

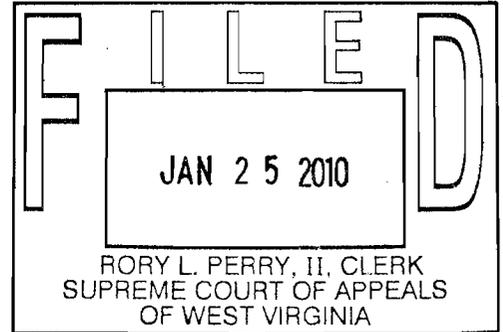
IN THE SUPREME COURT OF WEST VIRGINIA
-At Charleston-

Supreme Court Docket No: _____

JOHN HEATH WHITE,
Appellant,

Vs.

JAMES RUBENSTEIN;
EVELYN SEIFERT,
Respondents.



From The
Circuit Court of Marshall County, West Virginia

Honorable John T. Madden

Case No: 03-C-159

PETITION FOR WRIT OF MANDAMUS

By Pro se:

John Heath White
RD #2, Box 1
Moundsville, West Virginia 26041

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I. Jurisdiction.

Jurisdiction of this action is conferred upon this Court by the provisions of West Virginia Code §51-1-3 as well as Article VIII, §3 of the West Virginia Constitution. He also relies on State ex rel. Smoleski v. County Court, 153 W.Va. 307, 168 S.E.2d 521 (1969). Petitioner invokes this Courts jurisdiction for the relief authorized by the provisions.

II. Statements of Fact.

This Petitioner commenced a civil action on the 23rd day of July, 2002, within the Circuit Court of Kanawha County in case number 02-C-1925.

The Respondents filed a Motion to Dismiss and a hearing was held before the Honorable Judge Jennifer Bailey-Walker. When it was obvious that the Judge was not going to dismiss the complaint the Respondents counsel motioned to have the case changed to a Habeas Corpus and for the venue to be changed to the Circuit Court of Marshall County. The Petitioner had no objections so the Court transferred the case on the 23rd day of July, 2003 and gave it case number 03-C-159 for the Marshall County Circuit Court.

Between the 26th day of July, 2005 to the present there have been several motions and requests filed to the Circuit Court by this Petitioner all of which went unanswered by the Courts because the Respondents continued to file Motions to Strike Pleadings because he had Court appointed counsel.

On the 29th day of August, 2005 Judge Madden entered an order appointing Joseph J. Moses, Esq., to represent the Petitioner. Mr. Moses wrote to the the Petitioner on a couple separate

occassions and visited once at the Correctional Facility to discuss the problems, however, he never amended the petition nor did he proceed with the cases prosecution.

On or about the 24th day of October, 2005, the Court permitted Mr. Moses to withdraw and entered an order appointing Richard Hollandsworth, to represent the petitioner in this matter. This Petitioner never once spoke with Mr. Hollandsworth nor did he have any correspondence from him. He never proceeded with anything on the case.

Sometime following the appointment of Mr. Hollandsworth the Court withdrew him from the case and appointed Brent A. Clyburn to represent the Petitioner in this matter. Mr. Clyburn ran for Prosecuting Attorney of Marshall County and the Petitioner has never heard from Mr. Clyburn and from the record it shows that he never proceeded in the prosecution of this case.

On the 14th day of November, 2009 the petitioner filed his Motion for a Status hearing to the Circuit Court of Marshall County requesting new counsel or Ordering current counsel to work on the case. Unfortunately, Judge Madden has retired and nothing has been completed or scheduled.

III. Assignments of Error.

1. The Circuit Court (Judge) failed to perform the duties of judicial office impartially and deligently, in violation of Cannon 3 of the the West Virginia Code of Judicial Conduct.

2. The Circuit Court (Judge) has failed to enter a final judgment within a timely manner in violation of Rule 16.05(c-d) of the West Virginia Rules Trial Court Rules.

IV. Points and Authorities Relied Upon.

Statutes:

W.Va. Code §51-1-3.....1
W.Va. Code, Judicial Conduct 3(B)(1).....6
W.Va. Code, Judicial Conduct 3(B)(8).....6
W.Va. Code, Trial Court Rules 16.05(c-d).....7

Cases:

Smoleski v. County Court, 153 W.Va. 307, 168 S.E.2d 521.....1
Judy v. Kiger, 153 W.Va. 764, 172 S.E.2d 579.....5
Dunn v. Terry, 217 S.E.2d 849.....8
Haines v. Kerner, 404 U.S. 519.....8
Hughes v. Rowe, 449 U.S. 5.....8

V. Discussion of Law.

A. Standard of Review.

"The writ of mandamus has been used most extensively to control and correct the action of inferior courts. It is used not only to restrain their excesses, but also to quicken their negligence and obviate their denial of justice." State ex rel. Judy v. Kiger, 153 W.Va. 764, 172 S.E.2d 579 (1970).

B. Argument.

1. The Circuit Court (Judge) failed to perform the duties of judicial office impartially and deligently, in violation of Cannon 3 of the West Virginia Code of Judicial Conduct.

The Circuit Court of Marshall County received this Petitioner Case from the Circuit Court of Kanawha County on or about the 23rd day of July, 2003. This Court has been sitting on this case for approximately six (6) years.

The Court has appointed three (3) different attorney's to represent the Petitioner in this matter. Not one of the attorney's was worth a plug nickle because none of them proceeded forward with the case. The petitioner filed several pro se motions and complaints concerning the negligent acts of the attorney's when none of them would respond to his letters. the Court ignored the Petitioner's cry's for help and always granted the Respondents motions to strike the pro se pleadings because the petitioner was appointed counsel. It has the appearance as if they was working together to keep the petitioner from prosecuting his case. It was the Defendants who requested the case to be transferred from the Circuit Court of Kanawha County.

Pursuant to Cannon 3(B)(1) of the West Virginia Code of Judicial Conduct, "A Judge shall hear and decide matters assigned to the Judge except those in which disqualification is required."

3(B)(8), "A judge shall dispose of all judicial matters promptly, efficiently and fairly." In disposing of matters promptly efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights to parties of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the Courts. Commetary, Judicial Code.

The Circuit Court would not listen to any of the Petitioner's pro se motions causing him to rely on attorney's who did not even file one motion or make one phone call. In the Courts denial to denial to recognize the petitioners pro se motions, the Petitioner is being forced to suffer has continued to suffer proper mental health care and continued abuse from the defendants and/or their agents.

2. The Circuit Court (Judge) has failed to enter a final judgment within a timely manner in violation of Rule 16.05 (c-d) of the West Virginia Rules of Trial Court Rules.

The Circuit Court failed to properly enter any final orders in this matter. The case has been pending before the Court for

approximately six (6) years without any resolve or acknowledgement of the pro se motions filed through out the years.

Pursuant to Rules 16.05 (c-d) of the West Virginia Rules of Trial Court Rules of final judgment should be entered within eighteen (18) months of the filing of a general complaint and should be six (6) months in other civil actions. In this case the petitioner could not even get a response to the request for production of documents because the appointed attorneys would not work the case and the Circuit Court ignored the pro se motions.

VI. Conclusion and Relief Requested.

This Petitioner has been forced to suffer not only denial of medical care but also mental health care. He has also been denied fair treatment and has been given retaliatory segregation in violation of their own policy directives.

This petitioner has abided by all the Division of Corrections Policies as well as all the statutes and Court Rules. Unfortunately, all of his pleas for help has went unanswered and/or ignored by the Circuit Court of Marshall County. All the Court appointed counsel have been negligent in their duties in violation of the code of ethics. Because of all this this Petitioner's case has been pending for over six (6) years.

In a since the Court has granted he Respondents a blank check to do as they please to the inmates in their custody. The Respondents and/or their agents are well aware of the Courts refusal to provide any assistance and has made it known. When they are in violation of a policy, procedure, Court decision, etc., they laugh at the petitioner and make the comments such as, "get a lawyer"

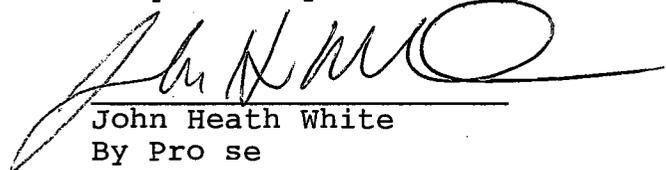
and/or "write the Court." The Respondents now act as if the petitioner has any rights to proper medical, where in he isn't asking much her merely wants his mental health medication (Lithium) properly dispersed so that his mind will quit racing 110 miles an hour.

Petitioner contends that a convicted prisoner does not forfeit all his constitutional rights, or protections by reason of his conviction and confinement in prison. Dunn v. Terry, 217 S.E.2d 849 (1975).

Courts should construe pleadings more liberally for pro se parties than for represented parties. See, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), "Pleadings of a pro se litigant should be held to less stringent standards than those drafted by a lawyer." See also, Hughes v. Rowe, 449 U.S. 5, 9 (1980). This rules helps ensure that meritorious positions are recognized and that the litigant is afforded an opportunity to appear and be heard.

For the forgoing reasons, Petitioner contends that he has been denied his statutory and and constitutional rights and has been forced to suffer mental pain and suffering at the hands of the Respondents. The Circuit Court has refused to address these issues and has denied the Petitioner his rights to a adequate trial on the issues. The Petitioner prays that this Court issue an ORDER demanding the Circuit Court to appoint dismiss the currently appointed attorney and appoint a competent attorney who will work the case. The Petitioner requests such other relief as this Court deems just and proper.

Respectfully Submitted,

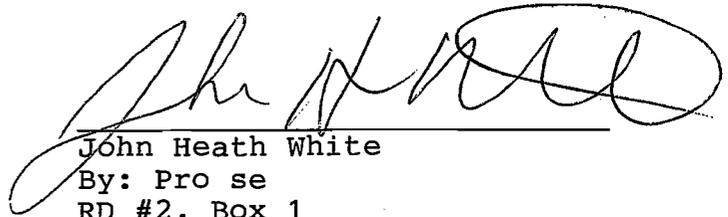

John Heath White
By Pro se

CERTIFICATE OF SERVICE

I, John Heath White, by pro se do hereby certify that I have served the forgoing Petition for Writ of Mandamus by mailing a true copy thereof by U.S. mail, first class postage, pre-paid on the 21st day of January, 2010 to the following:

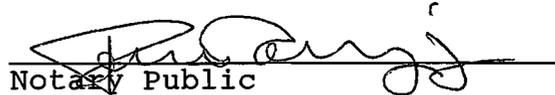
David R. Ealy, Clerk
Marshall County Court
Seventh Street
Moundsville, WV 26041

Charles Houdyschell, Jr.
Asst. Attorney General
1409 Greenbrier St.
Charleston, WV 25311


John Heath White
By: Pro se
RD #2, Box 1
Moundsville, WV 26041

Taken, subscribed and sworn to this 21st day of January, 2010.

My Commission Expires: 18 NOV 2019.


Notary Public

