the West Virginia Supreme Court. G. Todd Houck, a Special Prosecutor from Wyoming County appointed to this case, responded to Waldron's Writ of Habeas Corpus with Return On Writ Of Habeas Corpus on September 19, 2006.

1. STATE'S KNOWING USE OF PERJURED TESTIMONY.

In his Amended Petition for Writ of Habeas Corpus, Waldron asserts that the State knowingly used Mose Douglas Mullins's perjured testimony about the one thousand dollars (\$1,000.00) that he allegedly gave to Waldron in exchange for Waldron participating in the commission of the crime: being on the lookout for traffic while Mose Mullins shot three people. G. Todd Houck, a special prosecutor, responds that there is no fact or evidence in the record to

substantiate this allegation. Indeed, Waldron's assertion that the State knowingly used perjured testimony is without merit because during his testimony Mose Mullins willingly admitted that while he offered the \$1,000.00 to Waldron, he did not give it to him. Trial Transcript, Volume III, page 398. In fact, Mose Mullins conceded that the \$1,000.00 was recovered from his person by the police and given to his wife, Pamela Mullins. Id.

Moreover, Waldron alleges that while Mullins failed to implicate Waldron in the commission of the crimes on numerous prior occasions, he testified at trial that the petitioner was fully aware of the of the crimes and willingly participated in them. This allegation is also without merit because while Mose Mullins described Waldron's actions, he nevertheless kept repeating that "Rusty [Waldron] did not do anything."¹ Id. at 403-404. Moreover, prior to taking a guilty plea, Mullins wrote a letter to the Probation Department detailing everything that happened on the day of the crime. Id. at 407. Specifically, Mullins wrote that when he placed the gun between himself and Waldron in the car, Waldron asked him if he was going to kill Don Ball, too. Id. at 407-408. Accordingly, based on the foregoing, Waldron's assertion about Mose Mullins's testimony being untruthful is without merit.

¹ "Q. Is it your opinion, sir, that, if you don't actually pull the gun - - pull the gun out and shoot the trigger - - pull the trigger that you didn't do anything wrong?

A. I don't think you should be charged with murder if you didn't kill someone, no."

Q. So, if you know about murder and act as a lookout, you shouldn't be charged with murder?

A. The way I - - no.

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A. I can't - - I can't lay the blame on him [Waldron]. I can't say that he should share the same thing that I do." Trial Transcript, Volume III, pages 403-404 (Re-direct of Mose Mullins).

2. UNFULFILLED PLEA BARGAINS.

The Court refused to accept Waldron's plea agreement that reduced his conviction from one of a felony first-degree murder to a misdemeanor "accessory after the fact" charge. When Waldron was given time to decide whether to take a plea or to go to trial, the Court informed the defendant that it would only accept a felony plea, an unlawful assault at the least, if the defendant elected to plead guilty. Transcript of March 3, 2003, Hearing, pages 6-7. In refusing to accept the misdemeanor plea agreement, the Court emphasized that Waldron "was there every step of the way with Mr. Mullins." *Id.* Following the refusal of the plea agreement, the Court allowed Waldron to consult with his counsel about whether to take a felony plea or whether to take his case to trial. *Id.* at page 8. Waldron refused to plead to a felony offense and went to trial where he was convicted of voluntary manslaughter. On July 14, 2004, Waldron was sentenced to seven years in prison. Then, on September 30, 2004, after learning that Waldron was a recidivist, the Court sentenced him to an additional five years in prison.

The defendant claims that the Court was well aware of the nature of plea negotiations between Waldron and the State, where Waldron promised to fully cooperate and assist the State in the trial against his co-defendant, Mose Douglas Mullins, in exchange for pleading to a misdemeanor offense of "accessory after the fact." In fact, the Court released Waldron from jail to give him an opportunity to cooperate with the State in prosecuting Mullins. At the hearing held on February 6, 2003, Mr. Bell, McDowell County Prosecuting Attorney, stated that Waldron's assistance in the prosecution of Mullins' case was invaluable: 1) Waldron led the state police to the murder weapon hidden in the brushy, heavily wooded area of Bradshaw Mountain; 2) he helped the state police recover Mullins's bloody tennis shoes; 3) he gave a very detailed

statement describing all of the events leading up to the shootings and what happened afterward; and 4) he agreed to testify at all hearings and trials in connection with the murder of Jamie Chantel Webb and the woundings of Jeffrey Mullins and Don Ball. Transcript of February 6, 2003, Hearing at pages 11-12. Moreover, the State indicated that the misdemeanor plea was appropriate in Waldron's case because the State lacked any evidence to prove Waldron's involvement in the planning of the shootings or his participation in any way in the commission of these crimes. Transcript of March 3, 2003, Hearing, page 3.

Waldron appealed his conviction in May of 2005. The unfulfilled plea agreement was one of the grounds raised on appeal. The West Virginia Supreme Court affirmed the Court's decision and held that "[t]here is no absolute right under either the West Virginia or the United States Constitutions to plea bargain. Therefore, a circuit court does not have to accept every constitutionally valid guilty plea merely because a defendant wishes so to plead." Syl. pt. 2, State v. Waldron, 218 W. Va. 450, 624 S.E.2d 887 (2005) (per curiam) (citing State ex rel. Brewer v. Starcher, 195 W. Va. 185, 465 S.E.2d 397 (1995), full citation marks omitted). Because Waldron raised a Rule 11 issue on appeal, the West Virginia Supreme Court emphasized in Syllabus point 3 that Rule 11 of the West Virginia Rules of Criminal Procedure grants a trial court discretion to refuse a plea bargain. *Id.* (Citing Syl. pt. 5, State v. Guthrie, 173 W. Va. 290, 315 S.E.2d 397 (1984) and Syl. pt. 2, Myers v. Frazier, 173 W. Va. 658, 319 S.E.2d 782 (1984), citation omitted). A trial court's decision in accepting or rejecting a plea agreement must be "in light of the entire criminal event and given the defendant's prior criminal record whether the plea bargain enables the court to dispose of the case in a manner commensurate with the seriousness of the criminal charges and the character and background of the defendant." *Id.* at Syl. pt. 4.

(Citing Syl. pt. 6, Myers, 173 W. Va 658, 319 S.E.2d 782, full citation marks omitted).

The West Virginia Supreme Court noted that, contrary to Waldron's argument, the circuit court was not informed of the plea agreement terms prior to releasing Waldron into the custody of the State Police. *Id.* at 456, 893. Thus, the circuit court was not aware of the fact that the State and Waldron had bargained for a misdemeanor plea. *Id.* Moreover, the circuit court, in refusing to accept Waldron's guilty plea to a misdemeanor offense, took into account Waldron's prior felony record (his plea to a malicious assault in 1997), and the seriousness of the current crimes, which involved one death and two malicious assaults. Significantly, the West Virginia Supreme Court noted that the circuit judge rejected a guilty plea agreement for the first time in his nineteen years on the bench. *Id.* Additionally, the West Virginia Supreme Court noted that because a circuit court judge is allowed to discuss specific reasons for rejecting a guilty plea, the judge's statement that he would not accept anything less than a felony plea was not inappropriate. *Id.* Accordingly, the West Virginia Supreme Court has already ruled that Waldron's constitutional rights were not violated by the unfulfilled guilty plea.

3. INEFFECTIVE ASSISTANCE OF COUNSEL.

The threshold question in analyzing effectiveness of counsel assistance is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 W. Va. 668, 686, 104 S.Ct. 2052, 2064 (1984). In Strickland, the United States Supreme Court adopted a test that requires a defendant who claims ineffective assistance of counsel to prove two components. First, the defendant must demonstrate the deficiency of his counsel's performance. Defense

counsel must make errors so grievous as to deprive the defendant of his Sixth Amendment right to counsel. *Id.* Second, the defendant must prove that his counsel's actions prejudiced him thus denying him a fair trial. *Id.* Such prejudice is only presumed if the defendant shows that his counsel "actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" *Id.* at 692, 2067 (citing Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S.Ct. 1708, 1719 (1980)). Otherwise, the defendant must "affirmatively" show prejudice. *Id.* Hence, the appropriate test for prejudice is a showing of existence of a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 2068. Such reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome." *Id.*

The Special Prosecutor indicates in his Return On Writ Of Habeas Corpus that there is no fact or evidence contained in the record that would substantiate ineffective assistance of counsel allegation. In his Amended Petition for Habeas Corpus, Waldron indicated that his counsel, Mr. Mullins, did not adequately protect Waldron's interests during plea negotiations by failing to seek approval of the Court prior to acting upon the plea agreement. Moreover, Waldron asserts that Mr. Mullins failed to object during the course of the trial when the Court disposed of the notes taken by the father of a witness for the State. Furthermore, Waldron claims ineffective assistance of counsel because Mr. Mullins did not object to the Allen charge given to the jury and because Mr. Mullins did not attend meetings with the State regarding evidence used against Waldron, which was also later used to convict Waldron's co-defendant.

However, these acts or omissions to act on the part of Mr. Mullins can be viewed as trial tactics taken by a professional attorney. Nevertheless, because the Strickland test is twofold,

even if Waldron could prove serious errors taken by his counsel, he still has the burden to “affirmatively” show prejudice: the existence of “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. In other words, Waldron has to prove that had it not been for the errors committed by Mr. Mullins, the outcome of the trial would have been in his favor, thus planting reasonable doubt in the minds of the decision-makers regarding his guilt in the commission of voluntary manslaughter.

Ultimately, the inquiry then becomes whether there is “a reasonable probability” that the jury would have acquitted Waldron but for the errors of Mr. Mullins. The answer to that question would be negative according to the two-prong Strickland test because even if Mr. Mullins’s errors were so serious as to satisfy the first prong of the Strickland test, these errors did not prejudice Waldron in denying him a fair trial. In fact, the State had enough evidence to prove Waldron’s guilt in the voluntary manslaughter beyond a reasonable doubt, and no reasonable probability existed for the jury to find in his favor, but for errors of his defense counsel. The United States Supreme Court defined reasonable probability as “a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. Hence, in evaluating the ineffectiveness of counsel, and “[t]aking the unaffected [by counsel’s errors] findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.” *Id.* at 696, 2069.

The State’s evidence was that Mose Mullins, Waldron’s co-defendant, and Waldron

agreed to meet Chantel Webb, Jeffrey Mullins and Don Ball on the Bradshaw Mountain, and that Mose Mullins showed Waldron the gun, said he needed to take care of "some business . . . today," and asked Waldron to be on a lookout for incoming traffic for one thousand dollars (\$1,000.00). Trial Transcript, Volume I, pages 273-276. Clearly, Waldron understood what Mullins meant because he asked Mullins: "Are you going to kill Don Ball, too?" Trial Transcript, Volume III, page 408. Shortly thereafter, Mose Mullins shot and killed Chantel Webb and severely wounded Jeffrey Mullins and Don Ball with Waldron being on the lookout for traffic. Id. at 277-278. Gary O'Quinn and Karen Payne testified that when they saw Waldron and his co-defendant, Mose Mullins, after the shooting. Id. at pages 177, 182-186. Waldron came into the store but did not ask O'Quinn to call 911 for help, even though Mullins was outside the store pumping gas. Id.. These are just a few examples of the overwhelming evidence pointing toward Waldron's guilt of voluntary manslaughter.

Accordingly, assuming *arguendo*, that some aspects of Mr. Mullins's handling of Waldron's case were errors that could have possibly affected some of the finding in the case, Waldron was not prejudiced by such errors because the outcome of the trial would have been the same absent the errors due to enough evidence offered by the State to convict Waldron of voluntary manslaughter. In sum, Waldron has failed to prove that Mr. Mullins was ineffective in his defense because the petitioner has failed to prove that he was so prejudiced as to having been denied a fair trial.

4. REFUSAL TO TURN OVER WITNESS NOTES AFTER WITNESS HAD TESTIFIED.

In his petition, Waldron alleges that the defense counsel did not have an opportunity to

review the notes taken by observer during testimony of witnesses for the State. Waldron further argues that while he does not recall whether Mr. Mullins asked for production of these notes, failure to produce them was a violation of Waldron's constitutional rights. As the West Virginia Supreme Court noted in State v. Waldron, 218 W. Va. 450, 624 S.E.2d 887 (2005), counsel for the defense did not preserve this issue for appeal because the first time he objected to this matter was during the post-trial motions. "It must be emphasized that the contours for appeal are shaped at the circuit court level by setting forth with particularity and at the appropriate time the legal ground upon which the parties intend to rely." *Id.* (Citing State ex rel. Cooper v. Caperton, 196 W. Va. 208, 216, 470 S.E.2d 162, 170 (1996)). Because Mr. Mullins did not object at the appropriate time, the Court did what it deemed just and proper to do to assure a fair trial from Waldron: retrieve the notes from the observer and destroy them. When Mr. Mullins objected to this action at the post-trial motion hearing, the Court had no way of going back and allowing Mr. Mullins to review the notes. The Court's action was not prejudicial to Waldron because the notes were destroyed and, thus, not available to the State's witness and because Waldron had a full opportunity to cross-examine and impeach the witness. Therefore, based on the foregoing, Waldron's assertion that the destruction of the notes violated his constitutional rights is without merit.

5. CONSTITUTIONAL ERRORS IN EVIDENTIARY RULINGS.

In his petition, Waldron alleges that his constitutional rights have been violated because the Court permitted gruesome photographs to be admitted into evidence. Significantly, Waldron raised this issue on appeal and the West Virginia Supreme Court held that the photographs were

relevant to identify the victims, the crime scene, and the location of the wounds. Waldron, 218 W. Va. at 470, 624 S.E.2d at 895. The Court further held that these pictures were not prejudicial to Waldron because they were not “hideous, ghastly, horrible, dreadful,” and did not in any way influence the jury to decide the case being guided by their passions. *Id.*

Generally, trial courts are granted great discretion in admission of photographs depicting bodies of murder victims and blood. State v. Wheeler, 187 W. Va. 379, 419 S.E.2d 447 (1992). In State v. Derr, 192 W. Va. 165, 451 S.E.2d 731 (1994), the West Virginia Supreme Court announced new rules for assessing admissibility of photographs over a gruesome objection of counsel: “[t]he admissibility of photographs over a gruesome objection must be determined on a case-by-case basis pursuant to Rules 401 through 403 of the West Virginia Rules of Evidence.”² Syl. pt. 8, State v. Derr, 192 W. Va. 165, 451 S.E.2d 731 (1994). Moreover, “[a]lthough Rules 401 and 402 of the West Virginia Rules of Evidence strongly encourage the admission of as much evidence as possible, Rule 403 of the West Virginia Rules of Evidence restricts such liberal policy by requiring a balancing of interests to determine whether logically relevant is legally relevant evidence.” Syl. pt. 9, *id.* Ultimately, the balancing test of Rule 403 may prevent

² Rules 401 through 403 of the West Virginia Rules of Evidence state:

Rule 401. Definition of “relevant evidence.” “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of West Virginia, by these rules, or by other rules adopted by the Supreme Court of Appeals. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

even relevant evidence to be introduced at trial if such evidence is substantially outweighed by unfair prejudice to the defendant. *Id.*; State v. Lopez, 197 W. Va. 556, 476 S.E.2d 227 (1996). By establishing this new rule, the West Virginia Supreme Court expressly overruled State v. Rowe, 163 W. Va. 593, 259 S.E.2d 26 (1979), by holding that the Rowe rule was not compatible with the adoption of the West Virginia Rules of Evidence.³

Essentially, the query is then about unnatural body positions, contorted facial expressions, and the amount of blood and gore depicted. For example, the probative value of an 8 X 10 photograph of the victim's lacerated and bloodied face was substantially outweighed by unfair

³ "The first step under Rowe involves a determination as to whether the photographs are in fact gruesome. If the trial court makes the preliminary finding that the photographs are gruesome, the photographs are 'presumed to have a prejudicial and inflammatory effect[.]' 163 W. Va. at 595, 259 S.E.2d at 28. Once a 'gruesome' finding is made, photographs cannot be admitted unless the prosecution meets the second step of the Rowe inquiry and shows that the photographs "are of essential evidentiary value to its case.' 163 W. Va. at 596, 259 S.E.2d at 28. While there is some question as to the standard of review regarding the 'gruesome' finding, [FN10] most of our decisions indicate that a trial court's rulings regarding the admissibility of photographs are reviewed under an abuse of discretion standard. State v. Trail, 174 W. Va. 656, 328 S.E.2d 671 (1985).

FN10. *See*, State v. Young, 173 W. Va. 1, 14-15, 311 S.E.2d 118, 132 (1983) (this Court made its own gruesome finding).

Not only did Rowe give a distinct advantage to the defense by its allocation of the ultimate burden of proof to the prosecution but, for the first time in West Virginia's jurisprudence, it conditioned the admissibility of evidence on an "essential evidentiary value" standard. [FN11] Under the Rowe analysis, Rule 403 is used only if the trial court finds the photographs not to be gruesome. *See*, State v. Dye, 171 W. Va 361, 298 S.E.2d 898 (1982).. Whatever the wisdom and utility of Rowe and its progeny, it is clear that the Rowe balancing test did not survive the adoption of the West Virginia Rules of Evidence. Therefore, Rowe is expressly overruled because it is manifestly incompatible with Rule 403. [FN12]." Derr, 192 W. Va. at 176-177, 451 S.E.2d at 742-743.

prejudice to the defendant because it was gory and "it added nothing essential to the State's proof." State v. Wilson, 172 W. Va. 724, 725, 310 S.E.2d 486, 487 (1983). A photograph of a contorted burned body lying face up on the apartment floor and a close-up photograph of the burned victim with the left portion of the head burned beyond recognition and the right eye intact and open in a frozen stare were found to serve only one purpose at the trial: to inflame the jury. State v. Saunders, 166 W. Va. 500, 501-502, 275 S.E.2d 920, 921-922 (1981). In that case, the prosecutor already established that the victim was strangled with a cord and then set on fire. *Id.* In fact, these photographs did not anything new or useful to the State's case, other than arouse passions of the jury to cause them to decide the case on improper grounds. *Id.* In contrast, in State v. Haddox, 166 W. Va. 630, 635-636, 276 S.E.2d 788, 792-793 (1981), the West Virginia Supreme Court found that the three photographs of puncture wounds on the victim's upper torso were not gruesome, did not depict excessive blood, and were relevant to prove the State's case to show the exact location of the wounds.

Similarly, in the case at bar, as the West Virginia Supreme Court already pointed out on appeal, the photographs admitted identify the murder victim, Chantel Webb, by showing her when she was alive. The pictures of Chantel Webb on the morgue table further identify the wounds on her body without showing any excessive blood or gore. In fact, these pictures were taken prior to the autopsy, and they depict the victim's gunshot wounds to her head and lower back. Therefore, all of these photographs corroborated the State's case without inflaming the jury. Accordingly, the probative value of these photographs was not substantially outweighed by unfair prejudice, and they were properly admitted into evidence.

6. INSTRUCTIONS TO THE JURY.

Defense counsel argues that his constitutional rights were violated when the Court gave the jury an "Allen" charge after they deliberated for four and a half hours without reaching a verdict. Significantly, as the West Virginia Supreme Court noted, defense counsel did not preserve this issue for appeal because he failed to object to these jury instructions at trial.

Waldron, 218 W. Va. at 470, 624 S.E.2d at 896-897. The West Virginia Supreme Court found that the trial court's jury instruction was a modified Allen charge, that it was "in line with the instruction approved by this Court in State v. Blessing, 175 W. Va. 132, 331 S.E.2d 863 (1985), and that it was addressed to the jury as a whole. *Id.*

The threshold question where an Allen type instruction⁴ is given is "whether the trial court's instruction constituted improper coercion of the verdict." State v. McClanahan, 193 W. Va. 70, 74-75, 454 S.E.2d 115, 119-120 (1994) (referring to State v. Hobbs, 168 W. Va. 13, 282 S.E.2d 258 (1981)). Whether such improper coercion of the verdict exists depends upon the circumstances of each case. *Id.* In the case at bar, the trial court spoke to the jury as a majority instead of singling out a minority and encouraging them to follow the opinion of the majority. Instead, the trial court's instruction was almost identical to that in Blessing, 175 W. Va. at 133-134, 331 S.E.2d at 865, where the West Virginia Supreme Court held that such instruction was not coercive because at no time did the trial court address majority and minority opinions or urge the minority to change their mind. Accordingly, the modified Allen instruction in the case at bar

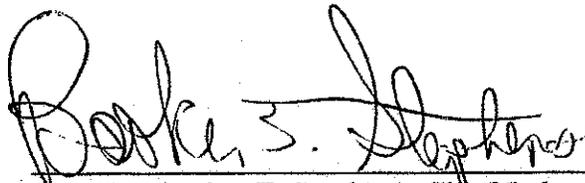
⁴"The central idea of the instruction is that although no juror is expected to yield a conscientiously held opinion, the jury has a duty to decide the case if it can conscientiously do so; and if a majority of the jury is either for conviction or acquittal, the minority ought to consider whether a contrary view may be reasonable and correct." 2 F. Cleckley, Handbook on West Virginia Criminal Procedure, II-257 (1993).

did not violate any of Waldron's constitutional rights and was properly given.

Therefore, based on the foregoing, the Court is of the opinion that all the Petitioner's grounds are without merit and taking into consideration the totality of all circumstances, the Court does hereby **DENY** James Blaine Waldron's Amended Petition for Writ of Habeas Corpus in total and it is so **ORDERED**, all to which Petitioner excepts and objects.

The Clerk of this Court is directed to forward a copy of this Order to G. Todd Houck, Special Prosecutor from Wyoming County, at P.O. Box 462, Pineville, West Virginia 24874, Jason R. Grubb, Counsel for the Petitioner, at P.O. Box 2056, Beaver, West Virginia 25813, and the Petitioner at his last know address of Inmate No. 1052141 – DOC 40987, Southwestern Regional Jail, 13 Gaston Caperton Drive, Holden, West Virginia 25625.

Enter: This 15th day of September, 2006.


Booker T. Stephens, Chief Judge