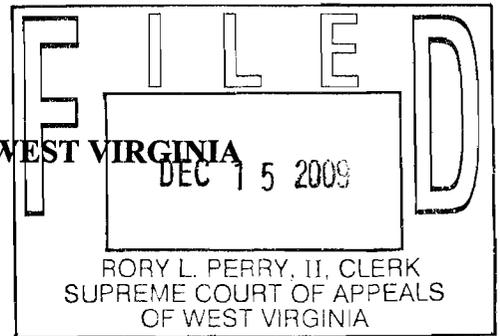


11/12

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**STATE OF WEST VIRGINIA EX REL.
CHRISTOPHER BROWNING,
Petitioner**

v.

CASE NO. 35135

**HONORABLE DANIEL P. O'HANLON,
JUDGE OF THE CIRCUIT COURT OF
CABELL COUNTY,
Respondent**

**RESPONSE TO PETITION FOR WRIT OF MANDAMUS
AND MOTION TO DISMISS**

This matter came before this Court on Petitioner's Petition for a Writ of Mandamus filed in the Supreme Court of Appeals on May 15, 2009. The Petition references the underlying matter, State ex Rel. Christopher W. Browning v. Evelyn Seifert, Warden, Northern Correctional Facility, Case No. 99-C-320. The underlying case is a writ of habeas corpus concerning the Petitioner's criminal conviction.

The Petition for a Writ of Mandamus should be dismissed and no rule should be issued against the Respondent. This matter was pending before the Honorable John Cummings initially. Judge Cummings retired and Judge F. Jane Hustead was elected to replace him. The case was properly before Judge Hustead when Petitioner filed his Petition for a Writ of Mandamus. Judge Hustead is a former prosecutor and was not at liberty to hear the underlying habeas corpus petition, since she was a member of the office of the prosecuting attorney when the Petitioner's underlying conviction took place. This matter was transferred by mutual agreement to Judge Dan O'Hanlon by order entered November 4, 2009. Judge O'Hanlon's office was unaware of the Petition for a

Writ of Mandamus until a corrected order was issued by the Clerk of the Supreme Court and received by Judge O'Hanlon's office via fax on December 7, 2009.

No order from the Supreme Court has been entered in the records of the Circuit Clerk of Cabell County.

This Petition should also be dismissed as a status conference has been set in this matter for Friday, January 22, 2010 at 10:30 am, as evidenced by the attached certified copy of the notice order.

Wherefore, this Court should dismiss this matter and no rule should issue.

Respectfully submitted,

A handwritten signature in cursive script, reading "Rebecca Melton Craig", is written over a horizontal line.

Rebecca Melton Craig, Esq.
Law Clerk to Judge Dan O'Hanlon
Cabell County Courthouse
750 Fifth Avenue
Huntington, WV 25701
(304) 526-8603

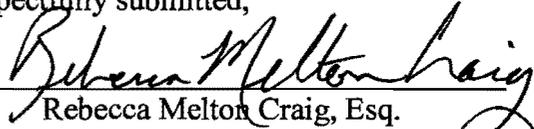
CERTIFICATE OF SERVICE

I, Rebecca Melton Craig, law clerk to Judge Dan O'Hanlon, does hereby certify that on December 11, 2009, I served the foregoing RESPONSE TO PETITION FOR WRIT OF MANDAMUS AND MOTION TO DISMISS by mailing, postage prepaid, a true copy thereof to the following:

Glen Conway, Esq.
845 4th Ave.
Huntington, WV 25701

Christopher W. Browning
Inmate #24003
Huttonsville Correctional Center
P.O. Box 1
Huttonsville, WV 26273

Respectfully submitted,



Rebecca Melton Craig, Esq.
Law Clerk to Judge Dan O'Hanlon
Cabell County Courthouse
750 Fifth Avenue
Huntington, WV 25701
(304) 526-8603

B. Grant

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

FILED

STATE OF WEST VIRGINIA EX REL
CHRISTOPHER BROWNING,

2009 DEC 10 A 11: 35

Petitioner

v.

ADELL CHANDLER
CIRCUIT CLERK
CABELL WV

CIVIL ACTION NO. 99-C-320
Judge Dan O'Hanlon

EVELYN SEIFERT, Warden,
Respondent

ORDER

Please take notice that a hearing on this matter is scheduled for **10:30 a.m.** on **Friday, January 22, 2010** in front of the Honorable Dan O'Hanlon for a status conference, scheduling and/or other proceedings as may be warranted in this matter. Counsel for the Petitioner shall prepare an order for transport of the Petitioner, if Petitioner's presence is deemed necessary at the hearing.

The clerk shall distribute copies to the following parties:

The Honorable Chris Chiles
Cabell County Prosecutor
Cabell County Courthouse
750 5th Avenue
Huntington, WV 25701

Glen Conway, Esq.
845 4th Ave.
Huntington, WV 25701

Christopher W. Browning
Inmate #24003
Huttonsville Correctional Center
P.O. Box 1
Huttonsville, WV 26273

Entered this 8th day of December, 2009.



Judge Dan O'Hanlon
6th Judicial Circuit

ENTERED Circuit Court Civil Order Book

No. _____ Page _____ this

STATE OF WEST VIRGINIA
COUNTY OF CASSELL

I, ADELL CHANDLER, CLERK OF THE CIRCUIT
COURT FOR THE COUNTY AND STATE AFORESAID
DO HEREBY CERTIFY THAT THE FOREGOING IS
A TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON _____

GIVEN UNDER MY HAND AND SEAL OF SAID COURT

THIS _____

 CLERK
CIRCUIT COURT OF CASSELL COUNTY WEST VIRGINIA