

IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

Charleston

No. _____

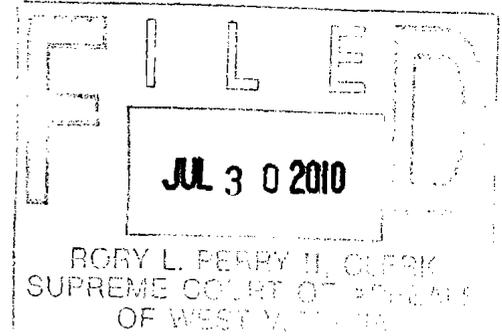
STATE EX REL., ALVIN LEE GREGORY, Pro Se,

Petitioner,

v.

THE HONORABLE MARK A. KARL, JUDGE
CIRCUIT COURT OF MARSHALL COUNTY,
WEST VIRGINIA,

Respondent.



PETITION FOR WRIT OF MANDAMUS

Comes now Alvin Lee Gregory, pro se, Petitioner ("Petitioner") and respectfully submits to the Court his Petition For Writ Of Mandamus and represents and alleges:

1. On May 1, 2006, the Petitioner filed his Petition For Writ of Habeas Corpus Ad Subjiciendum ("habeas corpus"), Alvin Lee Gregory v. Evelyn Seifert, Civil Action No. 06-C-107K.

Exhibit A, ln.1.

2. On May 3, 2006, said Habeas Corpus was served.

3. Since filing the habeas corpus Petitioner has filed a Motion For Summary Judgment (Exhibit A, ln.5), a Motion For Judgment On The Pleadings (Exhibit A, ln. 9-10), and two Motions For Judgment (Exhibit A, ln. 14 and 15).

4. Notwithstanding Petitioner's motions the Honorable Mark A. Karl, Judge, Circuit Court Of Marshall County, West Virginia ("Respondent") either neglects or refuses to enter judgment on the habeas corpus.

5. It is well settled law in this State that:

"Mandamus lies to require the discharge by a public officer of a nondiscretionary duty. Syllabus Point 3, State ex rel. Greenbrier County Airport Authority v. Hanna, 151 W.Va. 479, [153 S.E.2d 284 (1967)]. Syllabus point 1, State ex rel. West Virginia Housing Development Fund v. Copenhaver, 153 W.Va. 636, 171 S.E.2d 545 (1969). Syllabus Point 1, State ex rel. Williams v. Department of Mil. Aff., 212 W.Va. 407, 573 S.E.2d 1 (2002). A writ of mandamus will not issue unless three elements coexist - (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy. Syllabus Point 2, State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (1969)."

Syllabus Points 1 and 2, State ex rel. Burdette v. Zakaib, 685 S.E.2d 903 (W.Va. 2009).

6. Petitioner's habeas corpus has been before the Respondent over four years.

7. This Honorable Court has stated:

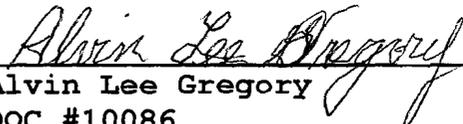
"Given the office and function of the writ of habeas corpus, a circuit court should act with dispatch. Accordingly, a circuit court must transfer habeas corpus applications promptly, if transfer is appropriate. If it does not make a prompt transfer, it is required to render a decision on the merits of the writ. Syllabus Point 3, Adams v. Circuit Court of Randolph County, 173 W.Va. 448, 317 S.E.2d 808 (1984)".

Syllabus Point 4, State ex rel. McLaughlin v. Vickers, 207 W.Va. 405, 533 S.E.2d 38 (2000)

8. Accordingly, Petitioner moves the Court to enter an order directing the Respondent to Show Cause, if any he can, why this Court should not direct the Respondent to enter his memorandum opinion and order setting forth his findings of fact and conclusions of law, by a date certain to be fixed by the Court, as to the one issue represented in the habeas corpus.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: July 16, 2010



Alvin Lee Gregory
DOC #10086
Northern Correctional Facility
RD 2, Box 1
Moundsville, WV 26041

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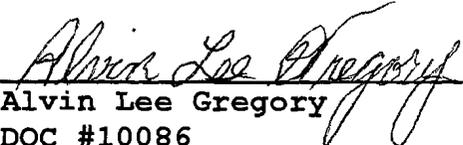
Respondent.

MEMORANDUM OF PARTIES

Petitioner: Alvin Lee Gregory
DOC #10086
Northern Correctional Facility
RD 2, Box 1
Moundsville, WV 26041

Respondent: The Honorable Mark A. Karl, Judge
Circuit Court of Marshall County
West Virginia
600 Seventh Street
Moundsville, WV 26041

Date: July 16, 2010



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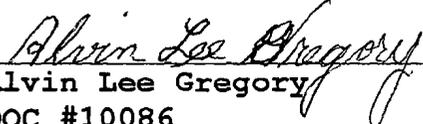
Respondent.

CERTIFICATE OF SERVICE

I, Alvin Lee Gregory, Pro Se, Petitioner, do hereby certify that I did serve the foregoing Petition For Writ Of Mandamus by depositing a true and exact copy thereof in the United States Mail, first class postage prepaid on this 16th day of July, 2010, addressed as follows:

The Hon. Mark A. Karl, Judge
Marshall County Circuit Court
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 26041

The Hon. Jeffrey D. Cramer
Prosecuting Attorney
Marshall County
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 2041



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