

13-0099

CLERK OF COURT
2012.09.29 PM 2:55

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No. 11-F-81

GARY ROLLINS,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION
FOR COURT APPOINTED COUNSEL FOR PURPOSES OF APPEAL**

On the 26th day of September, 2012, the parties appeared for a hearing on Defendant's Motion for Court Appointed Counsel [Doc. No. 364] (the "Motion"), seeking appointment of counsel to represent the Defendant on appeal. The Defendant, Gary Rollins, appeared in person and by and through his attorney, G. Wayne Van Bibber; and the State of West Virginia, appeared by and through its attorney, James R. Milam, II.

Following that hearing, and pursuant to the Court's direction, Defendant's counsel, G. Wayne Van Bibber, submitted to the Court the following documentation in support of the Motion and Defendant's claimed indigence:

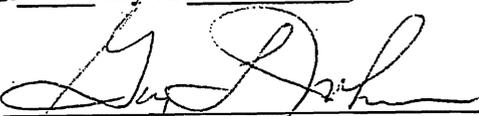
1. Correspondence from the Defendant's bankruptcy counsel, William W. Pepper, Esq., enclosing copies of amended bankruptcy schedules B and C filed in the Defendant's Bankruptcy Case No. 10-20988, pending in the United States Bankruptcy Court for the Southern District of West Virginia.
2. Correspondence from the Chapter 7 Trustee, Arthur M. Standish, Esq., regarding the status of the Defendant's bankruptcy case.

Having reviewed these documents, this Court has determined that the Defendant is indigent and satisfies the requirements for appointment of appellate counsel.

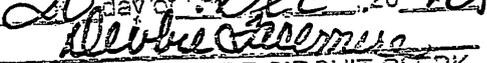
Accordingly, based on the foregoing, the Court does hereby **ORDER** that:

1. The Defendant's Motion for Court Appointed Counsel is hereby **GRANTED**; and
2. It is further **ORDERED** that William Bradley Dorsey be appointed to represent the Defendant on appeal of the conviction entered in this case; and
3. It is further **ORDERED** that the Clerk of this Court shall prepare and forward certified copies of this order to James R. Milan, II, Prosecuting Attorney, 511 Church Street, Room 203, Summersville, WV 26651; G. Wayne Van Bibber, G. Wayne Van Bibber & Assoc., PLLC, 3950 Teays Valley Road, Hurricane, WV 25526; Tim Carrico, Carrico Law Offices, 1412 Kanawha Blvd. E., Charleston, WV 25301; and William Bradley Dorsey, Callaghan & Calaghan PLLC, 600 Main Street, Summersville, WV 26651.

ENTERED this 20th day of December, 2012.



Hon. GARY L. JOHNSON, Circuit Judge

A true copy, certified this
20 day of Dec, 2012


DEBBIE FACEMIRE CIRCUIT CLERK
Nicholas County Circuit Court
Summersville, WV 26651
By Kathy Case Deputy

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. // Criminal Case Number: 11-F-81

GARY ROLLINS,

Defendant.

ORDER DENYING MOTION FOR NEW TRIAL
and
SENTENCING ORDER

On the 26th day of September 2012 came the State of West Virginia by and through James R. Milam II, Nicholas County Prosecuting Attorney, and came the defendant herein, Gary Rollins, in person and by counsel, G. Wayne VanBibber, for the purpose of a sentencing hearing herein before the Honorable Gary L. Johnson, Judge.

Whereupon, the Court reviewed the file in this matter and noted that on August 21, 2012, the defendant herein, Gary Rollins, was convicted by a jury of the felony offense of First Degree Murder with the recommendation from the jury of no mercy.

Counsel for the defendant moved the Court to grant the defendant a new trial for reasons stated in the written Motion for New Trial. Counsel for the State objected to the defendant's motion for reasons more fully set forth upon the record.

Based upon argument of counsel and upon due consideration, the Court **ORDERED** that the defendant's Motion for New Trial is hereby denied for reasons fully stated upon the record.

Thereafter, counsel for the defendant moved the Court to grant the defendant Court-appointed counsel for appeal purposes to which motion, the Court advised the parties that it would hold in abeyance any ruling on said motion until the bankruptcy trustee provides documentation that the defendant has no assets.

The Court inquired of the parties whether there was any reason not to proceed to sentencing herein, and there being none, **ORDERED** this matter proceed to sentencing herein.

Thereupon, counsel for the defendant addressed the Court, as did the defendant, on behalf of the defendant requesting that the Court grant the defendant leniency. Counsel for the State requested

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that the Court impose the maximum sentence of life without mercy.

Counsel for the State advised the Court that certain members of the victim's family were present in the courtroom who wished to make victim impact statements unto the Court.

Thereafter, Maria Bailey, JoAnne McNemar, Valerie Kubancik, and Regina Lucente, all sisters of the victim, and Velma Lucente, mother of the victim, each addressed the Court and the defendant concerning the impact of the crime committed herein.

The Court, upon due deliberation and consideration, does **ORDER** and **ADJUDGE** that the defendant herein, Gary Rollins, be, and he is hereby sentenced to the West Virginia State Penitentiary for the remainder of his natural life, without mercy, with zero days credit for time served, with said sentence to run consecutive to the sentence currently being served by the defendant as a result of a conviction in Federal Court. It is further **ORDERED** that the defendant shall pay all costs of prosecution.

The Court advised the defendant that should he fail to pay the costs of prosecution as set forth herein above, the Clerk of the Circuit Court shall notify the Division of Motor Vehicles of such failure to pay and the Division of Motor Vehicles shall suspend said defendant's driver's license or privilege to operate a motor vehicle in the State of West Virginia until such time as said costs are paid.

Whereupon, the Court advised the defendant that he had the right to appeal this case to the West Virginia Supreme Court of Appeals. The Court further advised the defendant that a written notice of intent to appeal must be filed within thirty (30) days from the date of entry of the final order in this matter and that said appeal must be perfected within four (4) months by the filing of a petition. The Court further advised the defendant that if he could not afford an attorney to perfect his appeal for him, the Court would appoint an attorney to represent him in this matter and that if he could not afford a transcript of the proceedings herein, the Court would likewise provide a copy of the transcript to him free of charge.

It is **ORDERED** that the defendant is hereby remanded to the custody of the Sheriff of Nicholas County who shall house the defendant at Central Regional Jail and shall, thereafter, arrange

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for and transport the defendant back to USP Loretto, Federal Correctional Institute Loretto, PA 15940.

The Court advised the defendant that he had the right to appeal this case to the West Virginia Supreme Court of Appeals. The Court further advised the defendant that a written notice of intent to appeal must be filed within thirty (30) days from the date of entry of the final order in this matter and that said appeal must be perfected within four (4) months by the filing of a petition. The Court further advised the defendant that if he could not afford an attorney to perfect his appeal for him, the Court would appoint an attorney to represent her in this matter and that if he could not afford a transcript of the proceedings herein, the Court would likewise provide a copy of the transcript to him free of charge.

It is further **ORDERED** that the Clerk of the Circuit Court shall prepare and forward a certified copy of this order to:

- G. Wayne VanBibber, Attorney at Law, 3950 Teays Valley Road, Hurricane, WV 25526;
- Tim Carrico, Attorney at Law, 1412 Kanawha Blvd. E., Charleston, WV 25301;
- West Virginia Division of Corrections, 112 California Avenue, Charleston, WV 25305;
- Central Regional Jail, 300 Days Drive, Sutton, WV 26601;
- Nicholas County Sheriff's Office, 700 Main Street, Summersville, WV 26651; and
- USP Loretto, Federal Correctional Institute, P.O. Box 1000, Loretto, PA 15940.

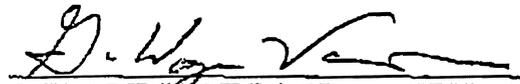
ORDER:

ENTER: 12-20-12

JUDGE

APPROVED BY:

JAMES R. MILAM II WV ID 7899
COUNSEL FOR THE STATE


G. WAYNE VANBIBBER WV ID 6680
COUNSEL FOR THE DEFENDANT

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ENTERED 12-20-12

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. // Criminal Case Number: 11-F-81

GARY LEE ROLLINS,

Defendant.

TRIAL ORDER

On the 14th day of August 2012 came the State of West Virginia by and through James R. Milam II, Nicholas County Prosecuting Attorney, and Assistant Prosecuting Attorney Nancy Wilkins-Bischoff, and came the defendant herein, Gary Lee Rollins, in person and by counsel, Wayne G. VanBibber and Tim C. Carrico, for the purpose of trial in the above-captioned matter before the Honorable Gary L. Johnson, Judge.

Whereupon, this matter having been set for trial by prior order of this Court, the Court called the above-styled action for trial, and, thereafter, the State having announced ready and the defendant having announced ready with jurors impaneled in this case.

Thereafter, the Court proceeded with voir dire and a panel of twelve (12) jurors and one (1) alternate was selected and sworn to try the issue in this matter.

The State made its opening statement and the defendant, by counsel, made his opening statement. Upon motion by counsel for the State, the jurors were transported to the crime scene for a view of the premises.

Thereafter, the State began the presentation of its case-in-chief and during the days of August 14, 15, 16, and 17, 2012, presented the sworn testimony of various witnesses including David Sales, Jamie Webb, Tanya Wagner, Dr. Zia Sabet, Jimmy Thompson, Sgt. Mike Crowder, Shawn Preast, Tom Casto, Sgt. R. D. Lilly, Thomas Schmidlin, Ph.D., Forrest Hoover, Dr. James Kaplan, Cpl. David Skala, Jason Jimmy, Velma Lucente, April Bailes O'Brien, and Dr. Cyril Wecht along with various exhibits in support of said testimony which testimony was subject to cross-examination by counsel for the defendant. The State rested its case at approximately noon on August 17, 2012.

After a lunch recess, counsel for the defendant presented the sworn testimony of various witnesses including Kurt Helpsinger, Brian Amick, Nina Amick, Kim Roberts, Loria Green, Nicholas County Magistrate Court Clerk, Delores Lanham, and William Gillespie, which testimony was subject to cross-examination by counsel for the State, after which, trial was concluded for the day and jurors were advised to return for a continuation of the trial on Tuesday, August 21, 2012.

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The trial resumed on August 21, 2012, at 9:30 a.m. with counsel for the defendant presenting various exhibits and testimony of witnesses including Scott Ellison, Dr. Cohen and Herb Gardner, which testimony was subject to cross-examination by counsel for the State. The defense rested his case on August 21, 2012, at approximately 11:50 a.m.

After a lunch break, the Court advised the jury of the charges it could consider in its verdict and did review said charges as contained in the indictment herein and thereafter advised the jury with respect to the Court's instructions and the Jury Verdict Form.

Whereupon, the parties did present their closing arguments, at the conclusion of which the Court excused the alternate juror and the jurors retired to the jury room at approximately 3:45 p.m. for the nomination of a jury foreman and began deliberations.

Upon due deliberation and consideration of all of the foregoing, the jury did return to the courtroom at approximately 5:10 p.m. with the Foreperson, Craig Brake, announcing to the Court that the following verdict had been reached in this matter.

"We, the jury in the above action find the defendant **guilty of First Degree Murder of Teresa Rollins**, as charged in the indictment.

And, having found the defendant guilty of First Degree Murder, we make the following recommendation:

The defendant is not granted mercy

/s/ Craig Brake
FOREPERSON

Date: 8-21-12 "

Thereupon, the Court inquired of the parties if they wished the jury polled in this matter, to which the counsel for the defendant advised that they did, in fact, wish to poll the jury.

The Court, thereafter, inquired of each juror if the verdict form accurately depicted their respective individual vote of guilt, to which each juror replied affirmatively.

Thereupon, the Court **ADJUDGED** the defendant herein, Gary Lee Rollins, guilty of the felony offense of First Degree Murder of Teresa Rollins as contained in the indictment in this matter.

Thereupon, the Court thanked the jury members for their service in this matter and advised said jurors with regard to further service during the September 2012 Term of Court and released said members from any further service in this matter.

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It is further **ORDERED** that a sentencing hearing in this matter shall be held on September 26, 2012, at 3:00 p.m.

It is **ORDERED** that the defendant is hereby remanded to the custody of the Sheriff of Nicholas County for incarceration at Central Regional Jail, in lieu of bond, pending the sentencing hearing herein.

It is **ORDERED** that the Clerk of the Circuit Court shall prepare and forward a certified copy of this order to G. Wayne VanBibber, Attorney at Law, 3950 Teays Valley Road, Hurricane, WV 25526, and to Tim Carrico, Attorney at Law, 1412 Kanawha Blvd. East, Charleston, WV 25301.

ORDER:

DONE
12-19-12
KC

ENTER:

12-18-12
[Signature]
JUDGE

APPROVED BY:

[Signature]
JAMES R. MILAM II WV ID 7899
COUNSEL FOR THE STATE

[Signature]
G. WAYNE VANBIBBER WV ID 6680
COUNSEL FOR THE DEFENDANT

[Signature]
NANCY WILKINS-BISCHOFF WV ID 10098
COUNSEL FOR THE STATE

[Signature] 6771
TIM CARRICO WV ID 6771
COUNSEL FOR THE DEFENDANT

CRIMINAL ORDER BOOK

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ENTERED

12-18-12



CERTIFIED COMMITMENT
CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
V.
GARY ROLLINS

Case Number: 11-F-81

On this 26th day of September 2012 came the attorney for the State and the defendant appearing in person and by G. Wayne VanBibber, Counsel.

IT IS ADJUDGED that the defendant has been convicted by a jury of the felony offense of **FIRST DEGREE MURDER** as contained in the indictment herein, the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty and convicted of the felony offense of **FIRST DEGREE MURDER** as contained in said indictment.

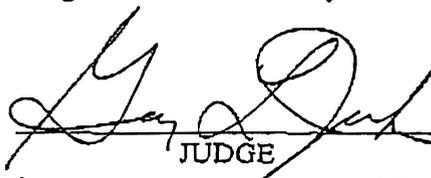
IT IS ADJUDGED that the defendant is hereby committed to the custody of the Warden of the West Virginia Penitentiary, or his authorized representative for the remainder of his natural life, without mercy, with zero days credit for time served, with said sentence to run consecutive to the sentence currently being served by the defendant as a result of a conviction in Federal Court.

Conviction Date: August 21, 2012
Sentence Date: September 26, 2012
Effective Sentence Date: September 26, 2012

IT IS ADJUDGED that the defendant herein, GARY ROLLINS, be, and he is hereby sentenced to the West Virginia State Penitentiary for the remainder of his natural life, without mercy, with zero days credit for time served, with said sentence to run consecutive to the sentence currently being served by the defendant as a result of a conviction in Federal Court. It is further **ORDERED** that the defendant shall pay all costs of prosecution.

It is **ORDERED** that the Clerk forthwith transmit this record of the judgment and commitment, duly certified, to the Warden/Superintendent of the West Virginia State Penitentiary and that this record serve as a commitment of the defendant.

NICHOLAS COUNTY


JUDGE

Done
10-9-12
KC

A TRUE COPY, Certified this _____ day of _____, 20____.

(SEAL) CRIMINAL ORDER BOOK 86 PAGE 710

ENTERED 10-9-12

CLERK