

13-1264

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
STATE OF WEST VIRGINIA

V.

Case No. 12-F-204  
Judge Yoder, Div. VIII

DANIEL L. HERBERT,  
DOB: 07/10/1984.

WEST VIRGINIA M. SUP. CT. REC.  
2013 NOV - 6 AM 10:53

**SENTENCING ORDER**

*Counts One – Five, Counts Nine, Ten, and Twelve*

On October 24, 2013, the State of West Virginia appeared by Assistant Prosecuting Attorney Gregory K. Jones and the Defendant appeared in person and by counsel, Matthew Harvey, for sentencing on Counts One – Five, and Counts Nine, Ten, and Twelve. The Defendant was convicted of these counts on September 5, 2013.

Whereupon, the Court first considered the Defendant’s post-trial motions. The Defendant did not raise any new issues that weren’t already argued during the course of the trial. The Defendant and the State renewed their arguments and position on the grounds of the motion. The Court finds no reason to change its previous rulings. Accordingly, the Defendant’s post-trial motions are denied.

Defense counsel then advised the Court that it received a copy of the pre-sentence investigation report and did not wish to make any objections or corrections to the report. The State also did not object to the contents of the report.

The Court next inquired whether the Defendant had any legal cause why sentence should not be pronounced today. Neither the Defendant nor his counsel provided the Court with any cause to delay sentencing. The Court then gave the Defendant and his counsel an opportunity to address the Court and present witnesses and exhibits.

PA  
Harvey  
C-W ✓  
DOC  
MCPD  
11-7-13

It is ordered the Defendant is sentenced as follows:

Count One	Attempted Murder of the First Degree,	W.Va. Code § 61-2-1,	Not less than three years nor more than fifteen years,
Count Two	Malicious Assault,	W.Va. Code § 61-2-9(a),	Not less than two years nor more than ten years,
Count Three	Malicious Assault,	W.Va. Code § 61-2-9(a),	Not less than two years nor more than ten years,
Count Four	Attempted Murder of the First Degree,	W.Va. Code § 61-2-1,	Not less than six years nor more than fifteen years, [sentence enhancement pursuant to W.Va. Code §61-11-18],
Count Five	Malicious Assault,	W.Va. Code § 61-2-9(a),	Not less than two years nor more than ten years,
Count Nine	Wanton Endangerment Involving a Firearm,	W.Va. Code § 61-7-12,	Five years,
Count Ten	Wanton Endangerment Involving a Firearm,	W.Va. Code § 61-7-12,	Five years, and
Count Twelve	Fleeing a Law-Enforcement Officer,	W.Va. Code § 61-5-17(d),	One year in jail.

All felony sentences shall be served in a penitentiary house of this state. The sentences for Counts One, Two, Four, Five, Nine, and Ten shall run consecutively to each other and consecutive to the sentence imposed for Count Eleven on July 25, 2013, by separate order. The sentences for Counts Three and Twelve will run concurrently with the sentences imposed today and the sentence for Count Eleven.

The Defendant is ordered to pay the costs of this action to the Berkeley County Circuit Clerk within one year of his release.

**CONVICTION DATE: SEPTEMBER 5, 2013**

**SENTENCE DATE: OCTOBER 24, 2013**

**EFFECTIVE SENTENCE DATE: JULY 4, 2012**

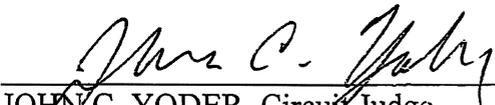
The Defendant is remanded back into the custody of the West Virginia Division of Corrections to begin serving his sentence.

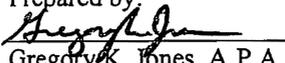
Finally, the Defendant was advised of his appellate rights in court. Upon the Defendant's request, the Court appointed Ben Crawley-Woods to represent the Defendant on his appeal of all counts except Count Eleven of the Indictment. Matthew Harvey remains his appointed lawyer on Count Eleven.

The Defendant's objection and exception to the sentences imposed by the Court is noted.

The Clerk shall enter this order and send copies of this order to the following persons or agencies: Matthew Harvey, Esq. at 134 West Burke St., Martinsburg, WV 25401; Gregory K. Jones at the Berkeley County Prosecutor's Office, 380 W. South St. Suite 1100, Martinsburg, WV 25401; Ben Crawley-Woods at 1314 Edwin Miller Blvd., Suite 212A; the Division of Corrections, and the Martinsburg City Police Department at 232 N. Queen St., Martinsburg, WV 25401 *for NCIC validation (CI#1207-16288)*. The Clerk shall then remove this case from the Court's docket and report it as closed.

11/5/13  
ENTERED

  
JOHN C. YODER, Circuit Judge  
23<sup>rd</sup> Judicial Circuit

Prepared by:  
  
Gregory K. Jones, A.P.A.

AT 12:01 PM  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/15/13 BY JBT/BJ

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

CASE NO. 12-F-204  
Judge Yoder, Div. V111

DANIEL L. HERBERT,  
  
DEFENDANT.

APPELLATE DIVISION  
NOV-8 PM 3:40  
1111

ORDER OF SUBSTITUTION

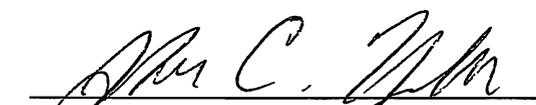
This matter came on before the Court, upon the papers and pleadings formerly read and had herein; and upon the Court's prior Order appointing the Matthew L. Harvey for the trial in this matter. And having informed the Court that Daniel L. Herbert wishes to appeal said conviction in this matter, Defendant requests that another attorney be appointed for the appeal in this matter.

Accordingly, it is ADJUDGED and ORDERED that the Ben Crawley-Woods, an attorney practicing before the Bar of this Court, is appointed to represent Defendant for the purposes of the appeal of this matter.

The Clerk shall enter the foregoing as of and for the day and date first hereinabove written and shall transmit attested copies to the Ben Crawley-Woods, Esq.; Matthew L. Harvey, Esq.; and the Defendant.

ENTERED: 11/8/13

C-W ✓  
RA  
Harvey  
Def  
11-13-13

  
\_\_\_\_\_  
JOHN C. YODER, JUDGE  
CIRCUIT COURT, BERKELEY COUNTY, WV

RECEIVED  
APPELLATE DIVISION  
NOV 11 2013  
JLBH