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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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STATE OF WEST VIRGINIA,

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PROSECUTING ATTORNEY
KANAWHA COUNTY, WY

v.

Circuit Court No. 06-F-240(Kirby)
06-M-56

Judge Herman G. Canady Jr.
Sitting By Assignment

DEC 10 AM 8:37

FILED

DAVID HAROLD EILOLA,
Defendant.

AMENDED ORDER

On a prior day the parties, appearing by counsel, advised the undersigned judge that a previous order entered on or about October 15, 2008, requires modification. Upon review of the transcript of the proceedings, and agreement of counsel this amended order is to be filed and made a part of the record:

On this 22nd day of September, 2008, came the State of West Virginia by Maryclaire Akers, Assistant Prosecuting Attorney, and the defendant, David Harold Eilola, both in person and by his counsel, Paula M. Cunningham, Deputy Public Defender, as scheduled by the Court pursuant to the September 4, 2008 order of the Supreme Court of Appeals, No. 08-61. The Supreme Court granted the defendant's July 1, 2008, pro se motions and remanded the matter to the Circuit Court of Kanawha County to resentence the defendant for purposes of appeal and with (sic) appropriate for the appointment of counsel.

The Court advised the defendant that any matter not addressed in his attorney's petition could be raised by the defendant in a pro se supplemental petition.

The Court then relieved Paula M. Cunningham as counsel.

The Court did then proceed to resentence the defendant, preserving to the defendant his objections and exceptions to being resented.

Upon hearing and full consideration of the arguments of the parties it is ORDERED:

1. With respect to the charge of Attempted Murder in the First Degree as charged in Count One of the indictment in Case No. 06-F-240, upon the jury's finding of guilt confirmed on this day, this Court hereby ORDERS that the defendant shall be sentenced to an indeterminate term of not less than three (3) years nor more than fifteen (15) years in the custody of the West Virginia Commissioner of Corrections, with credit for time served while awaiting trial, conviction, and sentencing, which credit has been calculated at four hundred ninety five (495) days; and
2. With respect to the charge of Malicious Assault as charged in Count Two of the indictment in Case No. 06-F-240, upon the jury's finding of guilt confirmed on this day, this Court hereby ORDERS that the defendant shall be sentenced to an indeterminate term of not less than two (2) years nor more than ten (10) years which shall be served consecutively to the sentence imposed for Count One under this Order; and
3. With respect to the charge of Arson in the Fourth Degree as charged in Count Three of the indictment in Case No. 06-F-240, upon the jury's finding of guilt confirmed on this day, this Court hereby ORDERS that the defendant shall be sentenced to a determinate term of two (2) years in the custody of the West

Virginia Commissioner of Corrections, which shall be served consecutively to the sentences imposed for Counts One and Two of the Felony indictment No. 06-F-240; and

4. With respect to the charge of Violation of Domestic Violence Protective Order as charged in Count Four of the indictment in Case No. 06-F-56, upon the jury's finding of guilt confirmed on this day, this Court hereby ORDERS that the defendant shall be sentenced to a term of twelve months in the custody of the West Virginia Regional Jail and Correctional Facility Authority, which shall be served consecutively to the sentences imposed for Counts One, Two, and Three under this Order; and
5. With respect to the charge of Domestic Battery as charged in Count Five of the indictment in Case No. 06-F-240, upon the jury's finding of guilt confirmed on this day, this Court hereby ORDERS that the defendant shall be sentenced to a term of twelve months in the custody of the West Virginia Regional Jail and Correctional Facility Authority, which shall be served consecutively to the sentences imposed for Counts One, Two, and Three and Four under this Order.

The above sentence is imposed to be consistent with this Court's prior rulings, subject to each of the defendant's objections and exceptions:

Wherefore, this Court hereby ORDERS that pursuant to the decision of the West Virginia Supreme Court of Appeals in State v. Middleton, 220 W.Va. 89 (2006), as follows:

- a) That the commitment shall be amended to reflect that the effective sentencing date and the actual sentencing date shall be the 6th day of August, 2007; and
- b) That the defendant's credit for time served calculated at four hundred and ninety five (495) days shall be deducted from the maximum aggregated sentence by the Commissioner of Corrections; and
- c) That this order shall be deemed a detainer in favor of the West Virginia Regional Jail and Correctional Facility Authority so that, once the defendant completes his penitentiary sentences or is paroled, the defendant shall be remanded into the custody of the said West Virginia Regional Jail and Correctional Facility Authority for service of the misdemeanor sentence.

The defendant then informed the Court he is unable to afford his own lawyer and that he did not want a public defender appointed to represent him.

The Court had earlier ruled that the filed petition for appeal and its amendment will remain a part of the record. Defense counsel then requested leave of the Court to withdraw the filed petition. This request was denied. However, the Court also stated:

“...(N)ew counsel can determine what they want to do in terms of rewriting your petition, redrafting it, leaving it alone, accepting it, adopting it, or whatever, after reading it and consultation with Mr. Eilola.” [Hearing transcript page 12]

Therefore Edward Bullman is appointed to represent the defendant.

The Clerk of this Court shall deliver an amended Order of Commitment to the Commissioner of Corrections, counsel of record, and to the defendant, currently

imprisoned at the Huttonsville Correctional Center, together with a true copy of this Order.

ENTERED

December 9, 2008

Hermand G. Canady Jr.
Hermand G. Canady Jr.
Recalled Senior Status Judge

SPECIAL JUDGE

Prepared and presented:

Paula M. Cunningham

Paula M. Cunningham
W.V. Bar No. 900
Deputy Public Defender
Kanawha County
P.O. Box 2827
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Agreed to by:

Robert W. Schulenberg III

Robert W. Schulenberg III
W.Va. Bar No. 3301
Kanawha Co. Assistant Prosecuting Atty
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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF December 10th 2008
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2/16/08
SEARCHED
SERIALIZED
INDEXED
FILED
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FBI - CHARLESTON

E. Bullman
PA
PDD
Court Admin.