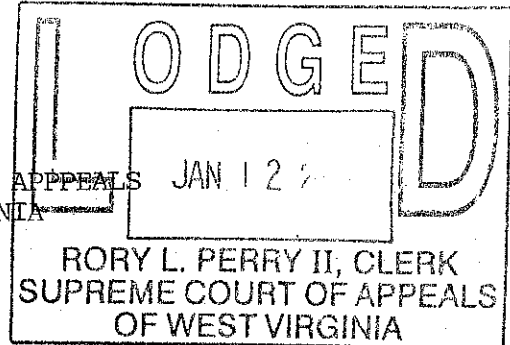


Jackie L. Snider, #20618
N.R.J.C.F. D-1-47
Rd, Box-1
Moundsville, West Virginia

Dated this 8-22 th day of 2004.

IN THE STATE SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA



JACKIE L. SNIDER

Petitioner,

V.

CIVIL ACTION No. 0-3-P-10

WILLIAM M. FOX,

Respondent.

PETITIONER'S APPEAL FROM THE CIRCUIT COURT
OF PLEASANTS COUNTY, WEST VIRGINIA

Petitioner, Jackie L. Snider, pro-se, herein, comes before this Honorable Court with his Appeal from the Circuit Court of Pleasents County, West Virginia.

Petitioner has filed his appeals from his Discipline hearing with the Division of Corrections in Pleasents Count, has filed his objections with the Division of Corrections, has filed his petition before the Circuit Court of Pleasents Count, West Virginia, has filed his objections to the responds to the Court, has filed his Notice of Appeal from the Circuit Court of Pleasents County, West Virginia, ALL Attached herewith, marked as exhibit's and made a part of this record.

PETITIONER'S STATEMENT

Petitioner aver's to the Court that the Division of Correction's for the State of West Virginia, has made rules for the Department of Corrections that is in conflict with the Statute of West Virginia.

Petitioner ask the Court to look to the West Virginia Statute, 62-13-3, c & e, the Commissioner for the Department of Corrections shall comply with the law's of the State, and can look to Art- 3, Sect. 14 VI, Statute must define or specify.

In Petitioner's case he was charged with the offence of RAPE by one of the officials at the Department of Corrections in St-Marys, West Virginia, how ever, as can be seen by the discipline report attached herewith, he did not enter the officers body in any way, only rubbed his hand against the officers breast.

The rules set out by the Department of Correction, attached herewith and marked as an exhibit, Police Directive 325.00, does not comply with the West Virginia Code.

PETITIONER'S REQUEST

Petitioner has attached all his documents herewith as exhibits and for the record of this Court to consider.

Petitioner request a Court ORDER ordering the Department of Corrections to amend the rules in Policy Directive 325.00, to comply with the Statute of West Virginia.

Petitioner request of this Honorable Court to ORDER the Department of Correction to reverse the Magistrate decision and the INCIDENT REPORT, attached herewith, marked as exhibit A, for the reason the

report does not comply with the rules of RAPE in the State of West Virginia.

Respectfully Submitted

1s/ Jackie L. Snider
Jackie L. Snider, pro-se

STATE OF WEST VIRGINIA

COUNTY OF MARSHALL, to-wit;

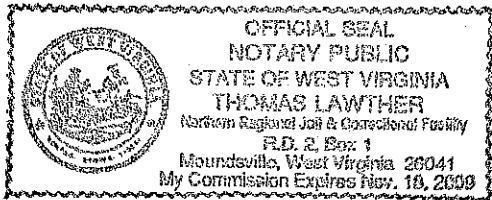
Taken, sworn and subscribed to before me this 22 th day of

August, 2004.

My commission expires Nov. 18, 2009.

SEAL:

1s/ Thomas Lawther
Notary Public

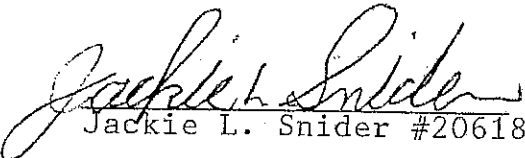


Jackie L. Snider #20618
NRJ&CF-C-3-Cell-40
Rd. 2, Box 1
Moundsville, WV 26041
Wednesday, January 29, 2003

Hon. Gail E. Mote, Clerk of the
Circuit Court of Pleasants County,
West Virginia
Pleasants County Courthouse
St. Mary, West Virginia 26170

Dear Ms. Mote:

Enclosed for filing is my Petition for a Writ of Habeas Corpus
AD-SUBJUCIENDUM, and "Exhibits from (1) one To (5) Five. Alos Ex. 5,
is a order from the Circuit Court of Fayette County, West Virginia.
The Judge was the Honorable John W. Hatcher, Jr., Judge.
Ms. Mote as soon as I can get copies of the Court files in Fayette
County, West Virginia, I will furnish this Honorable Court a Copies
those files. Ms. Mote thank you for your time and troubles in this
matter.


Jackie L. Snider #20618

IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA

JACKIE L. SNIDER,
Petitioner,

v.

Civil Action No. 03-P-10

~~EVELYN SEIFERT, WARDEN,~~
Northern Correctional
Facility, and
WILLIAM M. FOX, WARDEN,
St. Mary Correctional
Center,
Respondents.

PETITION FOR WRIT OF HABEAS CORPUS AD SUBJUCIENDUM

The petitioner, Jackie L. Snider, Pro-Se, seek to invoke original jurisdiction writ of Habeas Corpus Ad Subjuciendum pursuant to the West-Virginia Code 53-4-1, returnable before this Court, commanding the Respondents, Evelyn Seifert, Warden of the Northern Regional Jail and Correctional Center, and William M. Fox, Warden of the St. Mary Correctional Center, to produce the Petitioner before the bar of this Court, at a date and time in the near future, to show cause why the May 2, 2002 correctional magistrate conviction should not be reversed and why the petitioner should not be returned to his pre-correctional magistrate conviction status as the proceeding violated the rights of the petitioner as established by the United States Constitution and West Virginia Constitution.

FACTUAL BACKGROUND

The petitioner is serving an indeterminate sentence of 8 to 30 years regarding a conviction that is unrelated to the basic of the Petition. The petitioner was incarcerated at the Saint Mary's Correctional Center (SMCC) at the time of the occurrence of the actions that form the basic of this Petition. The Petitioner is presently be held at the Northern Correctional Center (NCC).

On April 26, 2002, an employee of the SMCC, Dietre Henthorn, LPN, filed an incident report regarding action on the part of the petitioner that allegedly occurred on April 25, 2002. Ms. Henthorn is a nurse employed

Attached to page (one) (1)

SMCC and the actions on the part of the petitioner that gave rise to the incident report occurred in the facility's infirmary during such time that ~~the petitioner was being~~

treated by Ms. Henthorn. The incident report submitted by Ms. Henthorn gave rise to a Violation Report, Docket No. SMCC-02-111-J, (Exhibit A) charging the petitioner with rape, a violation of Disciplinary Rule 1.03.

The violation report indicates that on Thursday, April 25, 2002, that Ms. Henthorn was treating the petitioner and that the petitioner began making a series of sexually suggestive comments which culminated in the petitioner intentionally reaching over and running his hand over Ms. Henthorn's breast.

The State of West Virginia Division of Corrections Policy Directive number 325.00 dated 12/1/99 defines rape, a Class I Rule Violation as follows: "1.03-Rape An inmate shall not physically force, or attempt to force another person to submit to any sexual act, nor shall they threaten another person with harm in order to compel them to commit a sexual act." (Exhibit B)

Incidentally, the State of West Virginia Division of Corrections Policy Directive number 325.00 dated 12/1/99 defines sexual acts, a Class II Rule Violation as follows: "2.09-Sexual Acts No inmate shall engage or attempt to engage in any sexual act with another person, including kissing or fondling. Nor shall an inmate expose their sexual organs to any person." (Exhibit C)

As specified in State of West Virginia Division of Corrections Policy Directive number 325.00 dated 12/1/99, the differences in punishments for Class I versus Class II Rule Violations is markedly different and more severe for Class I violations. (Exhibit D) For example, Class I violations can result in the loss of good time credit for up to two years whereas Class II violations can result in a maximum loss of good time credit of six months.

The violation report was served upon the petitioner on April 26, 2002 by a correctional officer and bailiff at SMCC, COII William Hale. The petitioner inquired as to what was being served upon him and was told by Officer Hale to read the document. The petitioner informed Officer Hale that

he was illiterate, but Officer Hale still refused to read the violation report to the petitioner.

Subsequent to being served with the violation report, the petitioner was transferred in the early afternoon of April 26, 2002 to the Northern Regional Jail in Moundsville, West Virginia where the petitioner was held incommunicado until May 2, 2002, the date of the hearing regarding the violation report.

A "Request for Witnesses/Representation" form (Exhibit E) was completed by Jess White, Inmate Legal Clerk, on April 29, 2002. The form indicates that Mr. Snider requested to be present at the hearing, that he requested representation, and that he requested the reporting staff be present. There are no requested witnesses listed on the form.

Fifteen minutes prior to the hearing, the petitioner met with Jess White, a prisoner assigned to represent him. The petitioner was given only fifteen minutes to consult with his representative and to prepare a defense. Although others were present in the infirmary at the time of the alleged incident, none of the potential witnesses were interviewed by Jess White, and none were called as witnesses for the petitioner.

Rule 6.11 Hearing Procedures, (Exhibit F) subsection (4)(b), of the State of West Virginia Division of Corrections Policy Directive number 325.00 dated 12/1/99 specifies that witnesses can be called on behalf of the inmate/defendant. Rule 6.11 (4)(d) further states that "(a) list of witnesses must be presented to the Magistrate no later than noon of the first regular business day preceding the day of the scheduled hearing.

The Hearing Report (Exhibit G) indicates that Jess White filed a Motion to Dismiss, alleging that the petitioner was not properly charged as the violation report did not properly describe the alleged disciplinary violation. The Motion to Dismiss was denied by the Magistrate citing the violation report described the petitioner as attempting to force another to submit to a sexual act.

The Hearing Report further indicates the only testimony came from Ms. Henthorn who testified that the information in her reports was true and accurate, and that the defendant ran his hand over her breast. Ms. Henthorn further testified that she got upset and left the room and that she was upset to the point she did not want to come back into the institution. The Hearing Report further indicates that Ms. Henthorn testified that the petitioner did not did not physically harm her nor did he threaten her and that the petitioner engaged in the aforementioned conduct without her consent and against her will.

The petitioner was found guilty of violating Rule 1.03 Rape by the Magistrate and was sentenced to six months punitive segregation, 90 days loss of all privileges, with a recommendation subsequently adopted by the warden of SMCC, William Fox, of a loss of one year earned good time credit.

Subsequent to the above hearing, the petitioner appealed the determination made by the Magistrate citing numerous grounds in a Disciplinary Appeal. (Exhibit H) Warden Fox denied the appeal by memorandum dated May 23, 2002. (Exhibit I)

The petitioner further appealed the determination of the Magistrate to the Commissioner of the Department of Corrections, Jim Rubenstein. (Exhibit J) By letter dated June 24, 2002, the appeal to the Commission was likewise denied with such letter signed by Beverly Gandee, Senior Inmate Grievance Coordinator. (Exhibit K).

The petitioner has exhausted all administrative remedies regarding an appeal of the institutional Magistrate's decision.

In conclusion, the petitioner was scheduled to appear before the parole board in July of 2002 and the aforementioned incident postponed such an appearance because of the loss of good time credit. Additionally, the petitioner was removed from the less restrictive setting of SMCC and placed

in highly restrictive segregation at the State's maximum facility, MOCC. The petitioner additionally lost his trustee status and privileges associated therewith, the petitioner further lost his job, the opportunity to acquire an education, and other privileges including telephone access, visitations, television and radio, and food purchasing privileges.

ISSUES FOR HABEAS CORPUS RELIEF

- I. Was the evidence presented to the institutional Magistrate during the rule violation hearing sufficient to sustain a finding of guilty regarding a violation of Disciplinary Rule 1.03-Rape.
- II. Were the petitioner's due process rights violated regarding the representation provided by the inmate representative and the circumstances under which such representation was provided.
- III. the evidence presented to the institutional Magistrate during the rule violation hearing in no way remotely sufficient to sustain a finding of guilty regarding an alleged violation of Disciplinary Rule 1.03-Rape.

For guidance, the petitioner relies upon the rule established by the West Virginia Supreme Court for appellate review of a guilty verdict in a criminal case as specified in Syllabus Point 1 of State v. Starkey, 161 W.Va. 517, 244 S.E. 2d 219 (1978). "In a criminal case, a verdict of guilty will not be set aside on the ground that it is contrary to the Evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt." Id. the evidence is to be viewed in the light most favorable to the prosecution." Id. To Warrant interference with a verdict on the ground of insufficiency of evidence, the court must be convinced that the was manifestly inadequate and that consequate and that consequent **injustice** has been done." Id. in viewing the evidence in a light most favorable to the complainant, Ms.Henthorn, the

violation report indicates that Ms. Henthorn was performing a health services request on inmate Jackie Snider when the alleged violation occurred. The violation report prepared based on Ms. Henthorn's statement further indicates that Mr. Snider made a series of sexually oriented statements and then that "...Mr. Snider intentionally reached over and ran his hand over my breast." The violation report concludes by Ms. Henthorn stating that "I told Mr. Snider that he wasn't allowed to touch me and I got up and left."

It is also worth noting the summary of testimony included in the Hearing Report which indicates that Ms. Henthorn stated that Mr. Snider "ran his hand over her breast," that Mr. Snider "did not physically harm her (Ms. Henthorn) nor did he threaten her (Ms. Henthorn)..."

The State of West Virginia Division of Corrections Policy Directive number 325.00 dated 12/1/99 defines rape as follows: "1.03-Rape An inmate shall not physically force, or attempt to force another person to submit to any sexual act, nor shall they threaten another person with harm in order to compel them to commit a sexual act."

Regardless of whether one considers running a hand across a woman's breast to be a sexual act, there was no allegation or indication that Mr. Snider physically forced or attempted to use physical force to compel Ms. Henthorn to be subjected to the aforementioned conduct. In fact, Ms. Henthorn indicated that she was not physically harmed by Mr. Snider. Certainly had Mr. Snider used physical force or had he attempted to force Ms. Henthorn to engage in a sexual act there would have been some type of physical harm, even if only slight. Additionally and in further support, Ms. Henthorn specifically denied that Mr. Snider threatened her.

It is also worth considering Rule 2.09-Sexual Acts as established by the State of West Virginia Division of Corrections Policy Directive number 325.00 dated 12/1/99. Sexual Acts is defined as: "(n)o inmate shall engage or attempt to engage in any sexual act with another person, including

kissing or fondling. Nor shall an inmate expose their sexual organs to any person.”

The petitioner's representative filed and argued a Motion to Dismiss the Rule 1.03 violation alleging that the violation report did not properly describe the violation. In viewing the evidence in a light most favorable to the complainant, the statements contained within the violation report indicate that at worst, the petitioner violated Rule 2.09-Sexual Acts by fondling the breast of Ms. Henthorn.

In sum, the violation report does not paint a very flattering picture regarding the actions of the petitioner. Ms. Henthorn alleges that the petitioner made a series of sexually oriented comments to her that would undoubtedly offend most people of reasonable sensitivities. However, it appears as though the unflattering picture painted by the violation report significantly clouded the judgement of both the correctional officer who completed the report as well the institutional Magistrate that decided the case.

Clearly, any evidence of physical force or attempted use of physical force or any evidence of the use of threats of harm to compel were “manifestly inadequate” to sustain a finding that the petitioner was guilty of “rape.” As such, the petitioner has been subjected to a “consequent injustice” in that he has lost substantial privileges as well as one year of good time credit because of an erroneous finding unsupported by evidence.

II. The petitioner's due process rights were violated regarding the representation provided by the inmate representative and the circumstances under which such representation was provided.

The West Virginia Supreme Court has adopted due process standards applicable to prison discipline proceedings in the case of Harrah v. Leverette, 165 W. Va. 665, 271 S.E.2d 322, 1980. As specified in Harrah, an inmate is entitled to the following due process protections: “(a) written notice of the claimed violations; (b) disclosure of evidence against him; (c) opportunity to be heard in person

and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body; and (f) a written statement by the fact-finders as to the evidence called on and reasons for discipline. Harrah at 672, 271 S.E.2d at 327.

As for providing written notice of the claimed violations and the disclosure of evidence to the inmate, it is clear that the West Virginia Supreme Court deemed notice to the inmate regarding the alleged violation an important due process consideration. As the petitioner is illiterate, it should be incumbent upon the State to provide notice in such a manner to insure adequate notice. Under the circumstances of the present case, the petitioner was given a copy of the violation report and was immediately placed in segregation away from others. The correctional officer that served the violation report refused to read the report to the petitioner and the petitioner was then placed in an environment which did not allow for any other individual to provide the required notice to the petitioner.

As for the requirement to have the "opportunity to be heard in person and to present witnesses and documentary evidence." here again the State has failed to meet its obligation in protecting the due process rights of the petitioner.

Mr. White, the inmate representative for the petitioner, did not meet with the petitioner until fifteen minutes prior to the hearing. Regarding this rather belated meeting between the petitioner and his representative, one of two situations must have existed; either Mr. White was able to meet with the petitioner at an earlier time and chose to not engage in such a meeting, or alternatively, officials at the Northern Regional Jail would not permit an earlier meeting.

Had Mr. White met with the petitioner earlier than fifteen minutes prior to the hearing, he would have learned that there were other witnesses present in the infirmary at the time of the alleged

incident and he could have submitted a request asking that such witnesses be brought to the hearing to testify on behalf of the petitioner. As the meeting between the petitioner and his representative did not take place until fifteen minutes prior to the hearing, the rules regarding hearing procedures and requesting witnesses could not be complied with as Rule 6.11 (4)(d) states that "(a) list of witnesses must be presented to the Magistrate no later than noon of the first regular business day preceding the day of the scheduled hearing.

As for the first possible scenario alleging that Mr. White failed to act reasonably. Although Mr. White is not a licensed attorney, he is compensated by the State Department of Corrections to provide representation services to inmates. As such, Mr. White should be held to some standard of care in engaging in such representation and the State should likewise ensure that compensated representatives adhere to some minimum standard. In proposing that Mr. White be held to some standard of care, a reasonable suggestion would be that Mr. White should have met with the petitioner no later than the morning prior to the hearing so that any witnesses to the alleged violation could be determined and so that a timely request to have such witnesses present at the hearing could be submitted to correctional officials. Were Mr. White, in fact, dilatory in his representation of the petitioner, Mr. White, an employee of the State Department of Corrections, effectively denied any meaningful opportunity to be heard in person and further denied the petitioner his right to present witnesses and documentary evidence.

Alternatively, if the correctional facility authorities prevented Mr. White from meeting with the petitioner prior to the meeting immediately before the hearing, then the State functionally denied the petitioner any meaningful opportunity to be heard in person and to present documentary evidence and the State further completely denied the petitioner the opportunity to present witnesses.

Given the extremely short period of time in which Mr. White would have had to prepare a

case for the petitioner, it would be a stretch of to suggest that any reasonable or meaningful opportunity to be heard or to present documentary evidence existed. Furthermore, if the State prevented Mr. White from accessing the petitioner until after noon the day prior to the hearing, the State functionally denied the petitioner the opportunity to present witnesses as the rules regarding the requesting and presenting of witnesses could not be complied with such requests could not be submitted prior to noon the day preceding the hearing.

In sum, the petitioner was not adequately advised as to the charges against him, nor the evidence against as the State was aware of his illiteracy and failed to reasonably accommodate the petitioner's deficiency by refusing to read the pertinent information to the petitioner.

Additionally, either Mr. White, the petitioner's representative and employee of the Department of Corrections, or the State directly or functionally prevented the petitioner from having the petitioner from being able to present witnesses and documentary evidence.

RELIEF SOUGHT

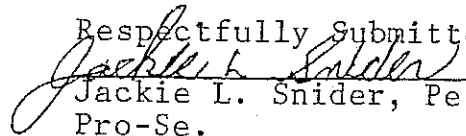
The petitioner would first request that he be reinstated immediately to the privilege and custodial status held by the petitioner on April 25, 2002 and prior to the filing and service of the violation report at issue during the pendency of this matter.

As the State violated the petitioner's due process rights, the petitioner would first request as a final disposition to this matter an immediate release from any ongoing punitive measures imposed as a result of the above proceeding and would further request a reinstatement of good time credit. The petitioner would further request the Court order all proceeding the above matter be expunged from his incarceration records and that he be restored to the same position and status held prior to the initiation of the proceedings associated with the aforementioned violation report.

As the State's conduct in evaluating the evidence and in protecting the due process rights of the petitioner in the context of the disciplinary proceeding were so derelict and as the petitioner has further been subjected to harsh penalties as a result of the State's action, the aforementioned request for relief would be the most appropriate regarding this matter.

Alternatively, the petitioner would request a finding by the Court that the petitioner was in fact guilty of violating Rule 2.09-Sexual Acts, that his good time credit be reinstated and that the Court further designate the time spent in segregation and prior lost privileges as the appropriate punishment for such rule violation. The petitioner would further make such a request and would specifically ask the Court to determine punishment as the State, by way of the Department of Corrections has already demonstrated that an inability to treat the petitioner fairly and in a manner consistent with protecting the due process rights of the petitioner.

Alternatively, and lastly, the petitioner would request that the determination made by the institutional Magistrate be vacated and set aside and that the petitioner be remanded to the Department of Corrections for proceedings and disposition consistent with the rules and policies of the Department of Corrections should the Court not be receptive to the options requested above. Plaintiff would also request that this Honorable Court to inform the Magistrates for the West Virginia Department of Corrections that State laws over ride "Policy Directive 325.00 date 01/July 2001. Cause the all of the Magistrates stated that all they go by is Policy Directive 325.00 and that State Laws dont mean nothing to them.

Respectfully Submitted By

Jackie L. Snider, Petitioner
Pro-Se.

Finally, the petitioner would request any other relief deemed appropriate by this Honorable Court given the circumstance of the case.

IN THE CIRCUIT COURT OF PLEASANT COUNTY, WEST VIRGINIA

AT SAINT MARY, WEST VIRGINIA

JACKIE L. SNIDER,
PETITIONER,

V.

CIVIL ACTION No. 03-P-10

EVELYN SEIFERT, WARDEN,
NORTHERN CORRECTIONAL
FACILITY, AND
WILLIAM M. FOX, WARDEN,
ST. MARY CORRECTIONAL
CENTER,
RESPONDENTS.

MOTION TO PROCEED IN FORMA PAUPERIS

Comes forth now your Petitioner, Jackie L. Snider Pro-Se; before this Honorable Court and doth seek leave to proceed in Forma Pauperis.

Petitioner/Plaintiff/Demandant is an indigent pursuant to the West-Virginia Code & 29-21-11, and does not have the money to hire himself an attorney or to pay court costs. He hath attached his Affidavit in Support to this Motion.

Respectfully Submitted By

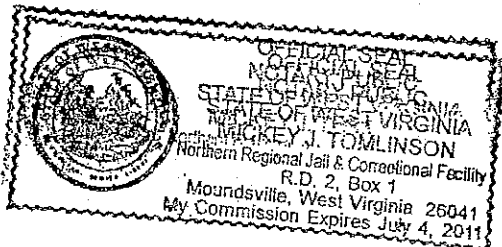
Jackie L. Snider
Jackie L. Snider, Petitioner
Pro-Se.

STATE OF WEST VIRGINIA,
COUNTY OF MARSHALL, TO WIT:

Taken, subscribed, and sworn to me, a Notary Public in and for the State of West Virginia and the County of Marshall on this 29 day of

January, 2003 A.D..

My Commission Expires July 4 2011



Mackey J. Tomlinson
Notary Public

VERIFICATION

I, the undersigned Petitioner, do hereby swear that the statements contained in the aforementioned ~~action, are True to the best of my knowledge and belief,~~ being that they are based on Facts. As to those that are base on information or belief, the Petitioner does believe them to be TRUE.

Jackie L. Snider
, PRO SE;

Taken, Subscribed, and Sworn before me, a Notary Public, in and for the County of MARSHALL and the State of West Virginia, on the 27 day of January, 2003 A.D..

My comission expires on the 4 day of July, 2011 A.D..

STATE OF WEST VIRGINIA,
COUNTY OF MARSHALL , TO WIT;

Mickey J. Tomlinson
NOTARY PUBLIC

