

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

PLAINTIFF,

v.

CASE NO 07-F-43

GREGG DULANEY SMITH,

DEFENDANT.

SENTENCING ORDER

This 8th day of April, 2009, came the State of West Virginia by JUDITH A. McCULLOUGH, Prosecuting Attorney of Ritchie County, West Virginia; also came the defendant, GREGG DULANEY SMITH, in person and by ROCCO MAZZEI, his attorney, and also came TINA PACZEWSKI, the Adult Probation Officer of the Court, for sentencing in the above-styled matter.

The Court FINDS that the defendant, GREGG DULANEY SMITH, had previously been found guilty of Count I, Malicious Assault; Count II, Malicious Assault; Count III, Wanton Endangerment Involving a Firearm; and, Count IV, Attempted First Degree Murder.

Whereupon, Counsel for the Defendant advised the Court that the Defendant had received and reviewed the pre-sentence investigation report heretofore filed with the Court, and moved the Court to omit the section containing the write-ups from the North Central Regional Jail, as the Defendant believes they were issued as a result of his dietary regimen. The Court granted the Motion, and modified the pre-sentence investigation report accordingly.

The Court orders the same to be filed and sealed and directs the parties to return their copies thereof to the Probation Officer following this hearing.

Thereafter, the Court noted that it was in receipt of a Motion for Probation and a Motion for Home Confinement, which were filed by the Defendant herein. Thereafter, counsel for the Defendant presented witnesses in support of said Motions.

352

ENTERED IN LO BOOK
No. 47 AT PAGE 479 Apr. 23
20 09 ROSE ELLEN COX, Clerk

Thereupon, the Court afforded the Defendant the right to allocution and the presentation of evidence, and the Defendant, in person, and through Counsel made allocution in this matter.

Thereafter, counsel for the State advised the Court that the State opposed the Defendant's Motions for Alternative Sentencing. Further, counsel moved the Court to impose the maximum sentences allowable for the Defendant's convictions, and to run said sentences consecutively. Counsel further informed the Court that Thomas Smith, the victim of the Defendant's crimes, and his wife, Melissa Smith, desired to address the Court regarding the impact the Defendant's crimes has had on their lives. Counsel further moved the Court to defer any Order of Restitution pending the outcome of Ritchie County Civil Action No. 07-C-72. Said Motion was granted by the Court. Restitution is hereby deferred until the civil case is finally resolved.

The Court finds that there was overwhelming evidence to support the convictions of the Defendant; that alcohol and drugs were not a factor in these crimes; that both the Court and the jury were fully convinced of the guilt of the Defendant; that the Defendant demonstrated a clear, deliberate, premeditated plan, the execution of which was captured on video, which was viewed by the jury. The Court finds that the Defendant's action exhibit a "malignant heart, fatally bent on mischief," and the Court believes that the Defendant intended to kill Thomas Smith. The Court further finds that the Defendant is surely sorry he is in jail, but has never expressed remorse for his actions throughout this proceeding; the Court believes that the Defendant tried to establish an alibi for his actions during his telephone call to 911; and, the Court believes from the evidence that the Defendant is a dictatorial, controlling individual, who will make every effort to have his way. The Court further finds that the Defendant's crimes were extremely violent actions, involving the use of a firearm.

The Court, having considered the same, finds that the Defendant is not a good candidate for either Probation or Home Confinement. Accordingly, the Court does hereby **DENY** the Defendant's Motion for Alternative Sentencing.

The Court does hereby sentence the Defendant, **GREGG DULANEY SMITH**, as follows: For his conviction in Count I, of **Malicious Assault**, the Court does hereby sentence the Defendant to serve not less than two (2) nor more than ten (10) years in the

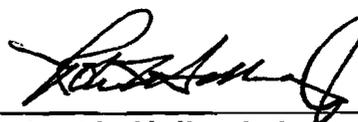
penitentiary, with credit for 249 days previously served; for his conviction in Count II, of **Malicious Assault**, the Court does hereby sentence the Defendant to serve not less than two (2) nor more than ten (10) years in the penitentiary; for his conviction in Count III, of **Wanton Endangerment Involving a Firearm**, the Court does hereby sentence the Defendant to serve a definite term of five (5) years in the penitentiary; and, for his conviction in Count IV, of **Attempted First Degree Murder**, the Court does hereby sentence the Defendant to serve not less than three (3) nor more than fifteen (15) years in the penitentiary. Said sentences are to run consecutively, one to the other.

Conviction Date: September 5, 2008
Sentence Date: April 8, 2009
Effective Sentence Date for Count I: July 29, 2008

The Court then advised the Defendant of his right to appeal his conviction to the West Virginia Supreme Court of Appeals, and the continued right to the appointment of counsel, and the right to have transcripts prepared in furtherance of said appeal.

Having dealt with all outstanding matters according to law, the Defendant, **GREGG DULANEY SMITH**, is hereby remanded to the North Central Regional Jail to await transfer to the custody of the Division of Corrections. It is further **ORDERED** that the Prosecuting Attorney is to prepare the Order reflecting today's proceedings and the Circuit Clerk is to provide certified copies to all parties of record.

ENTER: 4/23/2009



Robert L. Holland, Jr.
Judge of the Circuit Court
Ritchie County, West Virginia

Prepared by:


Judith A. McCullough, Esq.
Prosecuting Attorney
Ritchie County, West Virginia