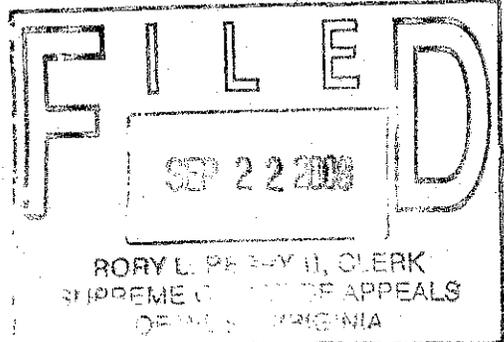


IN THE
SUPREME COURT OF APPEALS

In re.....

Supreme Court Case# _____

Att: Rory L. Perry, II:
Clerk of the Court
Supreme Court of Appeals
State Capitol, Room E-317
1900 Kanawha Boulevard, E.
Charleston, West Virginia
25305



Henry William Johnson, II/#46071-1,)
(Petitioner, pro se))

v.)

Bonnie Ward: Clerk of the Circuit Court)
of Raleigh County,)
(Respondent))

IN A PETITION FOR WRIT OF MANDAMUS
UNDER WEST VIRGINIA CODE §53-1-3

Dear Mr. Perry,

Please find enclosed herein Petitioner, pro se's Petition for Writ of Mandamus to be filed in the above captioned case, with Petitioner's Certificate of Service, as corroboration that NOTICE was sent thereof.

Please acknowledge your receipt thereof the Petition, and respond accordingly at your very earliest convenience, and thank you for your attention to this matter and my most immediate concerns.

Respectfully,

Henry William Johnson, II
Henry William Johnson, II /#46071-11
(Petitioner, pro se)

St. Mary's Correctional Center
2880 N. Pleasants Highway
St. Mary's, West Virginia 26170-4573

IN THE
SUPREME COURT OF APPEALS

In re.....

Supreme Court Case # _____

Henry William Johnson, II/#46071-1,)
(Petitioner, pro se))

v.)

IN A PETITION FOR WRIT OF MANDAMUS
UNDER WEST VIRGINIA CODE §53-1-3

Clerk of the Raleigh County Circuit)
Court: Bonnie Ward,)
(Respondent))

COMES THE PETITIONER, Henry William Johnson, II, pro se, in the above captioned action, and respectfully represents as follows:

- 1) Petitioner, by court appointed Public Defender, pursuant to Raleigh County Circuit Court Case # 07-F-58-B, pursuant to entry of a Kennedy plea, was sentenced, September 26th, 2007, to a term of one [1] to five [5] years imprisonment, and given sentence commencement credit from, March 15th, 2007;
- 2) Petitioner, pro se, as pursuant to the West Virginia Rules of Criminal Procedure [WVRCPP], Rule 35(b), did submit a Motion for Reduction of Sentence, November 7th, 2007, to Bonnie Ward: Clerk of the Raleigh County Circuit Court, by first class mail; the postage deducted from Petitioner's Inmate Trust Account, while he was incarcerated at the Martinsburg Correctional Center, Receiving Unit;
- 3) Petitioner, respectfully requested the clerk's acknowledgement of receipt of the Motion yet, received absolutely no response, whatsoever; nor any response to any follow-up letters of inquiry - despite it now having been well over ten [10] months;
- 4) As an elected functionary, the clerk of the circuit court has a ministerial duty to perform, as pursuant to the West Virginia Constitution, Article VIII, §9., Clerks of the Circuit Courts, in acknowledging receipt of, stamping on date received, and recording such petitions, motions, & briefs, etc., as are submitted to her/him; and responding to the petitioner or movant - whichever the case may be;

(continued on next page)

5) Movant, pro se, submitted the Motion well within the 120 days of sentencing as prescribed by the WVRCP - in fact, within two [2] months after being sentenced;

The failure of the clerk to respond has subjected Movant/Petitioner to substantial detriment in regard to consideration of the Rule 35(b) motion by the sentencing judge;

6) Pursuant to Rule 35(b) of the WVRCP, it is stated in relevant part:

'The court shall determine the motion within a reasonable time.'

Movant, pro se, in accordance with Rule 35(b) has moved the court to changing the sentence of incarceration to one of probation.

Petitioner, has served, to date, nearly eighteen months imprisonment of the one [1] to five [5] year sentence of imprisonment imposed, leaving a remainder of twelve [12] months left - given West Virginia Good Conduct Credit statute of one [1] day credit earned for every day served.

WHEREFORE, as pursuant to West Virginia Code §53-1-3, petitioner, pro se, respectfully prays of this Honorable Court that the Petition For Writ of Mandamus be granted, and directed to the respondent, to show cause if any she can, for her failure to respond with regard to acknowledgement of receipt of the Rule 35(b) motion, and follow-up letters of inquiry thereof.

Executed on this 17th
day of September 20 08.

Petitioner, pro se, does hereby declare under penalty of perjury that the foregoing facts averred in the Petition for Writ of Mandamus are true.

Henry William Johnson II
(Petitioner, pro se)

Petitioner respectfully prays for this,

Henry William Johnson II #46071-1
(Petitioner, pro se)

St. Mary's Correctional Center
2880 N. Pleasants Highway
St. Mary's, West Virginia 26170-4573

CERTIFICATE OF SERVICE

Petitioner, pro se, herein, does hereby certify, that on the 17th day of September 20 08, he mailed a true and correct copy of the foregoing petition for writ of mandamus, as NOTICE, to the respondent at 215 Main Street/Beckley, West Virginia 25801, by first class mail.

Henry William Johnson II
(Petitioner, pro se)

IN THE
SUPREME COURT OF APPEALS

In re.....

Supreme Court Case # _____

Henry William Johnson, II / #46071-1,
(Petitioner, pro se)

v.

Bonnie Ward: Clerk of the Circuit Court
of Raleigh County,
(Respondent)

)
)
)
) IN A PETITION FOR WRIT OF MANDAMUS
) UNDER WEST VIRGINIA CODE §53-1-3
)
)

NOTICE

COMES NOW THE PETITIONER, Henry William Johnson, II, pro se, in the above captioned action and hereby gives due NOTICE to the above named Respondent that this action is being pursued against you to show cause, if any you can, for your failure to perform your ministerial duty, as is prescribed by law, in failing to acknowledge receipt of, and otherwise, respond to Movant, pro se's, timely submitted Rule 35(b) Motion For Reduction Of Sentence, submitted you over eight [8] months ago in November 2007, nor respond to follow-up letter of inquiry.

Executed on this 17th
day of September 20 08.

Henry William Johnson II / #46071-1
(Petitioner, pro se)
St. Marys Correctional Center
2880 N. Pleasants Highway
St. Marys, West Virginia 26170-4573