

Rec'd 7/26/06

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA.

STATE OF WEST VIRGINIA,

VS.

INDICTMENT NO. 05-F-307-F

HAROLD LEE CYRUS.

ORDER

This matter came on this day for disposition pursuant to the defendant having been found guilty by a jury of the offenses of "Sexual Abuse by a Custodian" and "Incest." There being present in Court is the defendant, in person and counsel for the defendant, Phillip Scantlebury; and the State of West Virginia by his Prosecuting Attorney, Deborah K. Garton, her Assistant Prosecuting Attorney.

Whereupon, counsel for defendant renewed their motion to set aside the verdict of the jury and grant unto the defendant a new trial. And the Court, after hearing argument of counsel for the defendant and the State, is of the opinion that the matters and things contained therein are not sufficient in law or fact to set aside the verdict of the jury and grant unto the defendant a trial; therefore, defendant's motion is overruled, to which action of the Court the defendant objected, which objection the Court overruled, and to which ruling of the Court the defendant excepted.

The Court having received the report of the defendant's pre-sentence investigation, and after considering said report and the statements of counsel and the defendant, the Court finds that the defendant is not a fit and proper person for probation because: (1) there is a substantial risk that the defendant will commit another crime during any period of probation or conditional discharge; (2) probation or conditional discharge would unduly depreciate the seriousness of the defendant's crime;

(3) the public good would not be served by placing the defendant on probation; and (4) the public good would be served by the Court imposing a sentence of incarceration.

Whereupon, the Court inquired of the defendant if anything for himself he had or knew to say why the Court here should not now proceed to pronounce judgement against him and nothing being offered or alleged in delay of judgment, it is **ORDERED** that the defendant, Harold Lee Cyrus, be taken from the bar of this Court to the Southern Regional Jail and therein confined until the warden of the penitentiary can conveniently send a guard for him, and that he be taken to the penitentiary of this State and therein confined for the indeterminate terms of not less than ten (10) nor more than twenty (20) years each as provided by law for each offense of "Sexual Abuse by a Custodian" as the State in Counts 19 and 22 of its Indictment herein hath alleged and by a jury hath been found guilty and not less than five (5) nor more than fifteen (15) years each as provided by law for each offense of "Incest" as the State in Counts 20 and 23 of its indictment herein hath alleged and by a jury hath been found guilty; that these sentences run consecutively with one another; that the defendant be given credit for 3 months and 11 days which he has served on said charge; and that he be dealt with in accordance with the rules and regulations of that institution and the laws of the State of West Virginia.

After due consideration, it is the further **ORDER** and **DECREE** of this Court that imposition of the defendant's 10-20 year sentence as to the offense of "Sexual Abuse by a Custodian" as contained in Count 22 of the Indictment *only* be suspended, and that when the defendant is discharged from the penitentiary with regard to his remaining 10-20 year sentence imposed as to the offense of "Sexual Abuse by a Custodian" as contained in Count 19 of the Indictment and 5-15 year sentences imposed as to the offenses of "Incest" as contained in Counts 20 and 23 of the Indictment, he shall be placed on probation for a period of ten (10) years with the following specific conditions:

1. That the defendant have no contact, directly or indirectly, with the victim;
2. That the defendant participate in sexual offender treatment;
3. That the defendant have no contact with children;
4. That the defendant not reside within 500 feet of a school;
5. That the defendant be monitored by GPS monitoring system.

Thereupon, counsel for defendant notified the Court of their intent to appeal said judgement to the Supreme Court of Appeals and moved the Court to grant unto the defendant a stay of execution and post-conviction bond. After due consideration, the Court **DENIES** the defendant's motion and it is the **ORDER** and **DECREE** that the defendant's bond be revoked as he is at high risk to leave the area and/or re-offend, and the defendant is remanded to the Southern Regional Jail to await transportation to the penitentiary. It is further **ORDERED** that the David C. Smith and Phillip Scantlebury be appointed to represent the defendant in his appeal subject to the filing of a financial affidavit, and that the court reporter shall prepare transcripts of the proceedings in this matter upon counsel's completion of appropriate forms.

It is the further **ORDER** and **DECREE** of this Court that the defendant pay all court costs within one (1) year of his release or be subject to having his driver's license revoked.

And the defendant is remanded to the Southern Regional Jail.

The Clerk shall forward a copy of this Order to counsel for the defendant and the probation department.

Dated this 24th day of July 2006.

ENTER:


JOHN R. FRAZIER, JUDGE

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. CASE NO. 05-F-307

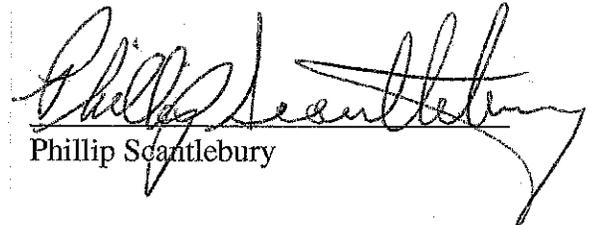
HAROLD LEE CYRUS,

DEFENDANT.

CERTIFICATE OF SERVICE

I, Phillip Scantlebury, counsel for Defendant, do hereby certify that I have served a true and correct copy of the foregoing Petition for Appeal upon Deborah Garton, Assistant Prosecuting Attorney, at her last known address of Mercer County Annex, 120 Scott Street, Ste. 200, Princeton, West Virginia 24740, by United States mail, postage prepaid.

Dated this the 7th day of February, 2007.


Phillip Scantlebury