

Supreme Court Review

Presented by

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Substantive criminal law

- *State v. Gravely*, 916 S.E.2d 718 (W. Va. 2025)

3. When considering whether a defendant's predicate offense for a violation of West Virginia Code § 61-7-7(b) is a “felony crime of violence against the person of another,” a court must examine the statutory elements of the predicate offense and determine whether an element requires a violent act against another person. The court may not consider the specific conduct of the defendant in committing the predicate offense.

4. A conspiracy conviction under West Virginia's general conspiracy statute, West Virginia Code § 61-10-31, is not a “felony crime of violence against the person of another” for the purposes of West Virginia Code § 61-7-7(b)(1) (eff. 2016).

Substantive criminal law

- *State v. Stevens*, ___ S.E.2d ___, 2026 WL 1382670 (W. Va. 2026)

Indictments/Grand juries

- *SER State v. Cuomo*, 927 S.E.2d 189 (W. Va. 2026)
- *SER State v. Sweeney*, ___ S.E.2d ___, 2026 WL 1506257 (W. Va. 2026)
- *SER State v. Butcher*, No. 25-760, 2026 WL 1083209 (W. Va. 2026)
- *State v. Brendan W.*, ___ S.E.2d ___, 2026 WL 1552182 (W. Va. 2026)

Pleas

- *State v. Page*, ___ S.E.2d ___, 2026 WL 1382897 (W. Va. 2026)

4. To determine whether a defendant has presented a fair and just reason to withdraw a guilty plea pursuant to Rule 32(e) of the West Virginia Rules of Criminal Procedure, a court should consider the totality of the circumstances and this non-exhaustive list of factors: (1) whether the defendant knowingly and voluntarily pleaded guilty; (2) whether the defendant asserts innocence; (3) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (4) whether the defendant received competent assistance of counsel in making the decision to plead guilty; (5) potential prejudice to the government, including whether the government opposes the motion to withdraw; and (6) whether withdrawing the plea will waste judicial resources. No one factor controls and the relevance of each factor will vary according to the circumstances surrounding the entry of the plea and the motion to withdraw.

Pleas

- *State v. Hensley Jr.*, ___ S.E.2d ___, 2026 WL 1179515 (W. Va. 2026)

2. Before invoking this Court's appellate jurisdiction in a criminal action under West Virginia Code § 58-5-1(c) (2022), a defendant must be convicted and sentenced; the sentence constitutes the “final judgment” from which a defendant may appeal.

Trial Procedure

- *State v. Small*, 916 S.E.2d 661 (W. Va. 2025)
- *State v. Smith*, 917 S.E.2d 14 (W. Va. 2025)
- *State v. McKinney*, No. 24-16, 2026 WL 1506295 (W. Va. 2026)
- *State v. Rose*, ___ S.E.2d ___, 2026 WL 1430001 (W. Va. 2026)
- *State v. Frymer*, ___ S.E.2d ___, 2026 WL 1362000 (W. Va. 2026)

Trial Procedure

- *SER Butler v. Adams*, ___ S.E.2d ___, 2026 WL 1382694 (W. Va. 2026)

7. The two-term rule established in West Virginia Code section 62-2-12 (2020) is triggered when a defendant is arrested and jailed on a criminal charge.

8. The term of court in which the defendant is arrested and jailed does not count as a “term” for the purpose of determining whether he or she was “indicted before the end of the second term of the court, at which he is held to answer,” as required by West Virginia Code section 62-2-12 (2020).

9. Whenever a defendant has been confined in violation of West Virginia Code section 62-2-12 (2020), the mandatory remedy is the defendant's immediate discharge from pre-indictment confinement.

Appellate Procedure

- *State v. Jeffers*, No. 23-106, 2025 WL 2201726 (W. Va. 2025)
- *State v. Summerfield*, ___ S.E.2d ___, 2026 WL 1328772 (W. Va. 2026)

Habeas/Original Writ Procedure

- *Arthur C. v. Frame*, 928 S.E.2d 419 (W. Va. 2026)
- *Spears v. Frame*, 2025 WL 2614074 (W. Va. 2025)
- *SER State v. Dyer*, 2026 WL 1399609 (W. Va. 2026)
- *Hicks v. Frame*, 2026 WL 820826 (W. Va. 2026)

/s/ Phillip M. Stowers
Circuit Court Judge
Ref. Code: 259FD76WX

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CC-40-1997-C-369
Putnam County Circuit Clerk
Stephanie M. Smith

In the Circuit Court of Putnam County, West Virginia

ALAN L. HICKS,
ALAN L. HICKS,
Plaintiffs,

v.

Case No. CC-40-1997-C-369
Judge Phillip Stowers

GEORGE TRENT, WARDEN MT.
OLIVE CORRECTIO,
Defendant

Order

Motion to Dismiss filed by Kanawha County Prosecuting Attorney is hereby
GRANTED.

/s/ Phillip M. Stowers
Circuit Court Judge
7th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

The Right to Remain Silent

- *State v. Small*, 916 S.E.2d 661 (W. Va. 2025)

Right to Remain Silent ... the game!

1. “Maybe I should talk to a lawyer.”
2. “Could I call my lawyer?”
3. “I'll be honest with you, I'm scared to say anything without talking to a lawyer.”
4. “If y'all think I did it—I know that I didn't do it—so why don't you just give me a lawyer dog, 'cause this is not what's up.”
5. “[I'd] probably like to have an attorney present.”
6. “... I do want a lawyer.”

404(b)/Intrinsic Evidence

- *State v. Mason*, 916 S.E.2d 647 (W. Va. 2025)
- *State v. Paglia*, ___ S.E.2d ___, 2026 WL 1194679 (W. Va. 23-570, 2026)
- *State v. Hendershot*, ___ S.E.2d ___, 2026 WL 1552261(W. Va. 2026)

Sentencing/Disposition

- *State v. DePriest*, 922 S.E.2d 562 (W. Va. 2025)
- *State v. Brautigam*, 922 S.E.2d 383 (W. Va. 2025)
 5. To calculate the maximum amount of time a court may order as an additional term of supervised release after ordering a term of imprisonment upon a revocation, a court must first determine the authorized term of supervised release, then subtract any revocation term of imprisonment since the defendant's initial term of supervised release began. This calculation must subtract both the term of imprisonment on the instant revocation, as well as any previous terms of imprisonment resulting from supervised release revocations. W. Va. Code § 62-12-26(j) (eff. 2021).

Con law

- *SER Urban v. Hardy*, 923 S.E.2d 339 (W. Va. 2025)

4. A circuit court's ruling on involuntarily administering medication to a defendant for competency restoration purposes must follow the four-part test established in *Sell v. United States*, 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003): (1) first, a court must find that important governmental interests are at stake; (2) second, the court must conclude that involuntary medication will significantly further those concomitant state interests; (3) third, the court must conclude that involuntary medication is necessary to further those interests; and (4) fourth, the court must conclude that administration of the medication is medically appropriate, i.e., in the patient's best medical interest in light of his or her medical condition.

5. The State has the burden of proof to demonstrate, by clear and convincing evidence, that it has satisfied the four-part Sell test in a case where it seeks to forcibly medicate a defendant solely to render that individual competent to stand trial.

Con law

- *State v. Miller*, 916 S.E.2d 593 (W. Va. 2025)
- *State v. Allman*, 923 S.E.2d 412 (W. Va. 2025) *cert denied* 2026 WL 490853
- *SER State v. McLaughlin*, No. 25-340 (W. Va. May 29, 2026)
- *State v. Thompson*, 927 S.E.2d 885 (W. Va. 2026)

SCOTUS cases

- *Case v. Montana*, 607 U.S. 107 (2026)
- *Pitchford v. Cain*, 608 U.S. ____, 2026 WL 1485608 (U.S. 2026)
- *Villarreal v. Texas*, 146 S. Ct. 756 (2026)
- *Ellingburg v. U.S.*, 607 U.S. 163 (2026)
- *Burnett v. U.S.*, 25-5442 (Gorsuch, J., dissenting from cert. denial)