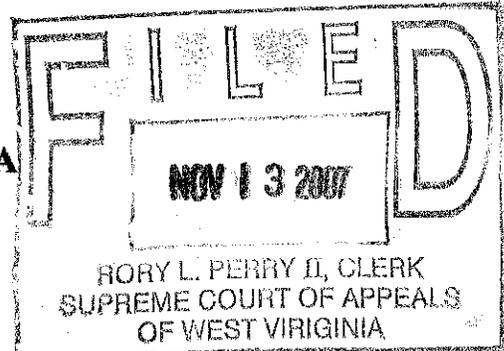


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**STATE EX REL., WALTER W. WEIFORD
PROSECUTING ATTORNEY
POCAHONTAS COUNTY, WEST VIRGINIA
PETITIONER**



V. NO 33531

**THE HONORABLE JOSEPH C. POMPONIO, JR.,
CIRCUIT COURT JUDGE OF THE 11TH JUDICIAL CIRCUIT
RESPONDANT**

**BRIEF BY JOEL ROSENTHAL A PARTY TO THE DECISION,
TO PETITION FOR WRIT OF PROHIBITION FILED BY WILLIAM
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**BRIEF BY JOEL ROSENTHAL AN AFFECTED PARTY TO THE
DECISION TO PETITION FOR WRIT OF PROHIBITION, FILED
BY WILLIAM R. VALENTINO, ASSISTANT ATTORNEY
GENERAL**

**To: THE HONORABLE, THE JUSTICES OF THE SUPREME
COURT OF APPEALS OF WEST VIRGINIA**

**HON. JOSEPH P. ALBRIGHT, CHIEF JUSTICE
HON. ROBIN JEAN DAVIS, JUSTICE
HON. LARRY V. STARCHER, JUSTICE
HON. BRENT D. BENJAMINE, JUSTICE
HON. ELLIOTT E. MAYNARD, JUSTICE**

RORY L. PERRY, II, CLERK

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Comes now Joel Rosenthal, the affected party and defendant in the underlying criminal case, acting on behalf of himself, pro se, filing this brief in defense of the authority of Judge Joseph C Pomponio, JR. to hear and render his ruling in the case of the State of West Virginia V. Joel Rosenthal, case 07-M-AP-02. Acting pro se, Joel Rosenthal begs that your honors recognize that he is not an attorney and therefore might err in the nuances or procedures of his presentation. Hopefully, he will not be penalized for such digressions and that the validity of his arguments holds sway.

I, Joel Rosenthal, president of Point of View Farm, Inc, a non profit charitable organization submitted an application to do business in West

Virginia in January of 2000. The sole business activity listed was for the “care and preservation of abandoned and needy wildlife” and the purpose of the business was for the “operation of an animal sanctuary.” Mr. Joe Manchin III, WV Secretary of State then issued me a “CERTIFICATE OF AUTHORITY” certifying “that the application conforms to law.”

Statement of Facts

This case began on 30 May, 2005 when a Mr. Stoots and a Mr. Harvey brought to me a fawn they had found drowning in a lake. The gentlemen had called the DNR and were told to release it back into the wild. I informed them that I would assist them at doing just this while at the same time making sure it was fed and cared for. (Feeding deer is not illegal even by DNR standards) Upon hearing of this act and confirmation from me personally that I did take the fawn and returned it to the wild, the DNR, nevertheless, filed criminal charges against me for the illegal possession of wildlife (WV code 20-2-4). At no point did they either confiscate or ask for the fawn to be relinquished as required by statute (20-2-4).

In subsequent trials in Magistrate Court I filed evidence indicating that 1) the activities carried out were simply the instructions of the DNR. 2) That WV code 61-8-19 clearly states that one is breaking the law if they abandon, neglect or deprive sustenance from ANY animal. 3) That

authorization to possess animals in WV is clearly rendered at the hands of many, to include by statute the Federal Govt. and its treaty in regards to Migratory Birds (WV code 20-2-4) and the Governor of WV (20-2C-1). 4) That WV code 20-2C-1(h) clearly states: in regards to my business license and my IRS ruling that *"License" means any license, permit or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, rule, regulation or ordinance of a participating state.*5) That no where in WV Code or Rules or Regulations does the Director of the DNR have sole or exclusive authority over possession. 6) That no where in WV Code, Rules or Regulations is even the term Authorization defined. 7) That I had public documents from the US Treasury Dept. (IRS) authorizing me to care for needy wildlife as part of my 501 (C) (3) non profit, charitable status. 8) That I had authorization from the US Fish and Wildlife Service to possess and care for migratory birds. 9) That I had a Certificate of Authority from the West Virginia Secretary of State, Joe Manchin, III, stating that my WV business activity of caring for needy and abandoned wildlife complied with the law.

The conflict alone between 20-2-4 and 61-8-19 constitute statutes in *pari materia*. State ex rel. Revercomb v. O'Brien Nos. 10806, 10807

SUPREME COURT OF APPEALS OF WEST VIRGINIA
141 W. Va. 662; 91 S.E.2d 865; 1956 W. Va. LEXIS 16

Clearly the State cannot place a citizen in a catch 22 situation making it impossible for him to abide by the law no matter what he does. The DNR is trying to say that by aiding the fawn I was breaking the law, but had I abandoned the fawn I would have likewise broken the law.

Judge Pomponio, from my appeal, clearly recognized that the authority to possess wildlife lay not solely in the hands of the DNR but could reside in many venues. He thus not only ruled, but had the authority and jurisdiction to rule that such a decision could exist with the Secretary of State who issued his Certificate of Authority. In addition Judge Pomponio being astute in the English language understood that even WV Code 20-2C-1(h) was self evident.

Judge Pomponio could just as easily have recognized many of the other points of my defense especially that of statutes *in pari materia*, or that indeed I was complying with the orders given by the DNR themselves to return the fawn to the wild.

Assignment of Error

Over and over Mr. Valentino contends that via my Certificate of Authority from Mr. Manchin, WV Secretary of State that I have tried to

established a relationship with the Director of the DNR as an agent of the Director. (pages 3, 5 of his Petition) **Nothing could be further from the truth.**

Nor does Judge Pomponio in his ruling mention any relationship with the Director of the DNR. The business relationship is with the State of West Virginia in the same manner that my authorization to possess migratory birds is with the US Fish and Wildlife Service and requires no input from the WV DNR or its Director. While I am amazed at what some attorneys can do, Mr. Valentino surely thinks of himself as a legal alchemist since he seeks relief for an “error” that did not occur. **This alone should cause dismissal of his petition.**

Mr. Valentino clearly and accurately states (top page 9 of his Writ) that WV code 20-2-3 declares ownership of wildlife in West Virginia to be held by the State, not the DNR. He goes on to state that the DNR has “broad powers” over the regulation of these animals, but at no time does he even try to state that the DNR has exclusive power over these animals for he knows that the DNR does not. Over and over Mr. Valentino has created his distortions and one by one I have repudiated, impeached, refuted, invalidated and exposed their lack of credibility not only via Mr. Valentino’s own words and assertions, but by statutes and DNR documents

themselves.

Your honors I do truly hope that you will refresh your memories by referring to my two responses to Mr. Valentino's Petition. There I have added the many documents and facts to support my contentions above. To repeat all of those again here would be redundant.

The filing of this Petition for a Writ of Prohibition itself is unlawful. No matter how Mr. Valentino tries to slice it this action of his is an illegal appeal. If it looks like a duck, walks like a duck and quacks like a duck it is a duck. If it looks like an appeal, walks like an appeal and quacks like an appeal it is an appeal. Perhaps Walt Disney can turn a pumpkin into a fancy carriage, but Mr. Valentino cannot disguise an appeal as a Petition. He is illegally trying to overturn Judge Pomponio's ruling to dismiss the criminal charges. Mr. Valentino states this in the middle of page 1 of his Petition. For him to attempt to override this decision is tantamount to violating WV Code 58-5-30 (i) *Notwithstanding any provision of this code to the contrary, no appeal shall lie where the double jeopardy provisions of the United States Constitution or the constitution of the state of West Virginia prohibit further prosecution.* State v. Walters, 411 S.E. 2d 688, 186 W. Va. 169 (1991) Mr. Valentino's Writ also directly violates my U. S. Constitutional rights as stated in the 5th Amendment.

Interestingly, sustaining this Writ by Mr. Valentino would strip Judge Pomponio from having the authority to make his rulings **thus depriving me of my very appeal and violating WV Code 50-5-13.**

Standard of Review

It is the burden of Mr. Valentino to establish that Judge Pomponio did not have jurisdiction to render his ruling, that Judge Pomponio did not follow the law in rendering his decision and that Judge Pomponio's decision in any way has caused harm, detriment or injury to the State of West Virginia. Mr. Valentino has articulated none of this, for none exists.

Judge Pomponio clearly has jurisdiction in that the incident happened in the district of the 11 Circuit and that an officer of the court and the State, Mr. Tony Tatano, prosecuted the case in Pocahontas County.

Judge Pomponio clearly had the authority to make his decision as he followed all existing laws, rules and regulations.

Nor has Mr. Valentino presented any evidence that the State of West Virginia or the DNR would incur any costs because of this ruling. Quite the contrary because any aid that I render relieves the DNR of those responsibilities. The idea that somehow because of this ruling that many, tens, hundreds or even thousands of non profit charitable organizations whose only goal is the care of wild animals are suddenly going to invade

West Virginia is ridiculous beyond belief. Hopefully, your Honors will not lose sight of the fact that one need only own property in West Virginia in order to shoot, injure, maim, abandon and possibly kill almost any wild animal in West Virginia yet the DNR now fights vigorously to prevent someone with decades of experience from aiding a miniscule few of these creatures. On any scale it is clear which practice produces harm.

Conclusion

I, Joel Rosenthal have with this Brief added to the information I have already supplied to your Honors with my two responsive filings to Mr.

Valentino's Petition for a Writ of Prohibition. It is my fervent request that the information contained in those documents be included in this Brief or at least referred to in your deliberations. For me to be repetitive here would be to waste your time.

Mr. Valentino's Petition is nothing more than an appeal disguised as a Writ. Judge Judy on TV likes to say to those who are trying to pull the wool over her head "Don't pee on my leg and try to tell me it is raining." I am afraid Mr. Valentino is trying to pull the wool over all of our heads. "A wolf dressed in a sheep skin is still a wolf." His Petition is illegal. Even his "Assignment of Error" did not occur.

Judge Pomponio, having full jurisdiction in this matter, read and studied the law, rendered a decision in this criminal matter and ruled that my actions in regard to this fawn were legal. He had full authority to do this. With his action I was relieved of the stigma of being a criminal. Statute prevents an appeal to this matter. For the Court to sustain the Petition would effectively deny me my right to an appeal, reverse an exoneration and condemn me to a double jeopardy conviction.

In addition I have refuted all of Mr. Valentino's spurious allegations in the documents I have submitted. I am amazed that such an officer of the court and an employee of the Attorneys General's office would present such blatantly false and misleading information to your Honors.

In my opinion this matter is clearly not one of a judicial review, but one of a legislative matter. In my opinion Mr. Jezioro should be directed to that body of our government which formulates our laws. The current laws are written in plain English and can be understood by all. I did not write the laws, I only obey them. That Mr. Jezioro does not like the laws is evident. That Mr. Jezioro has distain for those who care about individual animals is also evident from his position paper (see my 2nd response) responding to H.B. 4125. Clearly, I acted within the law on many levels, not just via my business license. Since it is illegal to abandon ANY animal in need (WV

Code 61-8-19) then it is illegal for me to abandon any fawn brought to me.

The DNR when called by Mr. Stoots and Mr. Harvey had the opportunity to deal with the fawn themselves. They abrogated their responsibility and chose not to take possession of this fawn themselves, nor did they ask these gentlemen to bring it too them. Instead they tried to instruct these men to break the law.

Stoots and Harvey sought my assistance. My actions to place the fawn in the wild while still assisting it were perfectly legal and conformed to all our laws, rules and regulations.

I have also outlined in my two initial responses to the Writ several other legal mechanisms by which I within the law can assist our wildlife.

WV Code 20-2C-1 (h) lays forth the most critical definition of what a license is for the possession of wildlife. The words are crystal clear, in plain English and without ambiguity.

It should also be noted that the possession of wildlife is not an inherently legal or illegal activity. There are already many businesses in West Virginia that possess wildlife via many mechanisms. Some of them are for profit some not. Obviously no one in West Virginia can authorize an inherently illegal activity. One cannot under any circumstances have a business in West Virginia to say print money, or grow marijuana. But

possessing wildlife is not an illegal activity under all circumstances. And the law does not give exclusive authorization for this possession to the Director of the DNR.

In the final analysis:

- 1) This petition is really an illegal appeal of a criminal case where the Defendant, Joel Rosenthal, was declared to be acting legally by Circuit Court Judge, Joseph Pomponio.
- 2) Judge Pomponio had the authority and the jurisdiction to hear this case.
- 3) Judge Pomponio never even made the statement that the Petition wishes to correct.
- 4) Any decision to sustain this petition for a Writ of Prohibition would rob me of my right to appeal the magistrate court conviction.
- 5) Any decision to sustain this petition for a Writ of Prohibition would once again convict me of this charge and thus deprive me of my Constitutional right to be free of double jeopardy.
- 6) The law is very clear in that the authorization to possess wildlife in WV is not exclusive to any entity.

Dated this 7 day of November, 2007

Pro Se Defendant in underlying case

Joel Rosenthal

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CERTIFICATE OF SERVICE

I, Joel Rosenthal, defendant in the lower Circuit Court case do hereby affirm under penalty of perjury that I have given copies of this Brief of Joel Rosenthal to the following:

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Via registered mail 9 November, 2007

Joel Rosenthal JRR 9 November, 2007

Honorable Joseph C. Pomponio, Jr.
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Lewisburg, WV 24901

BY HAND
Via registered mail 9 November, 2007

Joel Rosenthal JR 8 November, 2007

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In person 7 November, 2007

Joel Rosenthal *JAR* 7 November, 2007