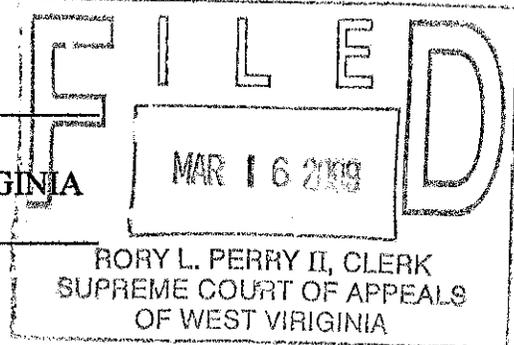


**IN THE SUPREME COURT OF APPEALS  
OF  
WEST VIRGINIA**

\_\_\_\_\_  
CHARLESTON, WEST VIRGINIA  
\_\_\_\_\_



**STATE OF WEST VIRGINIA,**

Plaintiff Below-Respondent,

VS.

WEST VIRGINIA SUPREME COURT NO.: 34718  
CIRCUIT COURT OF MERCER COUNTY  
CASE # 05-F-220-F

**SPICY JEAN ALLEN, aka SPICY CARTER,**

Defendant Below - Petitioner.

\_\_\_\_\_  
**BRIEF OF PETITIONER**  
\_\_\_\_\_

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

PETITION ..... 1

KIND OF PROCEEDING AND NATURE OF RULINGS BELOW ..... 1

STATEMENT OF FACTS ..... 3

ASSIGNMENTS OF ERROR ..... 3

POINTS AND AUTHORTIES RELIED UPON ..... 4

ARGUMENT AND DISCUSSION OF LAW ..... 6

**I. THE SENTENCE IMPOSED ON THE PETITIONER BY THE MERCER COUNTY CIRCUIT COURT IS EXCESSIVE AND INCONSISTENT WITH THE PETITIONER'S PLEA OF GUILTY TO ATTEMPT TO COMMIT A FELONY TO WIT: MURDER ..... 6**

**II. THE PETITIONER WAS DENIED HER SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HER DEFENSE ATTORNEYS FAILED TO ADEQUATELY ADVISE HER OF THE DIFFERENCE IN PENALTY BETWEEN ATTEMPT TO COMMIT A FIRST DEGREE MURDER AND ATTEMPT TO COMMIT A FELONY, TO-WIT: MURDER, AND BECAUSE THEY FAILED TO OBJECT WHEN THE JUDGE INCORRECTLY REFERRED TO THREE TO FIFTEEN YEARS AS A POSSIBLE SENTENCE FOR THE CRIME LISTED IN THE PLEA AGREEMENT. .... 8**

CONCLUSION AND PRAYER FOR RELIEF ..... 12

VERIFICATION ..... 14

**TABLE OF AUTHORITIES**

**UNITED STATES CONSTITUTION**

U.S.C.A. Const. Amend. VI .....8, 9, 11, 12

**WEST VIRGINIA STATE CONSTITUTION**

W. Va. Const. Art. 3 § 14 .....9

**WEST VIRGINIA CODE**

W. Va. Code § 58-5-1 (1923) *et seq.* ..... 1

W. Va. Code § 61-2-1 (1987) ..... 6

W. Va. Code § 61-2-2 (1965) .....6

W. Va. Code § 61-2-3 (1994) ..... 6

W. Va. Code § 61-11-8 (2002) ..... 5, 6, 7, 8, 9, 12

**WEST VIRGINIA RULES OF APPELLATE PROCEDURE**

W. Va. R. App. P. 3 ..... 1, 3

**WEST VIRGINIA RULES OF CRIMINAL PROCEDURE**

W. Va. R. Crim. P. 35 .....5

W. Va. R. Crim. P. 37 .....1

**UNITED STATES SUPREME COURT CASES**

Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985) ..... 10

Strickland v. United States, 466 U.S. 668, 104 S.Ct. 2052 (1984) .....5, 9, 10, 11

**FOURTH CIRCUIT CASES**

Hooper v. Garraghty, 845 F.2d 471 (4<sup>th</sup> Cir. 1987), *cert. denied*, 488 U.S. 843, 109 S.Ct. 117  
(1988) ..... 10

O'Dell v. Netherland, 95 F.3d 1214 (4<sup>th</sup> Cir. 1996) .....10

Ostrander v. Green, 46 F.3d 347 (4<sup>th</sup> Cir. 1995) .....10

**WEST VIRGINIA SUPREME COURT OF APPEALS CASES**

Becton v. Hun, 205 W. Va. 139, 516 S.E.2d 762 (1999) ..... 10

State ex rel. Burton v. Whyte, 163 W. Va. 276, 256 S.E.2d 424 (1979) ..... 10

State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995) ..... 5, 9, 10

State ex rel. Strogon v. Trent, 196 W. Va. 148, 469 S.E.2d 7 (1996) ..... 9

State ex rel. Vernatter v. Warden, 207 W. Va. 11, 528 S.E.2d 207 (1999) .....10

## **PETITION**

### **TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

The Petitioner, Spicy Jean Allen, aka Spicy Carter, by and through her counsel, Henry L. Harvey and Joseph T. Harvey, and pursuant to West Virginia Code § 58-5-1 (1923) *et seq.*, Rule 3 of the West Virginia Rules of Appellate Procedure, and Rule 37 of the West Virginia Rules of Criminal Procedure, that give this Court jurisdiction over appeals from West Virginia circuit courts, petitions this Honorable Court to grant her Appeal from the decision of the Mercer County Circuit Court, Mercer County, West Virginia, entered on August 6, 2008, in the matter styled herein.

### **KIND OF PROCEEDING AND NATURE OF RULINGS BELOW**

This case is an appeal from the Petitioner's conviction of Attempt to Commit a Felony, To-Wit: Murder following the entrance of a guilty plea. In this case, the Petitioner asks this Court to reverse the lower court's decision denying the Petitioner's Motion for Correction of Sentence and adjudging her guilty of the above-stated criminal offense. On June 15, 2005, the Petitioner, Spicy Jean Allen, aka Spicy Carter, was indicted on the charges of First Degree Murder, Conspiracy to Commit Murder in the First Degree, Robbery in the First Degree, and Conspiracy to Commit Robbery in the First Degree. On December 21, 2005, the Petitioner, then represented by Paul Cassell and Harold Wolfe, III, entered into a Plea Bargain Agreement with the Mercer County Prosecuting Attorney, Timothy D. Boggess. Pursuant to said plea agreement, the Petitioner agreed to enter a plea of guilty to the Charge of Delivery of a Schedule II Controlled Substance (Hydromorphone) (Criminal Case No. 05-F-264-F) and a "best interest" plea of Attempt to Commit Murder. Said plea agreement was approved and signed by the Petitioner, Paul Cassell, Harold B. Wolfe, III, and Timothy D. Boggess, Mercer County

Prosecuting Attorney. The Disposition Order, entered on March 27, 2006, provided that the Petitioner plead guilty to Attempt to Commit Murder in the First Degree. The Petitioner was sentenced to an indeterminate term of not less than three (3) nor more than fifteen (15) years in the penitentiary. This sentence was ordered to run consecutively with the sentence she received in Criminal Case No. 05-F-264-F. The Petitioner was given credit for 345 days in the sentence in the above-styled case. The effective date of the sentence was March 27, 2006. The Commitment to Penitentiary Order provides that the Petitioner plead to Attempt to Commit a Felony, To-Wit: Murder.

On August 1, 2007, the Petitioner filed a Motion for Correction of Sentence asking the Mercer County Circuit Court to correct the previously imposed sentence and arguing that the Petitioner was sentenced to the term prescribed by the West Virginia Code for Attempt to Commit Murder in the First Degree, while her Plea Agreement clearly indicates that she plead to Attempt to Commit Murder, which bears a sentence of one (1) to three (3) years in the penitentiary or confinement in jail for not less than six (6) months nor more than twelve (12) months and a fine of not exceeding five hundred dollars (\$500). On July 25, 2008, the Honorable Derek C. Swope, Circuit Judge for Ninth Judicial Circuit, Mercer County, West Virginia, referred said motion to the Honorable David W. Knight, Senior Status Judge, for consideration. On August 6, 2008, Judge Knight erroneously denied the Petitioner's Motion for Correction of Sentence and ruled that the Petitioner was correctly sentenced on March 27, 2006, to a term of incarceration of three (3) to fifteen (15) years for the crime of Attempt to Commit Murder in the First degree. In his Order, Judge Knight cited portions of the plea hearing transcript, stating that the Petitioner "'totally' understood the plea agreement and the penalty she was facing". Order of August 6, 2008 at page 8. Pursuant to Rule 3 of the West Virginia Rules

of Appellate Procedure, the Petitioner filed a timely appeal from the final judgment entered by the Mercer County Circuit Court on August 6, 2008.

### **STATEMENT OF FACTS**

On or about April 17, 2005, the Petitioner, Spicy Jean Allen, was arrested without a warrant for first degree murder of Jermaine "Shorty" Mitchell and placed in the Bluefield City Jail. She was indicted for the offenses of Murder in the First Degree, Robbery in the First Degree, and two counts of Conspiracy on June 15, 2005. On December 21, 2005, the Petitioner filled out three forms: a Petition to Enter Plea of Guilty, a Plea of Guilty, and Defendant's Statement in Support of Guilty Plea. In those forms, the Petitioner indicated that she would plead to Delivery of Controlled Substance and Attempt to Commit Murder. The Plea Bargain Agreement was entered into on December 21, 2005, and indicated that she would plead to Delivery of Schedule II Controlled Substance (Hydromorphone) and that she would enter a "best interest" plea to Attempt to Commit Murder. The State agreed to dismiss all other charges and to waive and forego any enhancement of the sentence of the Petitioner pursuant to the "Habitual Criminal Act" or any other statute. The Plea Bargain Agreement was approved and signed by Ms. Allen, Paul Cassell and Harold Wolfe, III, counsel for the Petitioner at that time, and Timothy D. Boggess, Assistant Prosecuting Attorney. On December 21, 2005, the Court adjudged the Petitioner guilty of Attempt to Commit a Felony, To-Wit: Murder as the State has alleged in Count One of its Indictment No. 05-F-220-F, and the offense of Delivery of a Schedule II Controlled Substance, To-Wit: Hydromorphone. On March 27, 2006, the Court erroneously adjudged the Petitioner to be guilty of Attempt to Commit Murder in the First Degree, and sentenced her to an indeterminate period of not less than three (3) nor more than fifteen (15) years in the penitentiary to run consecutively with her previous sentence, effective

sentence being March 27, 2006. The Petitioner was given credit for 345 days already served in connection with this charge. The Commitment to Penitentiary Order stated that the Petitioner had been found guilty by plea to the Offense of Attempt to Commit a Felony, To-Wit: Murder.

On August 6, 2008, the Honorable David W. Knight erroneously denied the Petitioner's Motion for Correction of Sentence and ruled that the Petitioner was correctly sentenced on March 27, 2006, to a term of incarceration of three (3) to fifteen (15) years for the crime of Attempt to Commit Murder in the First Degree. In denying the Petitioner's motion, Judge Knight relied on the plea hearing transcript and argued that the Petitioner was well informed of the gravity of the offenses she was pleading to and the underlying penalties for these crimes.

#### **ASSIGNMENT OF ERROR**

That the Mercer County Circuit Court erred in denying the Petitioner's Motion to Correct Sentence because she was sentenced to the term prescribed by the West Virginia Code for Attempt to Commit Murder in the First Degree, while her Plea Agreement clearly indicates that she plead to Attempt to Commit Murder, which bears a sentence of one (1) to three (3) years in the penitentiary or confinement in jail for not less than six (6) nor more than twelve (12) months and a fine not exceeding five hundred dollars (\$500).

That the Petitioner was denied her Sixth Amendment right to effective assistance of counsel because Paul Cassell and Harold Wolfe, III failed to adequately advise her of the difference between penalties in Attempt to Commit Murder in the First Degree and Attempt to Commit a Felony, To-Wit: Murder. The Petitioner's attorneys also failed to object when the Judge kept referring to the Petitioner's possible sentence as being three (3) to fifteen (15) years in the penitentiary instead of a much lighter sentence prescribed for the offense pled to by the Petitioner.

## POINTS AND AUTHORITIES RELIED ON

Because the Petitioner entered a plea of guilty to Attempt to Commit a Felony: To-Wit Murder, an offense which bears a sentence less than a life term imprisonment under W. Va. Code § 61-2-3 (2002), she should have been sentenced under W. Va. Code § 61-11-8(b) (1994) to one (1) to three (3) years in the penitentiary or confinement in jail for not less than six (6) nor more than twelve (12) months and a fine not exceeding five hundred dollars (\$500). Instead, she received “an illegal sentence” pursuant to Rule 35 of the West Virginia Rules of Criminal Procedure, which was based on a charge she did not plead to: Attempt to Commit First Degree Murder. Moreover, the Petitioner was denied her Sixth Amendment right to effective assistance of counsel, because Paul Cassell and Harold Wolfe, III, counsel for the Petitioner at that time, failed to adequately inform the Petitioner of the penalties associated with Attempt to Commit First Degree Murder and Attempt to Commit a Felony, To-Wit: Murder. To evaluate ineffective assistance of counsel claims, West Virginia has adopted the two-prong test announced in Strickland v. United States, 466 U.S. 668, 104 S.Ct. 2052 (1984). In fact, Justice Cleckley paraphrased the two components of this test in Syllabus point 5 of State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995): “(1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” At the plea hearing, the Petitioner appeared to understand that she was pleading to an offense that involved a sentence of three (3) to fifteen (15) years in the penitentiary, while in reality she was pleading to Attempt to Commit a Felony, To-Wit: Murder, which bears a much lighter sentence, as indicated above. Clearly, the Petitioner’s attorneys failed to advise her of the correct sentence for the crime to which she was about to plead. Moreover, her counsel also failed to object to the Judge advising

the Petitioner of the incorrect sentence at the plea hearing. Therefore, based on the foregoing, the Mercer County Circuit Court erred in sentencing the Petitioner under W. Va. Code § 61-11-8(a) and then denying the Petitioner's Motion to Correct Sentence.

Therefore, based on the foregoing, the Petitioner respectfully requests that this Honorable Court reverse the Mercer County Circuit Court's denial of the Petitioner's Motion for Correction of Sentence and ORDER the Mercer County Circuit Court to release the Petitioner from imprisonment due to the fact that she has already served the statutory sentence for Attempt to Commit a Felony, to To-Wit: Murder, especially when taking into consideration the 345 days credited to her on the underlying criminal charge, and grant the Petitioner any other relief that this Court deems fair and just.

### **ARGUMENT AND DISCUSSION OF LAW**

#### **I. THE SENTENCE IMPOSED ON THE PETITIONER BY THE MERCER COUNTY CIRCUIT COURT IS EXCESSIVE AND INCONSISTENT WITH THE PETITIONER'S PLEA OF GUILTY TO ATTEMPT TO COMMIT A FELONY, TO WIT: MURDER.**

Statutorily, first degree murder is defined as "murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in article four, chapter sixty-a of this code". W. Va. Code § 61-2-1 (1987). The West Virginia Code also provides that "[a]ll other murder is murder of the second degree". *Id.* The penalty for Murder in the First Degree is life imprisonment. W. Va. Code § 61-2-2 (1965). The penalty for Murder in the Second Degree is an indeterminate period of not less than ten (10) nor more than forty (40) years in the penitentiary. W. Va. Code § 61-2-3.

Pursuant to W. Va. Code § 61-11-8(a), the penalty for the attempted offense punishable by life imprisonment, such as Murder in the First Degree, is three (3) to fifteen (15) years in the penitentiary. West Virginia Code § 61-11-8(b) provides that the penalty for attempted offense punishable by imprisonment in the penitentiary for a term less than life, such as Murder in the Second Degree, is not less than one (1) nor more than three (3) years in the penitentiary, or confinement in jail for not less than six (6) not more than twelve (12) months and a fine not exceeding five hundred dollars (\$500).

The Defendant, Spicy Jean Allen, entered into a plea agreement with the Mercer County Prosecuting Attorney, Timothy Boggess on December 21, 2005. Pursuant to said plea agreement, the Defendant agreed to enter a plea of guilty to the Charge of Delivery of a Schedule II Controlled Substance (Hydromorphone), as charged in the indictment for Criminal case no. 05-F-264-F and a "best interest" plea to Attempt to Commit Murder. On or about December 21, 2005, the Petitioner filled out and signed three plea documents: Petition to Enter Plea of Guilty, Plea of Guilty, and Defendant's Statement to Support Guilty Plea. These documents evidence her understanding that she was pleading to Attempt to Commit a Felony, To-Wit: Murder rather than Attempt to Commit Murder in the First Degree. Her plea agreement was approved and signed by the Petitioner, Paul Cassell and Harold B. Wolfe, III, counsel for the Petitioner, and Timothy D. Boggess. While the Disposition Order, entered on March 27, 2006, provides that the Petitioner plead guilty to Attempt to Commit Murder in the First Degree in the Order entered on December 22, 2005, the Court adjudged the Petitioner to be guilty of a lesser-included offense, "Attempt to Commit a Felony, To-Wit: Murder, as the State in Count 1 of its Indictment No. 05-F-220-F herein has alleged". Moreover, the Commitment to Penitentiary Order provides that the Petitioner plead guilty to "Attempt to Commit a Felony, To-Wit: Murder."

Notwithstanding the fact that the Petitioner plead to Attempt to Commit a Felony, To-Wit: Murder, the Mercer County Circuit Court sentenced her to an indeterminate term of not less than three (3) nor more than fifteen (15) years in the penitentiary, without any objections from her counsel. This sentence was ordered to run consecutively with the sentence she received in case number 05-F-264-F. The Petitioner was given credit for 345 days in the sentence in the underlying criminal prosecution. The effective date of the sentence was March 27, 2006. As indicated above, this sentence is appropriate for an attempted offense punishable by life imprisonment, to-wit, first degree murder. As evidenced by her plea agreement and supporting documents, the Petitioner did not plead to Attempt to Commit First Degree Murder.

On August 1, 2007, the Petitioner filed a Motion for Correction of Sentence, requesting that the trial court correct her sentence because she was sentenced to the term prescribed in the West Virginia Code for Attempt to Commit Murder in the First Degree, while her plea agreement clearly indicates that she plead to Attempt to Commit a Felony: To-Wit: Murder, which bears a sentence of one (1) to three (3) years in the penitentiary or confinement in jail for not less than six (6) nor more than twelve (12) months and a fine not exceeding five hundred dollars (\$500). This offense bears the above sentence because Attempt to Commit a Felony is punishable by a penitentiary term less than life, and, therefore, the provisions of W. Va. Code § 61-8-11(b) apply. The Mercer County Circuit Court denied the Petitioner's motion despite the fact that the sentence given to the Petitioner was not based on the charge agreed to in the plea agreement.

**II. THE PETITIONER WAS DENIED HER SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HER DEFENSE ATTORNEYS FAILED TO ADEQUATELY ADVISE HER OF THE DIFFERENCE IN PENALTY BETWEEN ATTEMPT TO COMMIT A FIRST DEGREE MURDER AND ATTEMPT TO COMMIT A FELONY, TO-WIT: MURDER, AND**

**BECAUSE THEY FAILED TO OBJECT WHEN THE JUDGE INCORRECTLY REFERRED TO THREE TO FIFTEEN YEARS AS A POSSIBLE SENTENCE FOR THE CRIME LISTED IN THE PLEA AGREEMENT.**

Pursuant to the Sixth Amendment of the United States Constitution, “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel in his defense”. U.S.C.A. Const. Amend. VI. *See also*, W. Va. Const. Art. 3 § 14. The Sixth Amendment right to counsel necessarily includes the right to effective assistance of counsel. U.S.C.A. Const. Amend. VI; W. Va. Const. Art. 3 § 14; State ex rel. Strogon v. Trent, 196 W. Va. 148, 469 S.E.2d 7 (1996). To evaluate ineffective assistance of counsel claims, West Virginia has adopted the two-prong test announced in Strickland v. United States, 466 U.S. 668, 104 S.Ct. 2052 (1984). In fact, Justice Cleckley paraphrased the two components of this test in Syllabus point 5 of Miller, 194 W. Va. 3, 459 S.E.2d 114: “(1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” Justice Cleckley further emphasized that courts must focus on whether counsel’s actions were in accord with the actions of a “reasonable lawyer . . . under the circumstances.” *Id.* Four years later, the West Virginia Supreme Court entertained the issue of ineffective assistance of counsel as it pertained to guilty pleas and discussed the Strickland test in great detail:

The first prong of the Strickland test requires that a petitioner ‘identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.’ Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. The second or ‘prejudice’ requirement of the Strickland/Miller test looks to whether counsel’s deficient performance adversely affected the outcome in a given case. A modified prejudice standard applies in cases where a conviction rests upon a plea of guilty. In this circumstance, the prejudice element ‘focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea

process. In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.' Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985). Under Hill, "[p]rejudice' is a reasonable probability sufficient to undermine confidence in the outcome.'" Ostrander v. Green, 46 F.3d 347, 355 (4<sup>th</sup> Cir. 1995) (quoting Strickland, 466 U.S. at 694, 104 S.Ct. at 2068), overruled on other grounds by O'Dell v. Netherland, 95 F.3d 1214 (4<sup>th</sup> Cir. 1996). While Hill's prejudice requirement focuses on a subjective question, 'the answer to that question must be reached through an objective analysis.' Hooper v. Garraghty, 845 F.2d 471, 475 (4<sup>th</sup> Cir. 1987), cert. denied, 488 U.S. 843, 109 S.Ct. 117, 102 L.Ed.2d 91 (1988).

State ex rel. Vernetter v. Warden, 207 W. Va. 11, 18, 528 S.E.2d 207, 211 (1999). Counsel for a criminal defendant has basic duties to his client: duty of loyalty, duty to avoid conflicts, duty of care, duty to consult his client, and duty to keep his client informed of important stages and developments of that client's case. Strickland, 466 U.S. at 688, 104 S.Ct. 2065. Such duties are not meant to be exhaustive; instead, counsel's performance is evaluated objectively in the realm of all surrounding circumstances. Id. Thus, courts must evaluate "the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, 2066. Such "reasonable professional judgment" necessarily involves "reasonable investigation," unless the defendant provided his counsel with reason to believe that such investigation would be in vain. It is also essential to examine counsel's communications with his client to see client's influence on counsel's decisions in a particular case. Id. For example, under the objective professional standard and absent extenuating circumstances, a criminal defense attorney must communicate to the defendant any guilty plea bargains discussed and/or offered by the prosecutor, because failure to do so would constitute ineffective assistance of counsel. Becton v. Hun, 205 W. Va. 139, 516 S.E.2d 762 (1999). In Becton, the West Virginia Supreme Court held that counsel's failure to communicate a plea agreement to the client amounted to ineffective assistance of counsel, and remanded the case

back to the trial court to enforce the sentencing conditions of the plea agreement where the State agreed to recommend a ten-year sentence. *Id.* at 145, 768. *See also, State ex rel. Burton v. Whyte*, 163 W. Va. 276, 280, 256 S.E.2d 424, 426 (1979). Moreover, it is imperative that counsel advise his client of the nature of her guilty plea and any penalties carried by the offenses.

In the case at bar, the Petitioner's Sixth Amendment right to counsel was violated because Paul Cassell and Harold Wolfe, III were ineffective in their representation of her in the underlying criminal prosecution in failing to adequately advise her of the underlying penalties for Attempt to Commit Murder in the First Degree and Attempt to Commit a Felony, To-Wit: Murder. It is clear from the plea agreement and supporting documents that the Petitioner entered a plea of guilty to Attempt to Commit a Felony, To-Wit: Murder. However, the transcript of the plea hearing suggests that the Petitioner understood the penalty for such offense to be three (3) to fifteen (15) years in the penitentiary. Accordingly, she was not adequately informed of the actual, much lighter penalty of the offense she was pleading to. Therefore, her counsel's failure to advise the Petitioner of the proper penalty to Attempt to Commit a Felony, To-Wit: Murder was deficient under the Strickland standard of reasonableness. Had she been advised of the exact penalty to the offense pled, she would not have agreed that the penalty to the offense was three (3) to fifteen (15) years and would not have taken a guilty plea under those circumstances. Moreover, her attorneys also failed to act within the standard of reasonableness by failing to bring to the attention of the Judge that the Petitioner's actual sentence would be derived from W. Va. Code § 61-11-8(b) instead of a much heavier sentence provided by W. Va. Code § 61-11-8(a). Had the attorneys objected to the Judge stating the Attempt to Commit First Degree Murder sentence and had they informed the Petitioner of the proper sentence of the offense to

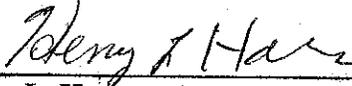
which she plead, the result of the proceedings would have been different, to-wit: a sentence imposed on the Petitioner in accordance with the offense to which she pled.

**CONCLUSION AND PRAYER FOR RELIEF**

Therefore, due to the fact that the Petitioner should have been sentenced to a confinement term in accordance with her plea agreement, whereby she plead to Attempt to Commit a Felony, To-Wit: Murder, and that she was given credit for time served in the amount of 345 days, and that she has already served two years and eleven months in the penitentiary, she should be released from her confinement as having finished the service for Attempt to Commit a Felony, To-Wit: Murder, the crime to which she entered a guilty plea. The Petitioner was also denied her Sixth Amendment right to effective assistance of counsel because her attorneys failed to adequately advise her and alert the Judge of the correct penalty for the offense to which she plead: Attempt to Commit a Felony, To-Wit: Murder. Accordingly, based on the foregoing, the Mercer County Circuit Court erred in sentencing the Petitioner under W. Va. Code § 61-11-8(a) and then denying the Petitioner's Motion from Correction of Sentence, and should have sentenced her under W. Va. Code § 61-11-8(b).

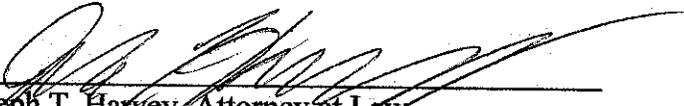
**WHEREFORE**, the Petitioner respectfully requests that this Honorable Court **REVERSE** the Mercer County Circuit Court's denial of the Petitioner's Motion for Correction of Sentence and **ORDER** the Mercer County Circuit Court to release the Petitioner from imprisonment due to the fact that she has already served the statutory sentence for Attempt to Commit a Felony, to To-Wit: Murder, especially when taking into consideration the 345 days credited to her on the underlying criminal charge, and grant the Petitioner any other relief that this Court deems fair and just.

Respectfully submitted,  
SPICY JEAN ALLEN  
Aka SPICY CARTER  
Petitioner  
By Counsel,



---

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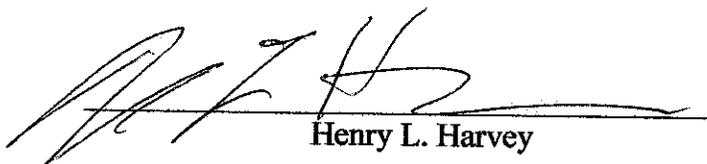
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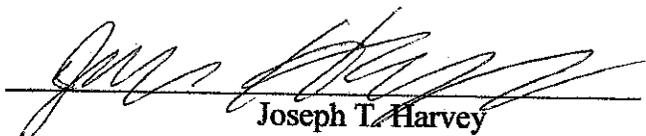
Joseph T. Harvey, Attorney at Law  
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1604 W. Main Street  
Princeton, West Virginia 24740  
Phone: 304-487-3788

**VERIFICATION**

STATE OF WEST VIRGINIA  
COUNTY OF MERCER, to-wit

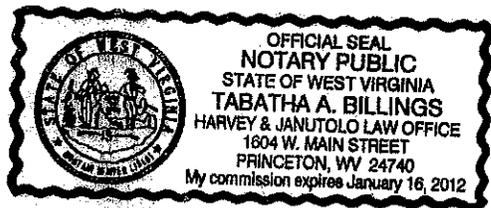
We, Henry L. Harvey and Joseph T. Harvey, counsel for the Petitioner, Spicy Jean Allen, in the foregoing Brief of Petitioner, after being duly sworn according to law, depose and say that the facts and allegations contained in the foregoing Brief of Petitioner are true to the best of our knowledge, except insofar as they are stated therein to be upon information and belief, and that so far as they therein stated to be upon information and belief, we believe them to be true.

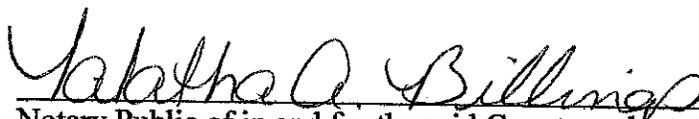
  
Henry L. Harvey

  
Joseph T. Harvey

Taken, sworn to and subscribed before me this 11<sup>th</sup> day of March, 2009,  
by Henry L. Harvey and Joseph T. Harvey.

My Commission Expires: January 16, 2012



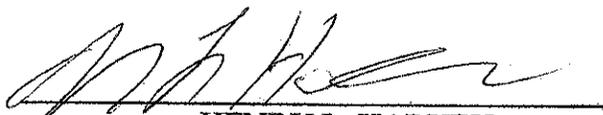
  
Notary Public of in and for the said County and  
State aforesaid

**CERTIFICATE OF SERVICE**

WE, HENRY L. HARVEY and JOSEPH T. HARVEY, Attorneys for the Petitioner,  
Spicy Jean Allen, aka Spicy Carter, hereby certify that I served a true copy of BRIEF OF  
PETITIONER on 11<sup>th</sup> day of March, 2009, by personally  
delivering the following:

Dawn E. Warfield  
Attorney General's Office  
State Capitol, Room E-26  
Charleston, WV 25305

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