

Taylor

35275

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
DIVISION II

STATE OF WEST VIRGINIA,

Plaintiff,

v.

MARA SPADE,

Defendant.

Case No. 08-M-AP-3  
JUDGE WILKES

BERKELEY COUNTY  
CLERK  
AUG 11 PM 2:04

ORDER DISMISSING APPEAL

This matter came before the Court this 8 day of August 2008, pursuant to Defendant's Appeal from a Magistrate Court Judgment of Conviction.

Upon the appearance of the State of West Virginia, by counsel Matthew Harvey, Esq., and Defendant Mara Spade, by counsel Paul G. Taylor, Esq.

FINDINGS OF FACT

1. On December 3, 2007, the Defendant pleaded no contest to one count of animal cruelty.
2. On February 4, 2008, the Defendant was sentenced to 90 days in jail, suspended for two years of probation.
3. On August 1, 2008, the Defendant appealed the Magistrate Court's decision.

CONCLUSIONS OF LAW

Upon consideration, it appears to the Court that the Defendant's appeal must be dismissed. The Defendant filed her Notice of Appeal pursuant to Rule 20.1 of the W. Va. Rules of Criminal Procedure. Rule 20.1(a) states:

Except for persons represented by counsel at the time a guilty plea is entered, any person convicted of a misdemeanor in a magistrate court may appeal such conviction to the circuit court as a matter of right.

Even though Rule 20.1 does not state that a no contest plea is included in the exception, the legislature likely intended for no contest pleas to be included in this language. Appeals of Magistrate Court jury trials and bench trials are anticipated in Rule 20.1(d). If the legislature intended for a separate appellate procedure for no contest pleas, then it would have provided language indicating this.

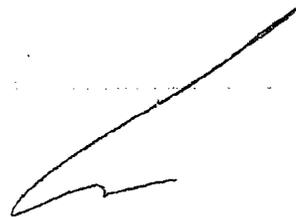
Accordingly, the Court **AFFIRMS** the Judgment of Conviction entered against the Defendant in Magistrate Court Case Number 06-M-3871. The Defendant's Petition for Appeal from that judgment is **DISMISSED**.

The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Court directs the Circuit Clerk to distribute attested copies of this order to counsel of record.

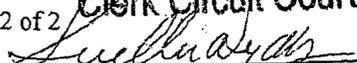
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CHRISTOPHER C. WILKES, JUDGE  
TWENTY-THIRD JUDICIAL CIRCUIT  
BERKELEY COUNTY, WEST VIRGINIA

**A TRUE COPY  
ATTEST**

Virginia M. Sine  
Clerk Circuit Court  
By:   
Deputy Clerk