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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

State of West Virginia

Criminal Action # 06-F-21

vs.

Edward Charles Grimes,

DOB 12 / 28 / 1981

SS# 216-04-5845

Defendant.

SENTENCING ORDER

This **January 29, 2007**, the State, by Gregory Smith, Esq., and Nicholas Colvin, Esq., Assistant Prosecuting Attorneys for Berkeley County; and the Defendant, in person and by counsel, Homer Alan Speaker, Esq., and Steven Arthur Greenberg, Esq., appeared for Sentencing.

The Defendant was, on **November 14, 2006**, found guilty at a trial by jury of **Murder In The Second Degree**, a lesser-included-felony of the offense charged in the Indictment, and is now adjudged convicted of said offense.

The Court first took up the post trial motions made by the Defendant and heard argument by the Defendant and the State. After consideration the Court found that the matters at issue in this case were fairly placed before a properly constituted jury of the Defendant's peers who closely listened to the evidence placed before them, and the instructions of the Court, and then deliberated at length to reach a verdict of Guilty to a lesser-included-offense of the Indictment. The Court found that there was evidence presented at trial sufficient to support such a verdict and that the Court should not substitute its own view of the evidence for that of the jury. Specifically the Court found that even without a direct instruction that malice may be inferred from the use of a deadly weapon, a jury was free to make such an inference and when considered along with all the other evidence, that could support a finding of malice. Otherwise,

BERKELEY COUNTY
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the jury had the issue of self-defense placed squarely before them and apparently did not find such a defense provided legal justification for the homicide in this case. The Defendant further raised other issues previously raised and ruled upon at trial, to which the Court reaffirmed its earlier rulings. Thus the Defendant's motions for Acquittal or New Trial were denied and his objection noted.

The Court next proceeded to hear arguments with regard to sentencing. The Defendant exercised his right of allocution by addressing the Court and the victim's family. Selected representatives of the victim's family then briefly addressed the Court. Upon the Defendant's motion the Court then heard in camera from the two children in the case who wished to speak on behalf of the Defendant.

Finding no cause which would preclude Sentencing, and having heard all submissions with regard to the Pre-Sentence Report and the appropriate Sentence, and the Court being fully informed of the circumstances surrounding the charges,

ACCORDINGLY:

**IT IS THE SENTENCE OF THE LAW
AND THE JUDGMENT OF THIS COURT:**

- Upon conviction for the felony of Murder In The Second Degree, being a lesser-included-offense of Indictment, that the Defendant be confined at the penitentiary house of this State for **FORTY (40) YEARS**, there to be dealt with according to law
- *It is further Ordered* that the Defendant pay **RESTITUTION** to: **City Hospital, Inc.**, (now West Virginia University Hospital East) in Martinsburg West Virginia, where the victim was treated before he expired (*account #V00001383833*), in the amount of **ELEVEN THOUSAND, TWO HUNDRED and THIRTY-ONE Dollars and SIX Cents (\$11,231.06)**; **Salutis Emergency Specialists** in the amount of **ONE THOUSAND SIXTY-EIGHT Dollars and THIRTY Cents (\$1,068.30)**; **Berkeley County Ambulance Authority** in the amount of **SIX HUNDRED and NINETY-EIGHT Dollars (\$698.00)**; **Eastern Panhandle Anesthesia Associates** at West Virginia University Hospital East in the amount of **FOUR THOUSAND, TWO HUNDRED and SEVENTY-FIVE Dollars (\$4,275.00)**; for a **TOTAL**

RESTITUTION of SEVENTEEN THOUSAND, TWO HUNDRED and SEVENTY-TWO Dollars and THIRTY-SIX Cents (\$17,272.36) through the Clerk of this Court.

The State shall recover of the Defendant its costs in this behalf expended. The Defendant is entitled to a credit for time he has served against this sentence.

It is further **ORDERED** that the Defendant is remanded to the Commissioner of the Division of Corrections to begin serving the sentence herein imposed. Until such time that a representative of the Division of Corrections takes custody of the Defendant, he is remanded to the temporary custody of the Superintendent of the Eastern Regional Jail, per diem cost associated with the Defendant's custody shall be paid solely by the Division of Corrections from the date of this Order.

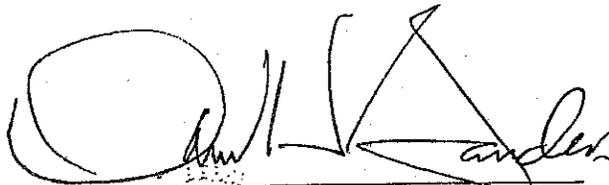
WHEREUPON, the Court advised the Defendant of the rights regarding appeal, as will appear on the record.

DATE OF CONVICTION:	November 16,	2006
DATE OF SENTENCING:	January 29,	2007
EFFECTIVE DATE OF SENTENCE:	September 7,	2005

The objection of the Defendant to any and all adverse rulings of the Court is noted.

The Clerk shall enter the foregoing as for the date first above written and shall forward attested copies to all counsel of record; to the Court's Probation Officer; to the Eastern Regional Jail; and to the Commissioner of the Department/Division of Corrections. The Clerk shall then retire this matter from the docket, placing it among causes ended and report the matter as disposed.

Entered: **February 7, 2007**

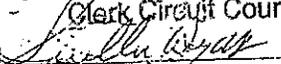


JUDGE OF THE CIRCUIT COURT

A TRUE COPY
ATTEST

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Virginia M. Sine
Clerk Circuit Court

By 
Deputy Clerk

Adams
PD HS
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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS.

CASE NO 06-F-21
JUDGE SANDERS

EDWARD C. GRIMES
Defendant.

AGREED ORDER REENTERING JUDGMENT AND SENTENCE
FOR PURPOSE OF PERMITTING APPEAL

This matter came before the Court on the 24th day of Sept., 2007, upon the appearance of the Defendant by Counsel, John P. Adams, and the Appearance of the State by its Prosecuting/Assistant Prosecuting Attorney. Whereupon Counsel for the Defendant advised the Court that the was requesting that the Court reenter its Judgment and Sentence in this case solely for the purpose of permitting the Defendant to seek an appeal of his conviction from the West Virginia Supreme Court of Appeals. Counsel further advised the Court that this case was now beyond 6 month maximum statutory period for such and appeal, that the delay in preparing the appeal had not been caused by the Defendant, and that counsel believed that meritorious grounds for appeal existed in this case. Counsel further advised the Court that no further extensions of any kind would be sought in this case and that Counsel believed this appeal could be completed within statutory time limits after if the Court entered the requested order which would have the effect of restarting the four-month appeal period. The Defendant was convicted on November 11, 2006 and sentenced in January 29, 2007.

BERKELEY COUNTY
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VIRGINIA/SHERIFF

Whereupon Counsel respectfully requested that the Court exercise its discretion and grant the requested relief and made the following representations to the Court.

- 1) That the original notice of intent to appeal was timely filed and requests for transcripts were timely made.

2) That there were unanticipated delays in obtaining some transcripts and other documents deemed critical by counsel to the effective prosecution of this appeal.

3). That counsel began work on this appeal substantially before the initial four month time limit but that the appeal was not completed within the statutory period.

4. That in an effort to complete the appeals, counsel requested and was assigned the services of Legal Assistant Peter Sheehan, who was providing substantial assistance to Counsel in the organization and preparation of this appeal. That in April 2007, Mr. Sheehan suffered a heart attack, was out of the office on medical leave for a period of several weeks, and then unexpectedly died. Because of the unexpected death of Mr. Sheehan, it took Counsel some time to locate and organize the work performed by Mr. Sheehan, which was substantial.

5. Counsel acknowledged that he has sole responsibility for the timely filing of the appeals and respectfully asked the Court to consider the following factors in considering counsel's motion;

1) That for an extended period of years, Counsel's family had been experiencing extremely serious difficulties, principally in connection with two of Counsel's children. That Counsel's family has sought and received counseling services for all family members. That these difficulties continued to occur and escalate throughout 2007. Counsel was required at many times to interrupt or suspend his activities at work. Counsel was at times required to physically leave work and go home to deal with these matters. As matters continued to deteriorate, intervention by law enforcement was required on more than one occasion. Because of the nature of this information, Counsel was permitted to provide the Court with a more detailed explanation in camera.

Counsel advised the Court the above events created tremendous stress and had a significant and adverse effect on Counsel's ability to effectively complete tasks in all in all areas of his life, including his legal work. Counsel further advised the Court that the frequent interruptions of and requirement to leave work to deal with family problems compounded his difficulties in completing this appeal because the nature of appellate work requires relatively long and unbroken periods of concentration.

2. That in May 2007, Counsel was involved in an accidental noise exposure accident which severely damaged Counsel's hearing. Counsel immediately sought medical treatment and continues to receive medical treatment for this injury. As a result of this injury Counsel has an approximately 70% hearing loss in his right ear and approximate 30% loss in his left ear. Counsel also experiences a continuous ringing or tinnitus in his right ear.

The effects of this injury on counsel have been profound, including: increased stress; inability to participate in normal conversation, inability to remain physically present in crowded situations such as parties or court rooms because of anxiety and confusion caused by hearing loss; inability to locate the sources of sound such as voices, bells, and car noises without careful visual inspection of his surroundings; high distractibility and irritation, inability to concentrate; loss of short-term memory; and sleeplessness.

Counsel has been advised by his treating physician that these symptoms are the result of permanent nerve damage and are typical. Counsel's treating physician has advised him that there is a chance of some remediation through the use of high does of steroids. Counsel is currently undergoing such treatments, a part of which includes direct injection of high doses of steroids through Counsel's right ear drum. Counsel has experienced significant and adverse reactions to this particular therapy, which have further compromised his ability to function in all

areas of his life. Counsel's family have advised him that they have observed significant and adverse effects on his emotional state from this therapy, which has exacerbated the problems within the family.

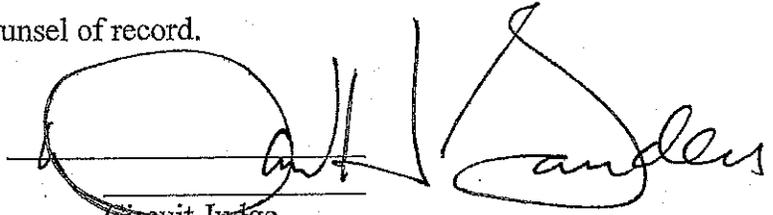
Counsel advised the Court that for all the reasons set forth his ability to perform work on this appeal was, and continues to be, compromised. Counsel has been regularly reporting to work and completing as much work as possible but has simply not been able to complete this appeal. Counsel does however believe that he can complete this appeal in a competent and professional manner for the following reasons: 1) Counsel has already performed substantial work on this appeal and is familiar with the issues; 2) all of the relevant and required materials have been collected and are at hand; 3) Counsel has requested and been granted the assignment of junior counsel to assist him in completing this appeal; 4) Counsel is highly experienced and competent in this type of work in normal circumstances.

Counsel also advised the Court that full disclosure of this information had previously been made to the Prosecuting Attorney, and that the Prosecuting Attorney did not oppose the granted relief.

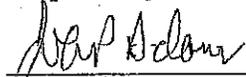
Upon consideration of all the matters presented the Court finds that counsel for the Defendant has shown good cause for the requested relief subject to the conditions set forth in Counsel's representations. It is therefore ORDERED that the JUDGMENT and SENTENCE of this Court in this case be and HEREBY IS REENTERED as of the day and date hereinabove written. It is FURTHER ORDERED that this shall be solely for the purpose of restarting the four month period in which the Defendant may seek an appeal and that no further extensions will be considered by the Court. It is FURTHER ORDERED that this Order shall have no effect on

any other aspect of this case, and the Defendant's incarceration and rehabilitation shall continue as set forth in the courts previous Order.

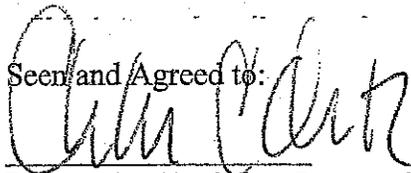
The Court shall enter the foregoing as of the day and date first hereinabove written and shall provide attested copies to all counsel of record.


Circuit Judge

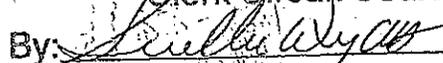
Prepared by:


John P. Adams
Public Defender Corporation

Seen and Agreed to:


Prosecuting/Assistant Prosecuting Attorney
Berkeley County, WV

A TRUE COPY
ATTEST

Virginia M. Sine
Clerk Circuit Court
By: 
Deputy Clerk