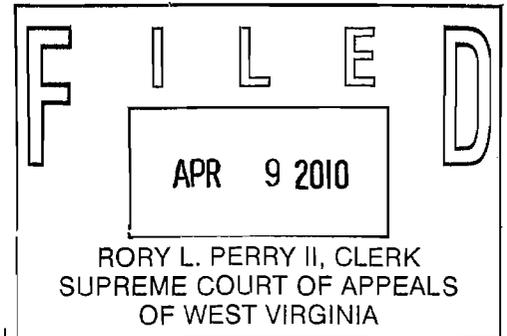


DANA DECEMBER SMITH
Mt. Olive Correctional Complex
1 Mt. Side Way Box 5 Oak 2
Mt. Olive, WV 25185

April 8, 2010

Rory L. Perry, II., Clerk
WV Supreme Court of Appeals
1900 Kanawha Blvd., East
State Capitol Complex
Charleston, WV 25305



**Re: Dana December Smith, Petitioner, v. David Ballard, Warden, Respondent,
Kanawha County Circuit Court Civil Action Case No. 09-MISC-182**

Dear Mr. Perry:

On March 12, 2009, the Honorable Justices of the West Virginia Supreme Court of Appeals affirmed the September 17, 2007, final order from the Circuit Court of Kanawha County to deny me a new trial. Therefore, unanimously refusing to reverse my double felony first degree murder convictions originating in the trial court. Cite as, *State ex rel. Smith v. McBride*, 681 S.E.2d 81 (WV 2009).

Subsequently, since the Circuit Court of Kanawha County completed evidentiary proceedings in my case on February 15, 2006, without addressing all the viable grounds raised by *pro se* and counsel in the previous state habeas corpus petitions. Then the West Virginia Supreme Court of Appeals ruling on June 16, 2006, in reference to: *In The Matter Of: Renewed Investigation of the State Police Crime Laboratory, Serology Division*, 633 S.E.2d 762 (2006), legally permits me to re-petition the lower and high tribunals for instant relief pursuant to the serology issues presented in my case, but never addressed in any post-conviction court of law. This is further supported by the fact that my original, amended an supplemental habeas corpus petitions were filed by *pro se* and counsel several years before this Honorable Court filed the aforementioned ruling. A ruling permitting me to re-petition for relief again based upon the complex serology issues in my case involving the WV State Police Crime Laboratory scientists Ted A. Smith and Howard B. Myers. These are the chemists in 1991-92 whom handled and tested the blood and semen evidence in my case, and, filed reports and orally testified under oath for the prosecution in my 1992 jury trial.

In fact, my case meets all the *Zain III* criteria required by the Honorable Court which is why I filed another petition for a writ of habeas corpus in the Circuit Court of Kanawha County on May 20, 2009, seeking appointment of counsel and adjudication of the serology issues the trial/habeas court whitewashed. I also filed a Motion for Discovery pursuant to WV Code § 53-4A-6, Motion for Disqualification of Judge Jennifer Bailey pursuant to Rule 17.01 of the West Virginia Trial Court Rules, Motion for Appointment of Counsel, and Motion for Omnibus Evidentiary Hearing.

Since this filing, however, Judge Bailey, has failed to contact the Chief Justice of this Court pursuant to Rule 17.01 (2) of the West Virginia Trial Court Rules governing my motion in this post-conviction proceeding. A motion that Mrs. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County will confirm if contacted by this Court that is properly filed and been pending since May 20, 2009, without any action being taken by Judge Bailey.

Therefore, based on the fact the aforementioned *Zain III* ruling came out approximately four (4) months after the conclusion of the final evidentiary hearing in my case in the Circuit Court of Kanawha County. Then I still qualify for adjudication on the serology issues properly raised in my previous habeas petitions and currently pending *Zain III* petition which the trial/habeas court never held a evidentiary hearing or addressed in the findings of fact and conclusions of law order dated September 17, 2007. So based on these contentions, and pursuant to the aforementioned pending *Zain III* petition with motions, I opine that it's a violation of due process, and obscene, that Judge Bailey would refuse to follow the rules regarding the Motion for Disqualification and the *Zain III* habeas petition filed on May 20, 2009, based on this Court's June 16, 2006, *Zain III* ruling.

Wherefore, I respectfully move you pursuant to your legal authority and this Honorable Court pursuant to WV Code § 51-1-3 to accept this correspondence as my *pro se* petition for a writ of mandamus praying to compel Judge Bailey to abide to the aforementioned rules permitting this case to move forward with the assignment of a special judge to enter a order appointing counsel, securing the serology evidence for independent STR DNA testing and to adjudicate the serology claims properly raised in my pending petition in a evidentiary hearing.

Anticipating your response, for I am,

Sincerely,


Dana D. Smith

DDS/ars
Enclosure

cc: Hon. J. Bailey, (J)
G. Castelle, Esq.
file