

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA, CHARLESTON

Brian Cunningham

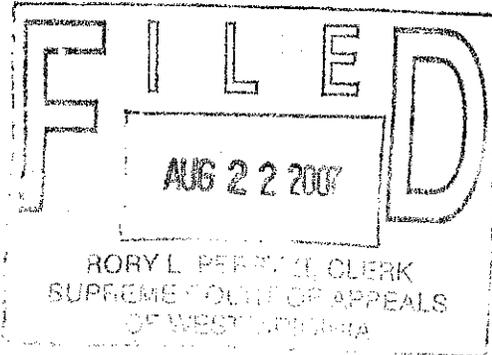
petitioner

Docket No. _____
Case No. 03-F-058

V.

Judge Charles M. Vickers
Fayette County Circuit Court

respondent



PETITION FOR WRIT OF MANDAMUS

Brian Cunningham
#26272 Stuart Hall
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185

TABLE OF CONTENTS

	Page
Petition for Writ of Mandamus.....	1
Statement of Facts.....	2
Prayer for Relief.....	3
<u>Certificate of Service</u>	4
Order Dismissing Habeas Corpus January 11, 2007.....	5
Petitioners Motion for Habeas Discovery filed January 22, 2007.....	8
Petition for Writ of Habeas Corpus filed March 1, 2007.....	13
Motion to Hold in Abeyance Habeas Petition filed March 1, 2007.....	18

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Brian Cunningham
#26272 Elm-202
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185

petitioner

Docket No. _____
Case No. 03-F-058
Judge: Vickers

V.

The Hon. Charles M Vickers, Judge
Circuit Court of Fayette County
100 Court Street Fayetteville, W.Va 25832

respondent

PETITION FOR WRIT OF MANDAMUS

Comes now petitioner [Brian Cunningham #26273] "pro se," in order to compel the Honorable Judge Charles M. Vickers of the Circuit Court of Fayette County, to disclose to petitioner the criminal file in Case No. 03-F-058, to appoint him counsel to file an amended Habeas Corpus Petition under W.Va. code 53-4A-1, and to hold an Omnibus Habeas Corpus Hearing on petitioner's claims.

In support of this petition, petitioner states that (1) he is entitled to an Omnibus Habeas Corpus Proceeding, under the law established by *Losh v. Mckenzie supra*, and *Dale v. Gibson supra*, (2) that the Fayette County Circuit Court has a duty to provide the same, and (3) that at this time the named respondent has failed to honor that duty.

STATEMENT OF FACTS

1. On May N/A, 2004, petitioner was indicted for Aiding and abetting First Degree Murder and Conspiracy to commit murder.
2. On August 16, 2005 petitioner was tried and convicted of first degree murder and conspiracy to commit first degree murder.
3. On N/A 2005 petitioner was sentence to life for his conviction on the offenses of first degree murder, and for 1-15 (one to fifteen years) for his conviction of conspiracy to commit murder, the sentences were ordered to run concurrently.
4. An appeal in this matter was filed on N/A 2005 and was subsequently refused by the Supreme Court of Appeals, Justices Starcher and Albright would grant.
5. On February 16, 2006, petitioner, without having a copy of his trial transcripts, and without having obtained the record of his case [Case No. 03-F-058], filed a Writ of Habeas Corpus under W.Va. Code 53-4A-1, claiming "Actual Innocence," of the August 16, 2005 conviction, listing several trial errors previously raised by trial counsel, Graydon C. Ooten, Jr.
6. On January 11, 2007, without appointing counsel to review his record, requiring the State to respond, or holding an omnibus habeas corpus hearing on his issues, the court dismissed petitioner's petition [Habeas Corpus] and denied him relief, finding that his grounds were without merit.
7. Thereafter, petitioner sought the assistance of a "Jailhouse Lawyer," who advised petitioner that a dismissal is not a final decision on the merits of his claims, precluding him from filing another habeas petition under W.Va. Code 53-4A-1.

8. On January, 22, 2007, petitioner filed a 'Post-Conviction Motion For Habeas Discovery,' in an attempt to obtain the court file, in order to prepare a "More adequate habeas petition."

9. By March 1, 2007, when petitioner had not recieved a response from the court on his discovery motion, petitioner filed petition under W.Va. Code 53-4A-1 For Writ of Habeas Corpus, an additional Discovery Motion, an a Motion to Hold in Abeyance his Habeas Petition, until the time the court provided his requested discovery materials.

10. On N/A 2007, petitioner filed a 'Notice of Action Filed and Request for Reponse,' reminding the court of his actions filed, and requesting that the court make a ruling on his Motion For Discovery.

Based on the facts of this case, and given the extent of petitioners sentence [Life], petitioner believes the law in West Virginia entitles him to at least (1) one trial, which he has received, (1) one Appeal, which the Supreme Court has considered and refused, and (1) one Omnibus Habeas Corpus Proceeding, which at this time petitioner has not had.

For the above stated reasons, petitioner asks this Honorable Court to issue an order directing the Circuit Court of Fayette County to show cause, if any, why Judge Charles M. Vickers fails to afford him an Omnibus Habeas Corpus Hearing, with the appointment of counsel, and to provide him with a copy of his criminal case file in this matter [Case No. 03-F-058].

WHEREFORE PETITIONER PRAYS THAT RELIEF BE GRANTED


Signature of "pro se," Petitioner

7-26-07
Date

CERTIFICATE OF SERVICE

I, Brian Cunningham, hereby attest by my signature, that the foregoing **Petition For Writ of Mandamus** has been filed on this the 26th day of July, 2007, by placing the same in the mail box at Mount Olive Correctional Complex, addressed to the following parties:

Kevin Holiday, Clerk
Fayette County Circuit Court
P.O. Box
Fayetteville, W.Va 25840-0569

Rory L. Perry, Clerk
Supreme Court of Appeals
State Capitol Complex
Room E-317
Charleston W.Va. 25305

**IN THE CIRCUIT COURT OF
FAYETTE COUNTY, WEST VIRGINIA**

BRIAN H. CUNNINGHAM, INMATE,

Petitioner,

vs.

CIVIL ACTION NO. 06-C-60-H

THOMAS MCBRIDE, WARDEN,

Respondent.

ORDER

On February 16, 2006 the Inmate Petitioner, pro se, filed a Petition seeking a writ of habeas corpus complaining of various alleged flaws within his Fayette County jury trial in which he was convicted of murder in the first degree and conspiracy.

The Court, in consideration of the aforementioned Petition, has reviewed the underlying felony criminal file (State of West Virginia vs. Brian Cunningham, Indictment No. 03-F-58) which contained, among other things, the transcript of the Petitioner's trial, a detailed listing of the issues raised in the Petitioner's then criminal appeal and the Supreme Court of Appeals of West Virginia's Order indicating the Court's refusal to consider said Petition.

The aforementioned issues raised on appeal by the Petitioner herein were as follows:

1. The Circuit Court erred when it denied the Petitioner's motion for judgment of acquittal at the conclusion of the State's case-in-chief as to the charge of conspiracy because the Court's ruling 1) disregarded the State's burden of proof, 2) unfairly, impermissibly and unconstitutionally shifted the burden of proof to the Petitioner and 3) was unfounded and inconsistent with the evidence in the record.

2. The Circuit Court erred when it denied the Petitioner's motion for judgment of acquittal at the conclusion of the State's case-in-chief as to the charge of murder because the Court's ruling 1) disregarded the State's burden of proof, 2) unfairly, impermissibly and unconstitutionally shifted the burden of proof to the Petitioner and 3) was unfounded and inconsistent with the evidence in the record.

3. The Circuit Court erred when it denied the Petitioner's motion for judgment of acquittal, reiterated at the conclusion of the trial as to the charges of conspiracy and murder because the Court's ruling 1) disregarded the State's burden of proof, 2) unfairly, impermissibly and unconstitutionally shifted the burden of proof to the Petitioner and 3) was unfounded and inconsistent with the evidence in the record.

4. The Circuit Court erred when it denied the Petitioner's motion for judgment of acquittal or in the alternative a new trial following the jury verdicts because the Court's ruling was erroneous in law, inconsistent with the evidence and fundamentally unfair.

5. The evidence presented at the Petitioner's trial was insufficient upon which to convict the Petitioner of conspiracy and murder.

The Petitioner herein in his aforementioned Petition raises all of the above-mentioned grounds, in addition to claiming malicious prosecution, a claim of undisclosed theory of prosecution, denial of equal protection and due process, unlawful arrest, double jeopardy, and ineffective assistance of counsel, claiming that he should not have testified in his own defense and that his trial counsel was inadequate.

The only new issues raised by the Petitioner are his claims unlawful arrest, denial of due process, malicious prosecution, double jeopardy and ineffective and inadequate assistance of counsel.

While the undersigned Court did not preside in the aforementioned criminal trial, the Petitioner's criminal trial counsel is a local lawyer who regularly appears before the Court in criminal, juvenile delinquency, abuse and neglect and

other civil cases, and he has an outstanding reputation with this Court for always being well prepared, honest, candid and unafraid to fiercely advocate for his clients.

After a thorough consideration of all of the aforementioned, the Court finds and concludes that if the Petitioner had not testified in his criminal trial the result, based on the totality of the evidence, would have been exactly the same and he would have been convicted.

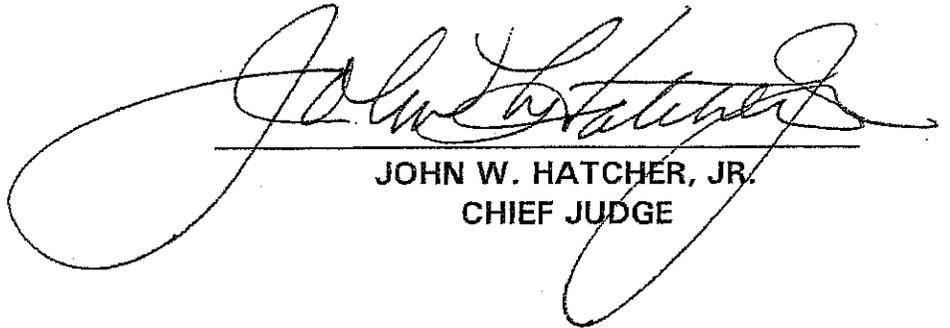
Further, the Court finds and concludes that the other remaining grounds for relief are without any merit.

Thus, the Court concludes that the allegations contained within the aforementioned Petition do not rise to the level of probable cause necessitating the issuance of the requested writ.

Accordingly, it is **ORDERED** that the relief requested be **DENIED** and said civil action be **DISMISSED**.

The Clerk shall, forthwith, mail an attested copy of this Order to Brian H. Cunningham, Inmate, Mount Olive Correctional Complex, One Mountainside Way, Mount Olive, West Virginia 25185.

ENTERED this the 11th day of January, 2007.



JOHN W. HATCHER, JR.
CHIEF JUDGE

A TRUE COPY of an order entered
Jan 11, 2007
Teste: *Daniel P. Wagh*
Circuit Clerk Fayette County, WV

IN THE CIRCUIT COURT OF FAYETTE COUNTY, FAYETTEVILLE WEST VIRGINIA

Brian Cunningham
#26272 Elm-202
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185

V.

Docket No. _____

Thomas McBride, Warden
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185

Case No. 03-F-058
Judge: Vickers

POST CONVICTION MOTION FOR HABEAS CORPUS DISCOVERY

Comes this date petitioner [Brian Cunningham], "Pro Se," and moves this honorable court, pursuant to the West Virginia Rules Governing Post-Conviction Habeas Proceedings in West Virginia, [promulgated February 1, 1977 and superseded by order of the West Virginia Supreme Court on December 13, 1999] for Habeas Discovery, in order to assist petitioner in filing a more adequate habeas petition, as contemplated by Losh v. McKenzie, Dale v. Gibson and the Rules Governing Post-Conviction Habeas Corpus Proceedings.

In support of this motion, petitioner states the following:

PROCEDURAL HISTORY-

On May N/A, 2004 petitioner was indicted on a two (2) count indictment charging him with First Degree Murder and Conspiracy To Commit First Degree Murder.

Bond was set for \$50,000 (fifty thousand dollars), on June 19, 2004; petitioner posted bail in the amount of \$5,000 (five thousand dollars), and was released on bond to await trial on said charges.

At trial on August 16, 2005 petitioner was found guilty of the offenses of First Degree Murder and Conspiracy To Commit Murder, based on the sole testimony of his co-defendant [Ramen Whitley], although the state notified the jury that petitioner was being tried as an aider and abettor, before and after the fact.

An appeal in this case was filed on N/A, 2005 and was refused by the Supreme Court of West Virginia thereafter on [date not available], Justices Albright and Starcher would grant.

On February 16, 2005 petitioner filed a Writ of Habeas Corpus in the Circuit Court of Fayette County, which was summarily dismissed [on January 15, 2007] by the court, without appointment of counsel, without requiring the state to respond, without an Omnibus Habeas Corpus Hearing or going into the merits of the claims raised.

REQUEST FOR DISCOVERY-

Pursuant to the West Virginia Rules of Civil Procedure, petitioner invokes the processes of discovery, and request leave of the court to do so.

Petitioner states that in order to have effective and fair review of his petition, and to adequately prepare the same, there are necessary materials, documents and evidence which have not been previously tendered to petitioner by previous counsel, which at this time, are needed for effective development of the issues for habeas relief.

Petitioner request discovery to include, but not be limited to the following:

- [1] Copy of all Forensic Reports and ballistics, of the alleged gun said to be the murder weapon in this case, and evidence of any and all fingerprints if any found on the weapon and identity of

person matching such fingerprints, any evidence of ownership of the weapon and/or reports indicating that the weapon was stolen identifying petitioner or his co-defendant as a possible suspect, and any reports indicating whether the shooter was left or right handed, as petitioner was right handed and his co-defendant was left handed, along with reports conducted on the clothing of co-defendant Whitley, that may indicate whether or not the blood patterns on his clothing were consistent with being the shooter or the driver in this case.

[2] All Transcripts of petitioners co-defendant [Ramen Whitley] and hearings, as the same is relevant to whether the state used **Inconsistent Theories** to prosecute petitioner, and whether **Perjury and Subordination of Perjury** occurred in this case, and whether the state alleged the same material facts at Ramen Whitley's trial as in petitioners trial, moreover, this evidence is necessary based on petitioners belief that the physical evidence in this case was consistent in confirming that co-defendant Ramen Whitley was the shooter in this case, which the state failed to disclose to petitioner in his trial.

[3] Transcripts of petitioners Grand Jury, which returned the indictments against petitioner, as the same is relevant to whether the indictment was void on its face, or if the Grand Jury was exposed to false evidence in contradiction to the states case in chief, where the sole evidence against petitioner in this case was statements from the co-defendant,

and the co-defendant admittedly gave several false, misleading and inconsistent statements in this case.

[4] Copy of the jury pool, and the wheel for the year ending August 2005, and the three (3) prior years, the statistical analysis of the racial makeup of qualified jurors in the Fayette County community during that time, as petitioner has raised issues relating to the courts failure to have blacks and other minorities on the jury, which challenges the array and jury pooling practices, as well as the racial composition of his jury based on the courts failure to recognize and seat blacks as jurors in petitioners trial, on request by counsel in this case, and in previous trials held in the Fayette County Circuit Court involving cases of African Americans, in violation of Due Process and Equal Protection.

WHEREFORE PETITIONER PRAYS THAT RELIEF WILL BE GRANTED

Signature of Petitioner

Date

CERTIFICATE OF SERVICE

I _____, attest by my signature that the foregoing **POST CONVICTION HABEAS CORPUS MOTION HABEAS DISCOVERY** has been delivered by U.S. Postal First Class Mail, by placing the same in the Mail Box at Mount Olive Correctional Complex on this the 22 day of January 2007, to the following parties:

Kevin Holiday, Clerk
Fayette County Circuit Court
P.O. Box 569
Fayetteville, W.Va. 25840-0569

IN THE CIRCUIT COURT OF FAYETTE COUNTY, OAKHILL WEST VIRGINIA

Brian Cunningham
#26272 Elm-202
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185
petitioner

v.

Thomas McBride, Warden
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185
respondant

Docket No. _____
Case No. 03-F-058
Judge: Vickers

PETITION UNDER W.Va. Code §53-4A-1 FOR WRIT OF HABEAS CORPUS

1. The judgement of conviction under attack was entered by the Circuit Court of Fayette County, West Virginia.
2. Petitioner was tried and convicted on August 16, 2005.
3. Petitioner was sentenced to Life with mercy in the penitentiary.
4. Petitioner was indicted, tried, convicted and sentenced on a two count indictment charging him with **First Degree Murder** and **Conspiracy to commit Murder**.
5. Petitioner plead not guilty to the aforementioned indictment.
6. Petitioner had a jury trial.
7. Petitioner testified at trial.
8. Petitioner filed a direct appeal to the Supreme Court of West Virginia, which was subsequently refused by the court, Justices Starcher and Albright would grant.

9. Petitioner does not have a sufficient record available to indicate the date his direct appeal was filed to the West Virginia Supreme Court, or to list the grounds raised at that time.
10. Petitioner filed a Habeas Petition in the Circuit Court of Fayette County on February 16, 2006 which was summarily dismissed on January 11, 2007.
11. Petitioner raised the following grounds in his habeas petition:
 - 1.)THE CIRCUIT COURT ERRED WHEN IT DENIED THE PETITIONERS MOTION FOR JUDGEMENT OF ACQUITTAL AT THE CONCLUSION OF THE STATES CASE IN CHIEF AS TO THE CHARGE OF CONSPIRACY BECAUSE THE COURTS RULING:
A. Disregarded the states burden of proof, B. Unfairly, impermissibly and unconstitutionally shifted the burden of proof to the petitioner, and C. Was unfounded and inconsistent with the evidence in the record.
 - 2.)THE CIRCUIT COURT ERRED WHEN IT DENIED THE PETITIONERS MOTION FOR JUDGEMENT OF ACQUITTAL AT THE CONCLUSION OF THE STATES CASE IN CHIEF AS TO THE CHARGE OF FIRST DEGREE MURDER, BECAUSE THE COURTS RULING:
A. Disregarded the states burden of proof, B. Unfairly, impermissibly and unconstitutionally shifted the burden of proof to the petitioner, and C. Was unfounded and inconsistent with the evidence in the record.
 - 3.)THE CIRCUIT COURT ERRED WHEN IT DENIED THE PETITIONERS MOTION FOR JUDGMENT OF ACQUITTAL REITERATED AT THE CONCLUSION OF THE TRIAL AS TO THE CHARGES OF CONSPIRACY AND FIRST DEGREE MURDER BECAUSE THE COURTS RULING: A. Disregarded the states burden of proof, B. Unfairly, impermissibly and unconstitutionally shifted the burden of proof to the petitioner, and C. Was unfounded and inconsistent with the evidence in the record.
 - 4.)THE CIRCUIT COURT ERRED WHEN IT DENIED THE PETITIONERS MOTION FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL FOLLOWING THE JURY VERDICTS BECAUSE THE COURTS RULING WAS ERRONEOUS IN LAW, INCONSISTENT WITH THE EVIDENCE AND FUNDAMENTALLY UNFAIR.
 - 5.)THE EVIDENCE PRESENTED AT PETITIONERS TRIAL WAS INSUFFICIENT TO CONVICT THE PETITIONER OF CONSPIRACY AND MURDER OF THE FIRST DEGREE.
 - 6.)CONVICTION BASED ON MALICIOUS PROSECUTION.
 - 7.)UNDISCLOSED THEORY OF PROSECUTION.
 - 8.)CONVICTION BASED ON DENIAL OF EQUAL PROTECTION AND DUE PROCESS.
 - 9.)UNLAWFUL ARREST.
 - 10.DOUBLE JEOPARDY.
 - 11.INEFFECTIVE ASSISTANCE OF COUNSEL.

(a) [1] N/A

[2] The state was not required to respond to said petition,

counsel was not appointed, nor was an omnibus habeas hearing

held on the merits of the petition.

[3] The court summarily denied the petition stating:

"The only new issues raised by petitioner are his claims of (1) Unlawful arrest, (2) Denial of due process, (3) Malicious prosecution, (4) Double Jeopardy, and (5) Ineffective assistance of counsel. While the undersigned court (Judge John W. Hatcher, Jr.) did not preside in the aforementioned criminal trial, the prisoners criminal trial counsel is a local lawyer who regularly appears before the court in criminal, juvenile delinquency, abuse and neglect and other civil cases, and he has an outstanding reputation with this court for always being well prepared, honest, candid and unafraid to fiercely advocate for his clients.

After a thorough consideration of all of the aforementioned, the court finds and concludes that if the petitioner had not testified in his criminal trial the result, based on the totality of the evidence would have been exactly the same and he would have been convicted. Further, the court finds and concludes that the other remaining grounds for relief are without any merit.

Thus, the court concludes that the allegations contained within the aforementioned petition do not rise to the level of probable cause necessitating the issuance of the requested writ.

Accordingly, it is **ordered** that the relief requested be **denied** and said civil action be **dismissed.**"

(EMPHASIS ADDED)

[4] Same as above

[5] Same as above

[6] Same as above

(b) On January 25, 2007 petitioner filed a **POST CONVICTION MOTION FOR HABEAS DISCOVERY**, in order to file a more adequate habeas petition.

[1] The post conviction habeas motion was filed in the Circuit Court of Fayette County.

[2] Petitioners post conviction habeas motion was filed in order to obtain transcripts of petitioners, as well as, his co-defendants hearings [including their trial and entire record] in this case.

[3] Petitioner in his discovery motion, advised the court that both records were necessary to develop and present issues on Perjury, Subordination of Perjury, and Prosecutorial Misconduct based on inconsistent theories, and to develop a more adequate habeas petition.

[4] At this time the court has not yet tendered the requested materials.

[5] N/A

[6] N/A

(c) N/A

(d) N/A

GROUND FOR RELIEF

Petitioner herein reserves all issues as previously filed, in his direct appeal, and subsequent habeas petition filed on February 16, 2006 as well as, all issues available in this matter, as if fully set forth herein in its entirety, and after the record is submitted to petitioner as requested, and an adequate review of the same can be conducted and a supplemental petition can be filed identifying the specific issues to be raised.

13. N/A

14. Petitioner's motion for habeas discovery is the only action pending in the court.

15. Petitioner's counsel throughout all proceedings in this case was Gratty Outton.

16. No, transcript has yet been tendered to petitioner of the criminal proceedings in this matter, which resulted in the conviction under attack.

17. Previous counsel submitted an appellate transcript request form for transcripts to the Circuit Court of Fayette County, but failed to tender a copy of the record to petitioner.

18. N/A

19. Petitioner was sentenced on both counts of a two (2) count indictment charging him with **First Degree Murder and Conspiracy to commit Murder.**

20. Petitioner does not have any future sentence to serve after he completes the sentence imposed by the judgement of conviction under attack.

WHEREFORE, PETITIONER PRAYS THAT THE COURT GRANT PETITIONER RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

Signature of "pro se," petitioner

I Declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(date)

IN THE CIRCUIT COURT OF FAYETTE COUNTY, OAKHILL WEST VIRGINIA

Brian Cunningham
#26272 Elm-202
Mount Olive Correctional Complex
One Mountainside Way
Mount olive, W.Va. 25185
petitioner

v.

Docket No. _____
Case No. 03-F-058
Judge: Vickers

Thomas McBride, Warden
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, W.Va. 25185
respondant

POST CONVICTION MOTION TO HOLD IN ABEYANCE PETITION
UNDER W.Va. Code §53-4A-1 FOR WRIT OF HABEAS CORPUS

Comes this day petitioner, [Brian Cunningham] "pro se," and moves this honorable court to hold in abeyance his habeas corpus petition accompanying this action.

Pursuant to this motion, petitioner asks this honorable court to accept his accompanying petition, and construe the same as filed on this date, but not to make any ruling or final order on the same, until some time after petitioner has received habeas discovery, as previously requested on _____, has reviewed the record, and a supplemental petition for habeas corpus is filed in the Circuit Court of Fayette County raising available issues for relief.

In support of the petition, petitioner states the following:

1. On _____, petitioner filed a Post Conviction Motion For Habeas Discovery in the Circuit Court of Fayette County.

2. At this time petitioner has not received any of the documents necessary to develop an adequate habeas petition.
3. The Federal A.E.D.P.A [Antiterrorist and Effective Death Penalty Act (Of 1996)] sets strict time limits for filing federal habeas petitions under §2254, by prisoners in state custody of one (1) year from the time a prisoners direct appeal has been denied.
4. At this time, the courts are in dispute over whether discovery motions and other actions, not specifically addressing the grounds to be raised on federal habeas corpus, will toll the one (1) year deadline.
5. As a safeguard to protect the rights of prisoners intended to file for relief in the federal courts, the federal courts have allowed prisoners to file habeas petitions prematurely, with a request to hold the same in abeyance pending final exhaustion of there claims in the lower court.
6. Petitioner herein would asks this honorable court to invoke the federal abeyance proceedings, and hold the accompanying petition in abeyance as if all grounds for relief had been set forth in their entirety within the accompanying habeas petition, until the time a supplemental petition can be filed in the Circuit Court of Fayette raising available issues for review in this matter.

WHEREFORE, PETITIONER PRAYS THAT RELIEF WILL BE GRANTED

Signature of "pro se," petitioner

Date

CERTIFICATE OF SERVICE

I _____, attest by my signature that the foregoing POST CONVICTION MOTION TO HOLD IN ABEYANCE PETITIONERS PETITION UNDER W.Va. Code §53-4A-1 FOR WRIT OF HABEAS CORPUS, has been delivered U.S. First Class Mail, on this the 1st day of March 2007, to the following parties:

Kevin Holiday, Clerk
Fayette County Circuit Court
P.O. Box 569
Fayetteville, W.Va. 25840-0569