
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PHILIP MICHAEL COLLINS,

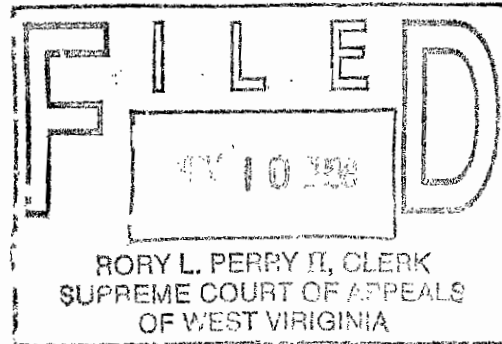
Petitioner, (Defendant Below),

v.

HONORABLE ROBERT A. WATERS,

(Wood County Circuit Court Judge),

Respondent.



PETITION FOR WRIT OF MANDAMUS

Underlying Proceeding

State of West Virginia v. Phillip Michael Collins
Case number 96-F-9 (98-P-9)
Circuit Court of Wirt County

GEORGE M. TORRES

State Bar # 6256
Counsel for Petitioner
Parkway Center
3901 Briscoe Road
Parkersburg, WV 26104
(303) 422-1337
(304) 422-1338 (fax)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PHILIP MICHAEL COLLINS,

Petitioner, (Defendant Below),

v.

Underlying Proceeding

96-F-9 (98-P-9)

(Circuit Court of Wirt County)

HONORABLE ROBERT A. WATERS,

(Wood County Circuit Court Judge) Respondent.

PETITION FOR WRIT OF MANDAMUS

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Circuit Court of Wirt County

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**MEMORANDUM OF LISTING OF PERSONS UPON WHOM
THE RULE TO SHOW CAUSE IS TO BE SERVED**

GEORGE M. TORRES
State Bar # 6256
Counsel for Petitioner
Parkway Center
3901 Briscoe Road
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(304) 422-1337
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HONORABLE ROBERT A. WATERS
Respondent
Circuit Court of Wirt County
Wirt County Courthouse
1 Court Street
Elizabeth, West Virginia 26143
(304) 424-1746 (Wood County Office)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PHILIP MICHAEL COLLINS,

Petitioner, (Defendant Below),

v.

HONORABLE ROBERT A. WATERS,

(Wood County Circuit Court Judge),

Respondent.

PETITION FOR WRIT OF MANDAMUS

NOW COMES, the Petitioner, Philip Michael Collins, and most respectfully alleges and prays as follows:

I. JURISDICTION

This Honorable Court has original jurisdiction in this matter pursuant to *Article VIII, § 3, W. Va. Constitution; West Virginia Code 53-1-2 et. seq;* and *Rule 14 of the West Virginia Rules of Appellate Procedure; Foster v. Sakhai, 210 W. Va. 716 (2001)*

II. STATEMENT OF FACTS

The Petitioner was indicted on the 30th day of September, 1996 on five counts of violating, *West Virginia Code § 61-B-3, Sexual Assault in the First Degree.* (Exhibit A) Subsequent to a jury trial held on July 23 and 23, 1997, in the Circuit Court of Wirt County, the Petitioner was found guilty on Counts One, Two and Three of the indictment . (Exhibit B) Counts Four and Five were dismissed upon motion of the Petitioner, at the conclusion of the State's evidence. (Exhibit C) Count One of the indictment was dismissed at the sentencing hearing of September 8, 1997. (Exhibit D)

The Petitioner was sentenced on Counts Two and Three of the indictment, and ordered to serve two consecutive sentences of fifteen to twenty-five years in the penitentiary. (Exhibit D) The Petitioner, represented by trial counsel, filed an appeal to this Court on March 25, 1998. The appeal was refused on June 16, 1998, with Justices Starcher and Maynard voting to grant review. (Exhibit E)

On November 11, 1998 the Petitioner filed a Petition for Habeas Corpus, and on January 8, 1999, the undersigned was appointed to assist the Petitioner with his habeas corpus petition. (Exhibit F) The undersigned on behalf of the Petitioner filed a Supplemental Petition for Writ of Habeas Corpus *ad Subjiciendum*, to the Circuit Court of Wirt County, on or about May 15, 2000, (Exhibit F) and an Evidentiary Hearing, was held on July 16, 2001. On April 30, 2002, the Circuit Court of Wirt County, entered an Order *motu proprio* modifying the sentence, by having the two sentences "run concurrently". (Exhibit G)

The undersigned on behalf and at the request of the Petitioner, on at least two occasions, requested that the Respondent Circuit Court Judge enter an order, with findings and conclusions of law, in relation to the evidentiary hearing held on July 16, 2001. (Exhibits H & I) The Circuit Court has the statutory obligation to render findings and conclusions of law, pursuant to *West Virginia Code § 53-4A-7 (c)*. Although said statute does not contain a time limit, or a certain time for these findings to be entered, the Petitioner alleges, that seven years is a sufficient period of time for the statute to be complied with. As of the date of this filing, the Honorable Circuit Court of Wirt County, has not made any decision as to the granting or denying of the Habeas Corpus Petition, or entered an order with findings as required by statute.

III STANDARD OF REVIEW

This Court has broad discretion when reviewing the decisions of the Circuit Courts, to grant or deny a habeas corpus petition. *West Virginia Code § 53-4A-7 (c)* requires a circuit court denying or granting a habeas corpus proceeding to make specific findings of fact and conclusion of law relating to each contention advanced by the petitioner, and to state the grounds upon which the matter was determined, *State, ex rel. Terry Lynn Watson, v. Hill, 200 W. Va. 201 (1997); State ex rel. McMannis v. Mohn, 163 W. Va. 129 (1979); State ex rel. Valentine v. Watkins, 208 W. Va. 26 (2000)*.

IV MEMORANDUM OF LAW CITING AUTHORITIES

The Petitioner has been incarcerated for over eleven years, and seven years have passed since he participated in an evidentiary hearing *vis a vis* his habeas corpus petition. At least twice during the last seven years, in April, 2005 and August, 2008, he has requested that the Respondent enter an order either granting or denying his habeas corpus petition, formulating the pertinent findings of fact and conclusions of law. As of the date of this filing the Respondent has not complied with the provisions of *West Virginia Code § 53-4A-7©*.

This Honorable court has stated on various occasions, that, "*A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.*" Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling, 153 W. Va. 531, 170 S.E.2d 367 (1969)*.

CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of the foregoing PETITION FOR WRIT OF MANDAMUS, ~~and~~ *WITH ADDENDUM AND DOCUMENTS* by personal delivery upon the following: *AB*

Judge Robert A. Waters
Circuit Court of Wood County
Judicial Annex Building, Third Floor
2 Government Square
Parkersburg, WV 26102

[Signature]
George M. Torres
Counsel for Petitioner, Phillip Michael Collins

VERIFICATION

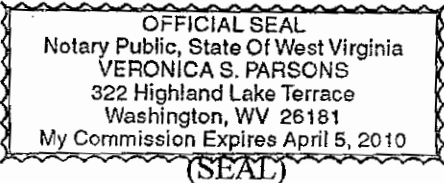
I, GEORGE M. TORRES, being duly sworn upon my oath that the facts and allegations contained in the foregoing PETITION FOR WRIT OF MANDAMUS *WITH ADDENDUM AND DOCUMENTS* are true, except where they are therein stated upon information and belief, and where they are therein stated upon information and belief, I believe them to be true. *AB*

[Signature]
GEORGE M. TORRES

The foregoing verification was acknowledged, taken and sworn before me, this _____ day of November, 2008.

Veronica S. Parsons

Notary Public



My Commission expires APRIL 5, 2010

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PHILIP MICHAEL COLLINS,

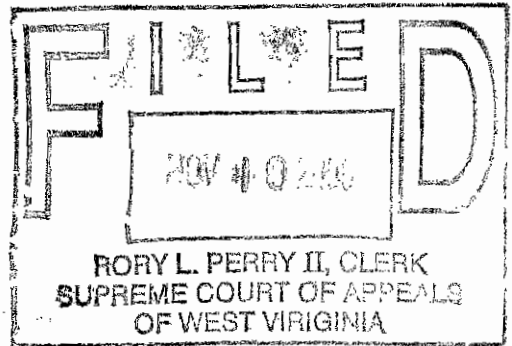
Petitioner, (Defendant Below),

v.

HONORABLE ROBERT A. WATERS,

(Wood County Circuit Court Judge),

Respondent.



ADDENDUM

- Exhibit A Indictment (3 pages)
- Exhibit B Verdict (2 pages)
- Exhibit C Order Dismissing Counts Four and Five of Indictment (2 pages)
- Exhibit D Sentencing Order of September 8, 1997 (3 pages)
- Exhibit E Refusal of Petition for Appeal (1 page) Order appointing counsel for habeas corpus petition (2 pages)
- Exhibit F Order appointing counsel for habeas corpus petition (2 pages)
- Exhibit G Order modifying Sentence (2 pages)
- Exhibit H Letter to Respondent, dated April 1, 2005 (1 page)
- Exhibit I Letter to Respondent, dated August 8, 2008 (1 page)

The petitioner in this matter requests that the Honorable Circuit Court below, comply with the nondiscretionary duty it has under the law; that the Petitioner has a clear legal right to the entry of an order granting or denying his habeas corpus petition, with findings of fact and conclusions of law; and that he has no other adequate remedy to require the discharge of the Circuit Court's duty. The Petitioner states that all the legal factors exist, for the granting of this writ by this Honorable Court.

The only issue that exists is: what is the time period within which the Circuit Court's must comply with its duty under the aforementioned statute? The Petitioner can only aver, that seven years is a reasonable period of time, during which, the lower court must or should comply with its nondiscretionary duty.

The Petitioner further states that prior to the institution of this petition, he has respectfully requested that the Circuit Court perform the act or duty which he seeks to enforce. *State ex el. Waller Chems. V. McNutt, 152 W. Va. 186 (1968)*

VII RELIEF REQUESTED

The Petitioner prays that this Honorable Court enter a rule to show cause to the Respondent, ordering him to show cause why the writ should not be awarded. Or in the alternative, order the Respondent to fulfill his duty to deny or grant his Habeas Corpus Petition, entering an order with findings of fact and conclusions of law, as to each of his contentions in said writ. The Petitioner has clearly demonstrated in this Petition, a) that he has a clear right to the remedy requested pursuant to the statute cited; b) that the Respondent has a clear legal duty to comply with the request of the Petitioner; c) that the Petitioner has requested of the Respondent that he comply with said legal duty; and d) that the Respondent's legal duty is nondiscretionary.

EXHIBIT A

STATE OF WEST VIRGINIA

COUNTY OF WIRT

**STATE OF WEST VIRGINIA
PLAINTIFF,**

VS.

NO: 96-F-___

**PHILLIP MICHAEL COLLINS,
DEFENDANT.**

INDICTMENT

COUNT ONE

West Virginia Code: 61-8B-3
Sexual Assault in the First Degree

THE GRAND JURY CHARGES:

That on or about a ___ day in December, 1995, in Wirt County, West Virginia, PHILLIP MICHAEL COLLINS, committed the offense of "Sexual Assault in the First Degree" by unlawfully and feloniously, engaging in sexual intercourse with Rebecca Wilkinson who was incapable of consent because she was less than eleven years old and he was more than fourteen years old, against the peace and dignity of the State.

COUNT TWO

West Virginia Code: 61-8B-3
Sexual Assault in the First Degree

THE GRAND JURY CHARGES:

That on or about a _____ day in December, 1995, in Wirt County, West Virginia, PHILLIP MICHAEL COLLINS, committed the offense of "Sexual Assault in the First Degree" by unlawfully and feloniously, engaging in sexual intercourse with Rebecca Wilkinson who was incapable of consent because she was less than eleven years old and he was more than fourteen years old, against the peace and dignity of the State.

COUNT THREE

West Virginia Code: 61-8B-3
Sexual Assault in the First Degree

THE GRAND JURY CHARGES:

That on or about a _____ day in January, 1996, in Wirt County, West Virginia, PHILLIP MICHAEL COLLINS, committed the offense of "Sexual Assault in the First Degree" by unlawfully and feloniously, engaging in sexual intercourse with Rebecca Wilkinson who was incapable of consent because she was less than eleven years old and he was more than fourteen years old, against the peace and dignity of the State.

COUNT FOUR

West Virginia Code: 61-8B-3
Sexual Assault in the First Degree

THE GRAND JURY CHARGES:

That on or about the _____ day of January, 1996, in Wirt County, West Virginia, PHILLIP MICHAEL COLLINS, committed the offense of "Sexual Assault in the First Degree" by unlawfully and feloniously, engaging in sexual intercourse with Rebecca Wilkinson who was incapable of consent because she was less than eleven years old and he was more than fourteen years old, against the peace and dignity of the State.

COUNT FIVE

West Virginia Code: 61-8B-3
Sexual Assault in the First Degree

THE GRAND JURY CHARGES:

That on or about the _____ day of January, 1996, in Wirt County, West Virginia, PHILLIP MICHAEL COLLINS, committed the offense of "Sexual Assault in the First Degree" by unlawfully and feloniously, engaging in sexual intercourse with Rebecca Wilkinson who was incapable of consent because she was less than eleven years old and he was more than fourteen years old, against the peace and dignity of the State.

A TRUE BILL

WILLIAM G. MERCER
PROSECUTING ATTORNEY

GRAND JURY FOREMAN

Found upon the testimony of _____

EXHIBIT B

IN THE CIRCUIT COURT OF WIRT COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

vs.

//

96-F-9

PHILLIP MICHAEL COLLINS,
Defendant.

VERDICT

COUNT ONE

We, the jury, find the defendant PHILLIP MICHAEL COLLINS guilty of "Sexual Assault in the First Degree" on or about December 18, 1995, as charged in Count One of the Indictment.

Patricia Francis
Foreman

We, the jury, find the defendant PHILLIP MICHAEL COLLINS not guilty of "Sexual Assault in the First Degree" on or about December 18, 1995 as charged in Count One of the Indictment.

Foreman

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CIRCUIT CLERK

DATE 7/23/97

SUSAN R. SETH

COUNT TWO

We, the jury, find the defendant PHILLIP MICHAEL COLLINS guilty of "Sexual Assault in the First Degree" on or about December 28, 1995 as charged in Count Two of the Indictment.

Patricia Francis
Foreman

We, the jury, find the defendant PHILLIP MICHAEL COLLINS not guilty of "Sexual Assault in the First Degree" on or about December 28, 1995 as charged in Count Two of the Indictment.

Foreman

COUNT THREE

We, the jury, find the defendant PHILLIP MICHAEL COLLINS guilty of "Sexual Assault in the First Degree" on or about January 17, 1996, as charged in Count Three of the Indictment.

Patricia Francis
Foreman

We, the jury, find the defendant PHILLIP MICHAEL COLLINS not guilty of "Sexual Assault in the First Degree" on or about January 17, 1996, as charged in Count Three of the Indictment.

Foreman

IN THE CIRCUIT COURT OF WIRT COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

vs.

//

96-F-9

PHILLIP MICHAEL COLLINS,
Defendant.

ORDER

On this 22nd and 23rd day of July, 1997, again came Phillip Michael Collins, Defendant in the above-styled case, in person and accompanied by his attorney, Joseph Santer, and came also the State of West Virginia by Theodore Davitian, Prosecuting Attorney in and for Wirt County, West Virginia.

Whereupon, came a jury, to wit: Dewey W. Nottingham, Robert L. Villers, Stephen G. Merrill, Jason C. Kirby, Teresa L. Edwards, Oval Pritt, Roger D. Young, Patricia Francis, Romona Lynch, Stephen D. Coe, Ora C. Wayne, and Glen Long; who, being selected and drawn by ballot as the law requires, were sworn to well and truly try and a true deliverance make between the State of West Virginia and Phillip Michael Collins, the defendant, and a true verdict render according to the law and the evidence.

Thereupon, after presentation of the State's evidence the Defendant moved the Court to dismiss counts four and five of the indictment based upon the State's failure to present sufficient evidence on said counts and the State having no objection thereto the court does hereby dismiss counts four and five of the indictment.

Whereupon, the Defendant presented evidence and thereafter both sides rested their case. Whereupon, after hearing instructions and arguments of counsel, the jury retired to their room to consider their verdict, and after a time returned into Court, and upon their oaths do say:

" We the jury, find the Defendant, Phillip Michael Collins, guilty of three counts of sexual assault in the first degree as charged in counts one, two and three of the indictment ."

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JOSH R. SIERS
CLERK

EXHIBIT C

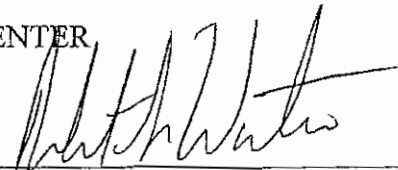
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After dismissing the jury, the gave the Defendant ten days to file post-trial motions and denied the Defendant's motion for bond. Thereafter the Defendant moved the Court to be placed on probation and the Court heard the Defendant's motion and deferred ruling on the same pending a pre-sentence investigation.

Whereupon, the Court does hereby order that the Defendant shall report to the Adult Probation Office of this Court to assist the said office in conducting a pre-sentence investigation.

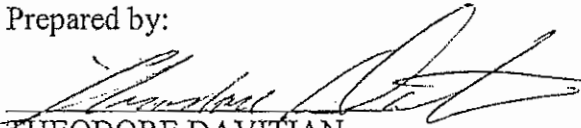
It is further ordered that this matter shall be set for hearing on the 8th day of September, 1997 at 10:15 a.m. o'clock to hear defense motions and to sentence.

ENTER



ROBERT A. WATERS, Judge

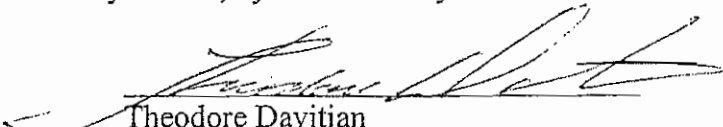
Prepared by:



THEODORE DAVITIAN
PROSECUTING ATTORNEY

CERTIFICATE OF SERVICE

I, Theodore Davitian, Prosecuting Attorney in and for Wirt County, West Virginia, do hereby certify that on the 8th day of September, 1997, I served the foregoing and hereunto annexed Order upon Joseph Santer, Attorney at Law, by hand delivery.



Theodore Davitian
Prosecuting Attorney

STATE OF WEST VIRGINIA,
Plaintiff,

EXHIBIT D

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CASE NO. 12
PAGE 64

IN THE CIRCUIT COURT OF WIRT COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

// CASE NO: 96-P-9

PHILLIP MICHAEL COLLINS,

Defendant.

COPY

ORDER

On this 8th day of September, 1997, came the State of West Virginia by Theodore Davitian, Prosecuting Attorney in and for Wirt County, West Virginia, Stephen W. George, Chief Probation Officer and the Defendant, in custody of the Sheriff of Wirt County, West Virginia, accompanied by his attorney, Joseph T. Santer.

Thereupon, Defendant made a motion to continue sentencing, which motion was denied.

Whereupon, Defendant made a Motion for Judgment of Acquittal, and after considering the evidence presented, said motion is hereby GRANTED as to Count One.

The Court having asked the Defendant, Defendant's attorney and the attorney for the State whether they had anything to say why the Court should not now proceed to pronounce sentence upon him according to law and nothing being offered or alleged in delay of sentence, it is, therefore, ADJUDGED that the Defendant is guilty upon a finding of guilty by a jury to the offense of First Degree Sexual Assault as charged in Count Two and Count Three of the Indictment.

Thereupon, the Court, before imposing sentence, determined that the Defendant and his counsel have had the opportunity to read

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DATE 9/10/97

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BY 65

and discuss the pre-sentence investigation report submitted by the Probation Officer, which is made available pursuant to the West Virginia Rules of Criminal Procedure, afforded the Defendant and his attorney the opportunity to speak on behalf of the Defendant and asked the Defendant personally if he wished to make a statement on his own behalf and to present any information in mitigation of punishment and the attorney for the State having also been given an equivalent opportunity to speak to the Court, upon consideration thereof, it is ADJUDGED and ORDERED that the Defendant, PHILLIP MICHAEL COLLINS, be committed to the custody of the West Virginia Division of Corrections for imprisonment for a term and period of not less than fifteen (15) years nor more than thirty-five (35) years on Count Two and for a term and period of not less than fifteen (15) years nor more than thirty-five (35) years on Count Three, said sentences to run consecutively, with a credit of forty-nine (49) days, and in all things dealt with as the law directs.

It is further ORDERED that the Defendant shall pay all psychiatric, psychological and counseling fees incurred by the victim to date and any and all future costs of such counseling.

It is further ORDERED that the Defendant shall undergo HIV testing, pursuant to West Virginia Code 16-3C-2 and further that the Defendant shall submit a blood sample to be submitted for DNA analysis pursuant to West Virginia Code 15-2B-1.

Whereupon, the Defendant executed a Notice of Sexual Offender Registration Requirements, which was ORDERED recorded.

Thereupon, the defendant made a motion for stay of execution to complete a psychological examination, which motion is hereby denied.

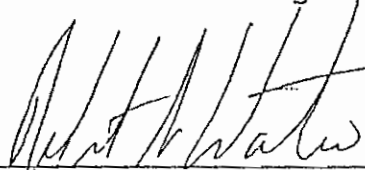
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DATE 9/10/87

Whereupon, the Court advised and informed the Defendant of his right to appeal this case to the West Virginia Supreme Court of Appeals and the right to employ an attorney to represent him for legal assistance in making such appeal, and that if the Defendant did not have available finances and means to employ such an attorney, an attorney would be appointed by the Court to represent the Defendant in making such appeal, and a transcript of the proceedings will be provided to the Defendant without charge if he is unable to afford the cost of such transcript.

Whereupon, the Defendant is remanded to the custody of the Sheriff of Wirt County, West Virginia for transportation to the duly authorized officials of the West Virginia Division of Corrections.

ENTER: 
ROBERT A. WATERS, JUDGE

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DATE 9/10/92

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of June, 1998, the following order was made and entered:

State of West Virginia, Plaintiff
Below, Respondent

vs.) No. 980856

Phillip Michael Collins, Defendant
Below, Petitioner

On a former day, to-wit, March 25, 1998, came the petitioner, Phillip Michael Collins, by Santer & Santer, and Joseph T. Santer, his attorneys, and presented to the Court his petition praying for an appeal from a judgment of the Circuit Court of Wirt County, rendered on the 10th day of September, 1997, with the record accompanying the petition.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal. Justices Starcher and Maynard would grant.

A True Copy

Attest:

Clerk, Supreme Court of Appeals

FILED

CIRCUIT CLERK

DATE 7/1/98

SUSAN R. SIERS

EXHIBIT F

IN THE CIRCUIT COURT OF WIRT COUNTY, WEST VIRGINIA

PHILLIP MICHAEL COLLINS,

Petitioner,

vs.

// CASE NO: 98-P-9

HOWARD PAINTER, Warden,
Mt. Olive Correctional Complex,

Respondent.

O R D E R

On a previous day the Court received a Petition for Writ of Habeas Corpus filed by the Petitioner, Pro Se, wherein the Petitioner requests that the Court appoint counsel to assist him in litigating a petition for post-conviction habeas corpus relief and the Court having considered said motion is of the opinion that it is advisable to appoint an attorney to represent the Petitioner and assist him in advancing all contentions and grounds which are available to the said relating to his present sentencing and incarceration, it is ORDERED that George M. Torres, an attorney practicing before the Bar of this Court be named and appointed to represent the Petitioner in all matters pertaining to said sentence and incarceration.

It further appears to the Court that West Virginia Code Chapter 53, Article 4A, requires that all contention or contentions and grounds in fact or in law which could be advanced shall be deemed to have been waived if a petitioner could have so advanced such contentions and grounds but intelligently and knowingly fails to advance such contentions and grounds. It is, therefore, ORDERED that the attorney heretofore appointed for said PHILLIP MICHAEL

COPY

COLLINS shall fully advise PHILLIP MICHAEL COLLINS of this requirement to advance such contentions and grounds which can be now advanced and the failure to do so may constitute a waiver of such contentions and grounds.

It is further ORDERED that the Clerk of this Court shall deliver a copy of this Order to the Prosecuting Attorney of Wirt County, West Virginia and to George M. Torres, attorney appointed said Phillip Michael Collins and it is further ORDERED that the Clerk of this Court mail a certified copy of this Order to the Defendant, Phillip Michael Collins, at the Mt. Olive Correctional Complex, #1 Mountainside Way, Mt. Olive, WV 25185.

ENTER:


ROBERT A. WATERS, JUDGE

I hereby certify that the foregoing
is a true and correct copy of the
original copy on file in my office.

ATTEST: SUSAN R. SIERS
Circuit Clerk - Wirt County, WV

Susan R. Siers

Date: 1/18/99

180

EXHIBIT G

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CR NO. 12
PAGE 680

IN THE CIRCUIT COURT OF WIRT COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

// CASE NO: 96-F-9

PHILLIP MICHAEL COLLINS,

Defendant.

ORDER

Upon its own motion, this Court proceeded to reconsider the Defendant's sentence previously imposed by Order dated September 8, 1997 and entered on September 10, 1997. After mature consideration, the Court is of the opinion that it should permit the Defendant's two (2) sentences of not less than fifteen (15) nor more than thirty-five (35) years to run concurrently rather than consecutively.

Therefore, it is hereby ORDERED that the Defendant's sentence should be reduced by permitting the sentences to run concurrently rather than consecutively.

Accordingly, it is hereby ORDERED that the Defendant shall be re-sentenced as follows:

It is ADJUDGED and ORDERED that the Defendant, PHILLIP MICHAEL COLLINS, be committed to the custody of the West Virginia Division of Corrections for imprisonment for a term and period of not less than fifteen (15) years nor more than thirty-five (35) years on Count Two and for a term and period of not less than fifteen (15) years nor more than thirty-five (35) years on Count Three, said sentences to run CONCURRENTLY, effective September 8, 1997 with a credit of forty-nine (49) days, and in all things dealt with as the law directs.

The Clerk of this Court shall send a certified copy of this Order to the Wirt County Prosecuting Attorney; George Torres, counsel for the Defendant; the Defendant at the Mt. Olive

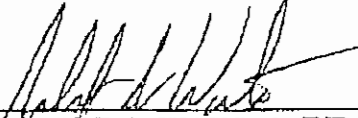
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Correctional Center and the West Virginia Department of Corrections. The Clerk shall also send amended commitments to the West Virginia Department of Corrections.

All other provisions of the Order dated September 8, 1997 and entered September 10, 1997 shall remain in full force and effect.

ENTER: April 29, 2002



 ROBERT A. WATERS, JUDGE

CLERK
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EXHIBIT

H

April 1, 2005

Robert A. Waters, Judge
Wood County Judicial Building, 3rd Floor
#2 Government Square
Parkersburg, WV 26101

RE: Phillip Michael Collins
98-P-9 (Habeas Corpus Proceeding)
Circuit Court of Wirt County

Dear Judge Waters:

My client has requested that I contact your office in relation to the above captioned matter. The evidentiary hearing in this matter was held on July 16, 2001. Subsequent to this hearing the Court, *motu proprio*, on April 30, 2002 entered an order modifying the original sentence entered on September 10, 1997, ordering that the "two sentences of not less than fifteen (15) nor more than thirty-five (35) years run concurrently rather than consecutively". My client is grateful for Court's intervention in the aforementioned order.

Mr. Collins, by counsel, requests that the Honorable Court, pursuant to the law, enter an order with findings in relation to the aforementioned evidentiary hearing.

Thank you very much for your cooperation in this matter.

Very truly yours,

George M. Torres

GMT/gtt

cc. Philip Michael Collins
Leslie L. Maze, Esq.

EXHIBIT

I

August 8, 2008

Robert A. Waters, Judge
Wood County Judicial Building, 3rd Floor
#2 Government Square
Parkersburg, WV 26101

RE: Phillip Michael Collins, 98-P-9 (Habeas Corpus Proceeding)
Circuit Court of Wirt County

Dear Judge Waters:

My client has requested that I contact your office in relation to the above captioned matter. The evidentiary hearing in this matter was held on July 16, 2001. Subsequent to this hearing the Court, *motu proprio*, on April 30, 2002 entered an order modifying the original sentence entered on September 10, 1997, ordering that the "two sentences of not less than fifteen (15) nor more than thirty-five (35) years run concurrently rather than consecutively".

Mr. Collins, by counsel, requests that the Honorable Court, pursuant to the law, enter an order with findings in relation to the aforementioned evidentiary hearing.

Thank you very much for your cooperation in this matter.

Very truly yours,

George M. Torres

GMT/gtt

cc. Philip Michael Collins
Leslie L. Maze, Esq.