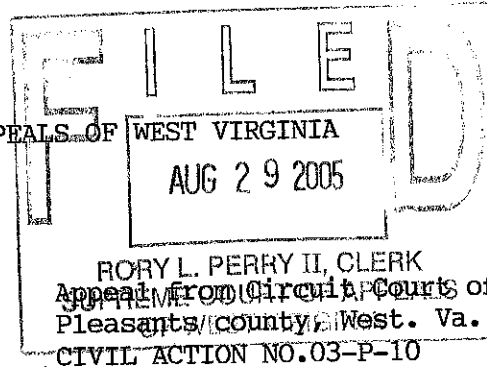


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



JACKIE SNIDER.  
Appellant,

V.

WILLIAM M. FOX, Warden,  
Appellee.

**BRIEF OF THE APPELLANT**

Jackie Snider  
Pro-Se:

## DISCUSSION

### APPELLANT'S ANSWER TO APPELLEE'S BRIEF BY Charles Houdyschell Jr.

Petitioner first answered the Court to proceed on the record, however the Appellee filed a Brief in behalf of the Respondent that Petitioner dose not agree with.

Petitioner avers that the attorney for the Respondent has not brought forth the true meaning of the case, law's and the facts of this case, therefore Petitioner feels he must answer Respondents brief.

The Respondent aver's that the Division of Corrections has been granted the authority to make rules for the operation of the agency. W.Va. Code 28-1-5. Petitioner dose not dispute the fact that the Commission of Correction has the authority to make rules an regulations, the Corrections in West Virginia could not run without proper rules and regulations, however the Commissioner is bound to stay and follow the rules and laws in the state of West Virginia set forth by our Supreme Court and legislative body's.

Respondent aver that the word RAPE is not in the West Virginia Code of sexual offenses set forth in Article 8B of Chapter 61, Petitioner avers that the Respondent is playing with words and meanings.

Respondent sets forth Sexual offenses, Petitioner request this Court to look to words and meanings of the Blacks Law Dictionary of guidance for Courts and attorneys, the word RAPE is found in this dictionary and is set forth as the same meaning as Rape,

" Unlawful sexual intercourse with a female without her consent. The unlawful carnal knowledge of a woman by a man forcibly and against her will. The act of sexual intercourse committed by a man with a woman not his wife and without her consent, committed when the woman's

resistance is overcome by force or fear, or under other prohibitive conditions. STATE V. LORA, 213 Kan. 184, 515 P.2d 1086, 1093.

A male who has sexual intercourse with a female not his wife is guilty of rape if: (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, Model Penal Code Section 213.1".

Respondent avers that Petitioner waived his right to his defense by not testifying, this is not set out in the true meaning of light, Respondent did not inform the Court that the Nurse in question was questioned to the effect, did Mr. Snider penetrate your body in anyway, did Mr. Snider force you into sexual acts, did Mr. Snider threaten you in anyway, this is the sum and substance of the questioning of the nurse, all her answers were NO, the tape of this hearing can be found in the magistrates office, Division of Correction, St. Mary's Correctional center, West Virginia, Note Petitioner has requested this tape with no responds from the Department of Corrections, with all of the Nurse's answer's being no there was no reason for Mr. Snider to inter into testimony, this alone shows that there can be no rape or as the Respondent put it sexual intercourse.

The Respondents attorney has set it forth, that the Department of Corrections can change the meaning of words to suit there rules and regulations, if the attorney, as he set it forth in W.Va Code, 25-1-5, would read these sections he would see that the Commissioner of Corrections SHALL follow the laws and legislative acts in the State of West Virginia.

The Respondent avers that the Department of Corrections has the, as the Respondent stated, Courts must afford great deference and flexibility to prison officials in their management of these volatile

environments, this Petitioner dose not question, however Petitioner dose question the fact that the Department of Corrections dose not have the right to change the words and meanings of law and legislative acts in the state of West Virginia, RAPE, SEXUAL INTERCOURSE, same meaning, means penetration, Petitioners case is sexual contact, in this meaning of light by the Respondent a person in the State of west Virginia that committed of assault could be charged with murder.

Our State Supreme Court in West Virginia has made it very clear in the case of, DE VAULT V. NICHOLSON , 296 S.E. 2d 682.

As an officer of the Department of Corrections, The Commissioner is bound by the statute creating that agency. . . . Furthermore, as an executive officer the Commissioner has the constitutional duty to "take care that the laws be faithfully executed." W.Va. Constitution, Art. VII, section 5. Our Constitution dose not permit executive officers to pick and choose the laws they will or will not execute, for if such were the case, the executive department, could, either by commission or omission, (sic) model a system of law different from that specified by the people acting through the legislative enactment as law exists, the executive department has the constitutional duty to attend to its faithful execution. ---S.E. 2d at---

Certainly anything that changes the status quo is not automatically suspect. Nor will this Court by reflex preserve the status quo if the executive branch has discretionary power to modify it.

Respondent aver there is no word RAPE in the statute 61- Article 8B, as Petitioner has stated no, however if the Respondent would look to the Statute of West Virginia, 61-11-8, Attempted Rape, STATE V. Franklin, W.Va. 43, 79 S.E. 2d 692 (1953), plainly sets forth the word Rape in the West Virginia Statute.

Respondent aver, In the case at hand, the appellant is challenging the internal administrative discipline issued him and not a criminal conviction for "rape." the respondent has not correctively stated the facts and true meaning of the challenging, petitioner is challenging the word of rape and its definition, the nurse stated there was no intercourse, she was not forced nor was there any harm to her, in this manner petitioner could only charged with sexual misconduct, the department of corrections contends that even though there was no intercourse the department can change the meaning of the word rape and charge petitioner with rape.

#### CONCLUSION

Petitioner contends that the department of Correction is not complying with the words any meaning of words set forth by our Courts and the legislative branch, the Department of Corrections is playing saying no matter what the word RAPE means they can charge an inmate with what ever they want to, this is not what the words and meanings of the Constitution, our Courts and the legislative branch has set forth, the West Virginia statute has made it very clear that there is different forms of sexual misconduct and the word rape dose not incorporate any kind of sexual misconduct the respondents wish to charge an inmate with.

Petitioner request of this Court to order the Department of Corrections to amend there Policy's and forms of the word RAPE to the extent of charging an inmate as to the correct charge he is charged with and to order the Department of Corrections to void the incident report in question and restore all of Petitioners good time that was taken from him in this incident, and any other awards this Court may see fit for the time Petitioner spent in lock-up.

For the all of the above Petitioner shall ever pray.

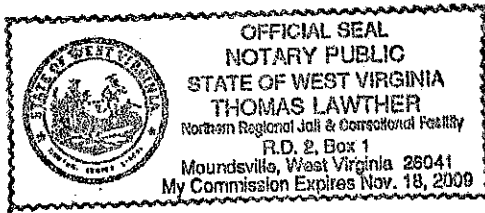
Jackie Snider  
Jackie Snider, pro-se

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

Taken, sworn and subscribed to before me this 22 th day of  
August 2005.

My commission expires Nov. 18, 2009.  
SEAL:

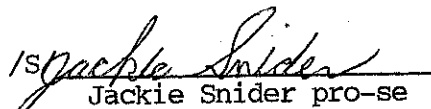
Thomas Lawther  
Notary Public



**CERTIFICATE OF SERVICE**

I, Jackie Sinder, Petitioner her-in, pro-se, Do hereby certify that nine copy's of Appellant's Brief was mailed to the State Supreme Court of Appeals in West Virginia and 1 (1) copy of the same was mailed to the state Attorney' Generals office, to Charles Houdyschell Jr., by depositing said copy;s in the United Sates Mail, postage pre-paid, this 22nd day of August, 2005, as addressed below.

Office of the Attorney General  
Darrell V. Mc Graw., Jr.  
STATE Capitol Building, E-26  
Charleston, West Virginia. 25305

  
Jackie Snider pro-se