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September 1999 Term Slip Opinion Summary

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**Slip
Number Case Information and Summary**

1 . State of West Virginia v. Mary Beth Davis

No. 25812c Filed:9/8/99, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

2 . State of West Virginia v. Tara Williams

No. 25815d Filed:9/8/99, (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

3 . Kevin S.E., Sr. v. Diana M.E.

No. 26007d Filed:9/8/99, (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

4 . Paul Mitchell, as Executor of the Estate of May S. Mitchell v. Anthony George Broadnax and Naomi S. Mitchell and Geraldine O'Dell v. Anthony Broadnax

No. 25539c Filed:9/14/99, (Davis, J., concurring).

Concurring opinion of Justice Davis

5 . **Wanda Sue Bower, Patricia E. Hawkins, Bobbie Jo Hardesty, Tommy Jay Hardesty, Kent Norman Huffman and Brenda Kay Spencer v. Westinghouse Electric Corporation, a Pennsylvania corporation, and North American Philips Corporation, a Delaware corporation**

No. 25338d Filed:9/20/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

6 . **State of West Virginia v. Eric J. Lightner**

No. 25822d Filed:9/24/99, (McGraw, J., dissenting, joined by Starcher, C.J.).

Dissenting opinion of Justice McGraw, joined by Chief Justice Starcher.

7 . **Deborah H. Cobb v. E.I. duPont deNemours & Company, a Delaware Corporation, and Diana Doran, Benefits Administrator**

No. 26113 Filed:10/8/99, (Per Curiam)(McGraw, J. and Risovitch, Judge, dissenting)(Risovich, Judge, sitting by temporary assignment).

Affirming trial court's grant of summary judgment to employer in employee's action for fraudulent misrepresentation as a result of the employee's efforts to obtain workers' compensation benefits.

8 . **University of West Virginia Board of Trustees/West Virginia University v. Thomas E. Aglinsky**

No. 25895 Filed:10/13/99, (Per Curiam)(Risovich, Judge, sitting by temporary assignment).

Reversing the circuit court's determination that an employee's termination was for gross misconduct and affirming a decision by the Board of Review of the West Virginia Bureau of Employment Programs determining that the employee was eligible for unemployment benefits without disqualification.

9 . **State of West Virginia ex rel. Charles R. Edgell v. Howard Painter, Warden, Mount Olive Correctional Complex**

No. 25896 Filed:10/13/99, (Per Curiam)(Starcher, C.J., disqualified)(Risovich, Judge, and Wilkes, Judge, sitting by temporary assignment).

Affirming circuit court's denial of habeas corpus relief to inmate convicted of three counts of second degree sexual assault of a thirteen year-old girl.

10 . Ronald Louis Predmore v. Kim Marie Predmore

No. 26011 Filed:10/13/99, (Per Curiam)(Risovich, Judge, sitting by temporary assignment).

Affirming circuit court's decision dismissing a divorce complaint on the ground of lack of jurisdiction.

11 . The Lawyer Disciplinary Board v. Geary M. Battistelli

No. 23938 Filed:10/13/99, (Per Curiam)(Risovich, Judge, sitting by temporary assignment).

Annuling license of attorney based upon his conduct in three separate matters. Attorney will be permitted to apply for reinstatement January 19, 2004, will be required to pay costs of the disciplinary proceedings, and reimburse certain clients.

12 . Jan-Care Ambulance Service, Inc. and West Virginia EMS Coalition v. The Public Service Commission of West Virginia, Interstate Medical Transport, Inc., and Sophia Volunteer Fire and Ambulance Service, Inc.

No. 26005 Filed:10/15/99, (Davis, J.)(Risovich, Judge, sitting by temporary assignment).

Affirming in part, reversing in part, and remanding to Public Service Commission for reconsideration of the issuance of certificates of convenience and necessity authorizing two common carriers by motor vehicle to provide transportation for certain persons to and from helath-care facilities.

13 . State of West Virginia ex rel. Steven Canterbury, Executive Director of the West Virginia Regional Jail and Correctional Facility Authority v. Carl "Worthy" Paul, Magistrate for Ohio County

No. 25890c/d Filed:10/15/99, (Starcher, C.J., concurring in part and dissenting in part).

Concurring in part and dissenting in part opinion of Chief Justice Starcher. Majority opinion filed July 15, 1999.

14 . State of West Virginia ex rel. Carolyn Shrewsberry and Herndon Processing Company v. Honorable John S. Hrko and Bobbie Shrewsberry

No. 25806c Filed:10/15/99, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher. Majority opinion filed July 14, 1999.

15 . Randall Conrad, et al. V. Charles Town Races, Inc.

No. 24739d Filed:10/20/99, (Risvich, Judge, dissenting).

Dissenting opinion of Judge Risovich, sitting by temporary assignment. Majority opinion filed 7/15/98.

16 . State of West Virginia ex rel. John F. Rist, III v. Honorable Cecil H. Underwood, Governor of the State of West Virginia, and Robert S. Kiss AND State of West Virginia ex rel. Richard A. Robb, W. Kent Carper, Rudolph L. diTrapano, Roger D. Forman, Marvin W. Masters, Anthony J. Majestro, American Civil Liberties Union of West Virginia, Thomas W. Pettit, Mark E. Gaydos, Carl N. Frankovitch, Michael G. Simon, James C. Peterson, R. Edison Hill, Harry G. Dietzler, Michael C. Bee, and Norman Steenstra, Jr. v. Honorable Cecil H. Underwood, Governor of the State of West Virginia, and Robert S. Kiss

No. 26653/26654 Filed:11/3/99, (McGraw, J.)(Davis, J., disqualified)(Miller, Retired J., sitting by temporary assignment)(Watt, Judge, sitting by temporary assignment)(Starcher, C.J., concurs and reserves the right to file a concurring opinion)(Miller, Retired J. and Maynard, J., dissent and reserve the right to file dissenting opinions).

Granting writ of mandamus, as moulded, in two consolidated cases, interpreting Article VI, Section 15 of the West Virginia Constitution to mean that Robert S. Kiss is constitutionally ineligible to be appointed to the office of Justice of the Supreme Court of Appeals that was rendered vacant by the resignation of Justice Margaret Workman.

17 . State of West Virginia ex rel. John F. Rist, III v. Honorable Cecil H. Underwood, Governor of the State of West Virginia, and Robert S. Kiss AND State of West Virginia ex rel. Richard A. Robb, W. Kent Carper, Rudolph L. diTrapano, Roger D. Forman, Marvin W. Masters, Anthony J. Majestro, American Civil Liberties Union of West Virginia, Thomas W. Pettit, Mark E. Gaydos, Carl N. Frankovitch, Michael G. Simon, James C. Peterson, R. Edison Hill, Harry G. Dietzler, Michael C. Bee, and Norman Steenstra, Jr. v. Honorable Cecil H. Underwood, Governor of the State of West Virginia, and Robert S. Kiss

No. 26653/26654d Filed:11/3/99, (Maynard, J., dissenting, joined by Miller, Retired J.).

Dissenting opinion of Justice Maynard, joined by Retired Justice Miller.

18 . Fairmont Specialty Services v. The West Virginia Human Rights Commission and Irma P. Voyle

No. 25335 Filed:11/4/99, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher. Majority opinion filed July 16, 1999.

19 . State of West Virginia ex rel. Consolidation Coal Company v. Honorable Russell M. Clawges, Jr., Judge of the Circuit Court of Monongalia County, and Boston Old Colony Insurance Company, a corporation

No. 25976 Filed:11/5/99, (Per Curiam)(Starcher, C.J., disqualified)(Watt, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Denying petition for writ of mandamus/prohibition seeking to prohibit the circuit court's correction of an order that was prematurely entered.

20 . State of West Virginia ex rel. Paul Farmer v. George Trent, Warden, Mount Olive Correctional Complex

No. 25855 Filed:11/5/99, (Per Curiam)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's decision to set aside an order appointing counsel for a post-conviction habeas corpus petitioner and to dismiss the pro se habeas petition.

21 . State of West Virginia v. Fred Salem Zain

No. 26194 Filed:11/5/99, (Davis, J.)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing the circuit court's decision that an indictment was vague and therefore insufficient and finding that the State and its political subdivisions are within the meaning of the terms "person" and "another" as contemplated by W. Va. Code Section 61-3-24(a) and (b), and that any vagueness in the indictment may be cured through the filing of a bill of particulars.

22 . In Re: Petition to Remove John G. Sims as Prosecuting Attorney for Logan County, West Virginia

No. 25957 Filed:11/5/99, (Per Curiam)(McGraw, J., disqualified)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing the decision of a three-judge panel appointed pursuant to West Virginia Code Section 6-6-7, and ordering that Respondent Sims immediately be removed from the office of prosecuting attorney for Logan County.

23 . Westover Realty Company, Inc. v. Estate of John Wassick, Jr., and John Wassick, III

No. 25899 Filed:11/5/99, (Per Curiam)(Starcher, C.J., disqualified)(Risovich, Judge, and Canady, Judge, sitting by temporary assignment).

Affirming circuit court's decisions concerning the effect of a disputed release on a promissory note and the circuit court's quashing of a subpoena duces tecum.

24 . Lawyer Disciplinary Board v. Cecelia G. Jarrell, a member of The West Virginia State Bar

No. 24009 Filed:11/10/99, (Risovich, Judge, sitting by temporary assignment)(Davis, J., dissenting)(Scott, J., did not participate)..

Rejecting a recommended sanction of admonishment and instead dismissing charges against attorney for actions taken while serving as prosecuting attorney and holding that in "rare instances . . . where extraordinary mitigating circumstances are present, it is not mandatory that a disciplinary sanction upon a lawyer holding public office be imposed."

25 . Lawyer Disciplinary Board v. Cecelia G. Jarrell, a member of The West Virginia State Bar

No. 24009d Filed:11/10/99, (Davis, J., dissenting).

Dissenting opinion of Justice Davis.

26 . State of West Virginia v. Stephen W. Hatfield

No. 25368 Filed:11/10/99, (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

27 . Linda J. Tracy, Administratrix of the Estate of Douglas B. Tracy, deceased v. Athelene Cottrell, By Her Administrator, Gabriel Cottrell, and General Motors Corporation, a corporation doing business in the State of West Virginia

No. 25845 Filed:11/12/99, (Davis, J.)(Scott, J., did not participate).

Reversing defense verdict in wrongful death action, remanding for further proceedings and setting forth principles for apportioning liability in wrongful death crashworthiness cases as well as guidelines for imposing sanctions against a party for spoliation of evidence.

28 . State of West Virginia ex rel. Terry Haynes v. West Virginia Parole Board

No. 26006 Filed:11/16/99, (Per Curiam)(Risovich, Judge, sitting by special assignment)(Starcher, C.J., dissenting)(Davis, J., dissenting)(Scott, J., did not participate).

Denying writ of habeas corpus to prisoner who alleged that the West Virginia Parole Board was violating federal and state constitution prohibitions against ex post facto laws by applying an amended statute allowing the Board to "set-off" next parole interviews by up to three years. See Carper v. West Virginia Parole Board, 203 W.Va. 583, 509 S.E.2d 864 (1998).

29 . State of West Virginia ex rel. Terry Haynes v. West Virginia Parole Board

No. 26006d Filed:11/17/99, (Davis, J., dissenting).

Dissenting opinion of Justice Davis.

30 . State of West Virginia ex rel. Terry Haynes v. West Virginia Parole Board

No. 26006d2 Filed:11/17/99, (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

31 . Lawyer Disciplinary Board v. Randall L. Veneri, a member of The West Virginia State Bar

No. 24221 Filed:11/16/99, (Per Curiam)(Risovich, Judge, sitting by special assignment)(Scott, J., did not participate).

In lawyer disciplinary matter, the Court agreed to dismiss two charges alleging that attorney failed to file an asset disclosure form listing his client's two separate employee benefit plans during the course of his client's divorce. Further, the Court agreed that a third charge was substantiated, that attorney failed to inform the family law master or opposing counsel that a proposed Qualified Domestic Relations Order had been altered while in the attorney's office. The Court disagreed with the Board's recommended sanction of 12 month suspension, stating that "an admonishment and the payment of costs are more appropriate penalties[.]"

32 . State of West Virginia v. Henry Theodore Allen, II

No. 25980 Filed:11/17/99, (Davis, J.)(Starcher, C.J., dissenting)(Maynard, J., concurring)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming trial court's decision to sentence defendant to an aggregate term of imprisonment in the county jail of seven years, two months, and four days as a result of his multiple misdemeanor convictions.

33 . State of West Virginia ex rel. Bobby J. Ball, Shirley Ball, and the Esate of Frances J. Ball v. Honorable John L. Cummings, Judge of the Circuit Court of Cabell County; Barbara S. Taylor, Chief, Office of Water Resources, West Virginia Division of Environmental Protection; Culloden Public Service District; and West Virginia-American Water Company

No. 26200 Filed:11/17/99, (Maynard, J.)(Risovich, Judge, sitting by temporary assignment)(McGraw, J., dissenting)(Scott, J., did not participate).

Granting writ of mandamus to allow citizens owning land downstream from treatment plant to intervene in an enforcement action filed by DEP, and setting forth specific guidelines for intervention of right under Rule 24(a) of the West Virginia Rules of Civil Procedure.

34 . Harold James Marsch, Tammie Marsch, Joshua Marsch and Dena Marsch v. American Electric Power Company and Ohio Power Company

No. 25863 Filed:11/19/99, (Per Curiam)(Starcher, C.J. and McGraw, J., dissenting)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's order denying appellants' motion for a new trial based upon the inadequacy of a jury verdict in their favor.

35 . Victor Holmes v. The Board of Education of Berkeley County and David Rogers

No. 25979 Filed:11/19/99, (Maynard, J.)(Starcher, C.J., and McGraw, dissenting)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing the circuit court and affirming a decision of the West Virginia Education and State Employees Grievance Board involving who should be awarded the position of head varsity basketball coach at Martinsburg High School, and holding that W. Va. Code Section 18A-2-9 does not prohibit a principal assigned to a school with a net enrollment equal to or greater than one hundred seventy students from simultaneously holding a coaching position.

36 . Sherman Jones and Lori Jones v. Patterson Contracting, Inc., a West Virginia Corporation, and Grasan Equipment Company, an Ohio Corporation

No. 25959/25960 Filed:11/19/99, (Per Curiam)(Davis, J., and Maynard, J., concurring, in part and dissenting, in part)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In a deliberate intention/products liability action by worker injured in a rock crushing machine, the Court affirmed the circuit court's directed verdict in favor of the employer in the statutory deliberate intention action, but reversed the directed verdict in favor of the manufacturer in the products liability action and remanded for further proceedings.

37 . State of West Virginia v. Dewitt Williams

No. 26352 Filed:11/19/99, (Per Curiam)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's judgment wherein appellant was found guilty of first degree sexual abuse and was sentenced to one to five years in the state penitentiary.

38 . State of West Virginia ex rel. Department of Health and Human Resources, Bureau of Child Support Enforcement, and Kerren Farmer v. Larry Farmer

No. 26354 Filed:11/19/99, (Maynard, J.)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Answering the following certified question from the Circuit Court of Boone County: "Is a minor child who was emancipated by marriage unemancipated and/or entitled to child support if divorced while under the age of 18?" This Court answered the certified question "No," a contrary answer to that given by the circuit court.

39 . State of West Virginia v. Walter Lee Swafford, II

No. 25844 Filed:11/19/99, (Per Curiam)(Maynard, J., dissenting)(Starcher, C.J., concurring)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing conviction in first degree murder case due to prosecutor's reference to defendant's failure to testify.

40 . P. David Boyer and Winnie Boyer v. Thomas R. Fitzgerald and P.C. Emmons

No. 25836 Filed:11/19/99, (Per Curiam)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's entry of summary judgment in favor of defendants in civil action alleging negligent performance of a house inspection.

41 . State of West Virginia v. Lawrence Edward Christian, III

No. 26438 Filed:11/19/99, (Per Curiam)(Starcher, C.J., concurring)(Maynard, J., dissenting)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing conviction for voluntary manslaughter and remanding matter for new trial due to the trial court's failure to strike a prospective juror for cause.

42 . Emmanuel Banks v. George Trent

No. 26499 Filed:11/22/99, (Per Curiam)(McGraw, J., dissenting)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing and remanding habeas corpus action with directions to the circuit court to make specific findings of fact and conclusions of law as mandated by W. Va. Code Section 53-4A-7(c).

43 . Jimmy Ray Sams and Velda Jo Sams v. Ocea Lou Goff

No. 26212 Filed:11/22/99, (Per Curiam)(McGraw, J., and Stone, Judge, dissenting)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's issuance of a preliminary injunction directing appellant to convey a parcel of real estate to the appellees.

44 . Sherman Jones and Lori Jones v. Patterson Contracting, Inc., a West Virginia Corporation, and Grasan Equipment Company, an Ohio Corporation

No. 25959/25960c/d Filed:11/24/99, (Davis, J., concurring in part, dissenting in part).

Concurring in part, dissenting in part opinion of Justice Davis, joined by Justice Maynard.

45 . In Re: Michael S.

No. 26177 Filed:12/2/99, (Stone, Judge, sitting by temporary assignment, delivered the Opinion of the Court)(Scott, J., did not participate).

Reversing final disposition order in juvenile matter that required restitution to be paid from the juvenile's federal SSI benefits.

46 . Supervalu Operations, Inc., a Rhode Island corporation d/b/a/ Supervalu-Milton Division (successor in interest by merger to Foc Grocery Company, a West Virginia corporation, f/k/a/ Wetterau Food Distribution Group-West Virginia Division) v. Center Design, Inc., a Georgia corporation; Parkland Development, Inc., a Georgia corporation; William A. Abruzzino and Rebecca Abruzzino

No. 26429 Filed:12/2/99, (Per Curiam)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming the circuit court's grant of summary judgment to appellee arising out of a lease dispute.

47 . State of West Virginia v. Michael Wayne Palmer

No. 26112 Filed:12/2/99, (Per Curiam)(Hrko, Judge, sitting by special assignment)(Scott, J., did not participate).

Reversing circuit court's decision denying defendant's motion to dismiss charges as required by a plea agreement and remanding for dismissal of the charges.

48 . Jody M. Stevens v. West Virginia Institute of Technology and/or West Virginia University Institute of Technology, and Montgomery General Hospital, Inc.

No. 25956 Filed:12/2/99, (Per Curiam)(McGraw, J., dissenting in part)(Risovich, Judge, dissenting in part)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In personal injury action, the Court affirmed the circuit court's grant of summary judgment in favor of the West Virginia Institute of Technology, but reversed the circuit court's grant of summary judgment in favor of Montgomery General Hospital, and remanded for additional proceedings.

49 . George W. Thacker v. Workers' Compensation Division and Steel of West Virginia, Inc.

No. 26197 Filed:12/2/99, (Per Curiam)(Starcher, C.J., concurring)(McGraw, concurring)(Johnsone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing an order of the Workers' Compensation Appeal Board that reduced a claimant's workers' compensation permanent partial disability award from 15% to 5%.

50 . CMC Enterprise, Inc. v. Ken Lowe Management Company

No. 26431 Filed:12/3/99, (Per Curiam)(Maynard, J., dissenting)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's decision arising out of contractual dispute involving the effect of oral change orders.

51 . Kenneth M. Rodriguez v. Consolidation Coal Company

No. 26350 Filed:12/3/99, (Per Curiam)(Davis, J., concurring in part and dissenting in part)(Kaufman, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming verdict and damage award in favor of employee in retaliatory discharge action.

52 . Patrick Rundle and Sandra Rundle, Husband and Wife v. Cynthia P. Keane, Karen L. Potesta, C & K Associates, and the City of Morgantown

No. 26193 Filed:12/3/99, (Per Curiam)(McGraw, J. and Kaufman, Judge, dissenting)(Kaufman, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming verdict in favor of the City of Morgantown in action alleging property damage caused by water runoff.

53 . State of West Virginia v. Bobby Lee Nichols

No. 26009 Filed:12/3/99, (Davis, J.)(Maynard, J., dissenting)(Risovich, Judge, concurring)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing conviction of defendant charged with DUI, Third Offense, and setting forth procedures whereby a defendant may stipulate to the status element of certain offenses, so that evidence of the prior convictions is not placed before the jury during trial of the primary offense. Where a defendant seeks to contest the existence of a prior conviction, a bifurcated proceeding may be held in certain circumstances.

54 . Lisa Sue King Shaffer, Administratrix and Personal Representative of the Estate of Virginia Dare Keeling King, Deceased v. Acme Limestone Company, Inc., a West Virginia corporation; J.L Spade Trucking, Inc.; Jack L. Spade, individually and doing business as J.L. Spade Trucking; and Jonathan Dale Riffey

No. 26114 Filed:12/3/99, (Davis, J.)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In personal injury action presenting questions as to the independent contractor relationship between the defendants, the Court affirmed in part, reversed in part, and remanded for further proceedings in light of the fact that the plaintiff had established an "illegal work" exception to the independent contractor defense that precluded summary judgment against her.

55 . In Re: Michael Ray T., Scottie Lee T., and Tonya Lynn T.

No. 26639 Filed:12/3/99, (Davis, J.)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's decision denying former foster parent's motion to intervene in abuse & neglect proceedings involving their former foster children.

56 . State of West Virginia v. James Robert Stephens

No. 25893 Filed:12/3/99, (Starcher, C.J.)(Maynard, J., dissenting)(Scott, J., did not participate).

Reversing defendant's conviction of first degree sexual assault and sexual abuse by a custodian and remanding for new trial due to prosecutor's argument to the jury that defendant's counsel did not dispute the defendant's guilt.

57 . In re: Petition of Dennis H. Burks for Judicial Review of Administrative Decision made by Joe E. Miller, Commissioner, Department of Transportation, Division of Motor Vehicles, Suspending the License of Dennis H. Burks to Operate a Motor Vehicle

No. 25897 Filed:12/3/99, (Starcher, C.J.)(Hrko, Judge, sitting by special assignment)(Scott, J., did not participate).

Reversing circuit court's order finding that the Department of Motor Vehicles was barred from suspending Burks' license because of the law enforcement officer's failure to obtain and give the results of a blood alcohol test to Burks.

58 . Oak Casualty Insurance Company v. Constance S. Iechliter, Tracy Lynn Harrison, Tabatha Kackley, a minor, Amanda Kackley, a minor, through the Sheriff of Mineral County, their Court-Appointed Guardian AND Patrick Neld, Sheriff of Mineral County v. Tabatha Kackley and Amanda Kackley, minors

No. 26208 Filed:12/3/99, (Davis, J.)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court's order in insurance interpleader action that restricted an interpleader defendant's right to file a lawsuit against an injured tortfeasor to determine the liability of that person or entity for the underlying accident.

59 . State of West Virginia v. Casey Rygh

No. 26195 Filed:12/3/99, (Starcher, C.J.)(Stone, Judge, sitting by special assignment)(Scott, J., did not participate).

Affirming conviction of two counts of felony murder and conspiracy to commit aggravated robbery and rejecting argument that appellant's juvenile records were improperly used against him because the records were used for the purpose of impeachment during the cross-examination of a witness for the appellant.

60 . State of West Virginia v. Timothy Ray Cline

No. 25924 Filed:12/3/99, (Per Curiam)(Davis, J., dissenting)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming conviction for driving on a suspended license, but reversing appellant's sentence, and remanding for resentencing in light of the recently amended West Virginia Code Section 17B-4-3(a), which removes jail as a sentencing alternative for the first offense of driving on a suspended license.

61 . John Hoyoux, d/b/a AeroLease v. James H. Paige, III

No. 26214 Filed:12/3/99, (Stone, Judge, sitting by special assignment, delivered the Opinion of the Court)(Scott, J., did not participate).

Affirming circuit court's decision finding that taxpayer had filed a timely claim for refund of sales taxes.

62 . Dale G. Nestor, II v. Bruce Hardwood Flooring, L.P.

No. 26430 Filed:12/6/99, (Per Curiam)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court's grant of summary judgement for employer in workers' compensation discrimination action and remanding for entry of final order containing sufficient findings of fact as required by Fayette County Nat. Bank v. Lilly, 199 W.Va. 349, 484 S.E.2d 232 (1997).

63 . Roy Collins, et al. v. City of Bridgeport

No. 25626 Filed:12/6/99, (Wilkes, Judge, sitting by temporary assignment, delivered the Opinion of the Court)(Starcher, C.J., and Davis, J., disqualified)(Risovich, Judge, and Canady, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming in part, reversing in part and remanding with directions in action related to merit pay and calculation of overtime pay for police officers under the police civil service act.

64 . Stonewall Jackson Memorial Hospital Company, a non-profit West Virginia corporation v. American United Life Insurance Company, a qualified foreign corporation; Gardner & White Corporation, a non-qualified foreign corporation; Gardner & White, Inc., a non-qualified foreign corporation; Harry D. Jackson, an individual

No. 25832 Filed:12/6/99, (Starcher, C.J.)(Risovich, Judge, sitting by special assignment)(Scott, J., did not participate).

Affirming circuit court grant of partial summary judgment against the appellant hospital on the issue of whether the appellee insurance company, as a general business practice, violated the West Virginia Unfair Trade Practices Act.

65 . In Re: Travis W.

No. 26640 Filed:12/7/99, (Maynard, J.)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In child abuse and neglect matter, affirming the circuit court's finding of abandonment, but remanding for the circuit court to conduct a disposition hearing that complies with West Virginia Code Section 49-6-5 and Rules 31 and 32 of the West Virginia Rules of Procedure for Child Abuse and Neglect.

- 66 . **State of West Virginia ex rel. John F. Rist, III v. Honorable Cecil H. Underwood, Governor of the State of West Virginia, and Robert S. Kiss AND State of West Virginia ex rel. Richard A. Robb, W. Kent Carper, Rudolph L. diTrapano, Roger D. Forman, Marvin W. Masters, Anthony J. Majestro, American Civil Liberties Union of West Virginia, Thomas W. Pettit, Mark E. Gaydos, Carl N. Frankovitch, Michael G. Simon, James C. Peterson, R. Edison Hill, Harry G. Dietzler, Michael C. Bee, and Norman Steenstra, Jr. v. Honorable Cecil H. Underwood, Governor of the State of West Virginia, and Robert S. Kiss**

No. 26653/26654c Filed:12/7/99, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

- 67 . **Kenneth M. Rodriguez v. Consolidation Coal Company**

No. 26350c/d Filed:12/8/99, (Davis, J., concurring, in part, and dissenting, in part).

Concurring in part and dissenting in part opinion of Justice Davis.

- 68 . **Penny D. (Fox) Kirby v. Rodney G. Fox**

No. 26215 Filed:12/8/99, (Per Curiam)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's decision to award custody of two children to the father after a divorce.

- 69 . **Deborah Hicks v. Kenneth P. Hicks**

No. 25977 Filed:12/8/99, (Risovich, Judge, sitting by temporary assignment, delivered the Opinion of the Court)(Maynard, J., and McGraw, J., dissenting, in part, and concurring, in part)(Scott, J., did not participate).

Affirming in part, reversing in part, and remanding for further proceedings in matter concerning calculation of child support, and setting forth principles governing calculation of the rental value of a home provided by the child support obligor to the obligee.

70 . State of West Virginia ex rel. Stanley M. Meyers v. Honorable David H. Sanders, Judge

No. 26425 Filed:12/8/99, (Risovich, Judge, sitting by temporary assignment, delivered the Opinion of the Court)(Maynard, J., concurring)(Scott, J., did not participate).

Denying a writ of prohibition seeking to prohibit the enforcement of the circuit court's order and holding that a habeas corpus petitioner may invoke the constitutional privilege against self-incrimination in response to a deposition question in a civil habeas corpus proceeding, and that the trial court may properly draw an adverse inference from the habeas corpus petitioner's silence pursuant to the privilege.

71 . Donna L. Crispen, E. Michael Crispen, natural guardians and next friends of Joseph Scott Crispen v. West Virginia Secondary Schools Activities Commission (WVSSAC) and Warren Carter, Executive Secretary (WVSSAC); Fred Aldridge, former Ravenswood High School Principal/Board of Appeals (WVSSAC); and all other members of the West Virginia Secondary Schools Activities Commission; Stephen Ashworth, Coach, Ravenswood High

No. 25958 Filed:12/9/99, (Per Curiam)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit courts dismissal of an action on the ground that venue did not lie in the county where the action was filed.

72 . State of West Virginia ex rel. Dollie Huffman, Administratrix of the Estate of Kayla Rene Huffman v. Honorable Booker T. Stephens, Judge of the Circuit Court of McDowell County; Joseph P. Nieto, D.O.; Laoratory Corporation of America Holdings, a non-resident corporation; and Princeton Community Hospital Association, Inc., a West Virginia corporation.

No. 26422 Filed:12/9/99, (Per Curiam)(Maynard, J., dissenting)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Issuing writ of prohibition to prevent the circuit court from transferring to Mercer County a wrongful death action instituted in McDowell County.

73 . State of West Virginia v. John Shabazz, a/k/a John Randle

No. 26211 Filed:12/9/99, (Starcher, C.J.)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's order denying defendant an appeal from magistrate court on a conviction for battery, and holding that the defendant was not prejudiced by the magistrate's communication with the jury during the jury's deliberations.

74 . In Re: Petition of Steven C. Petrey for Judicial review of Administrative decision made by Joe E. Miller, Commissioner, Department of Transportation, Division of Motor Vehicles, suspending the license of Steven C. Petry to Operate a Motor Vehicle

No. 26436 Filed:12/10/99, (Starcher, C.J.)(Johnson, Judge, sitting by temporary assignment, dissenting).

Reversing a circuit court ruling that held that the DMV could not revoke a driver's license for driving under the influence because the DMV was late in scheduling a hearing.

75 . State of West Virginia ex rel. Darrell V. McGraw, jr., Attorney General v. Combs Services; Combs Services, Inc.; Combs Funeral Services, Inc., d/b/a/ Greenlief-Combs Funeral Home; Steven W. Combs, individually; and Steven W. Combs, funeral director

No. 26196 Filed:12/10/99, (Davis, J.)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming, as modified, judgment of the circuit court regarding the priority accorded a statutory lien in favor of purchasers of preneed funeral contracts.

76 . State of West Virginia v. Lowell Eugene Paynter

No. 26205 Filed:12/10/99, (Davis, J.)(Maynard, J., dissenting)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In appeal of conviction for second degree murder, the Court reversed and remanded for a new trial because the circuit court erred in failing to order a psychiatric evaluation of the defendant because his first competency evaluation did not comport with W. Va. Code Section 27-6A-1(a).

77 . State of West Virginia v. Timothy Ray Cline

No. 25924c/d Filed:12/10/99, (Davis, J., concurring, in part, and dissenting, in part).

Concurring in part and dissenting in part opinion of Justice Davis.

78 . Erie Insurance Property and Casualty Company v. Pioneer Home Improvement, Inc.; Gerald Skanes and Mary E. Skanes

No. 26216 Filed:12/10/99, (Maynard, J.)(McGraw, J., dissenting)(Davis, J., disqualified)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's determination that appellee Erie Insurance had no duty to defend or indemnify Pioneer under Pioneer's commercial general liability policy of insurance.

79 . Heather Spaulding v. Mingo County Board of Education

No. 26221 Filed:12/10/99, (Per Curiam)(Maynard, J., disqualified)(Stone, Judge, and Watt, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming \$250,000 judgment for personal injuries in favor of student injured during an altercation at Tug Valley High School.

80 . P. Lee Clay v. Selina Rose Clay (now McClure)

No. 26209 Filed:12/10/99, (Per Curiam)(Stone, Judge, by temporary assignment)(Scott, J., did not participate).

Reversing circuit court's order regarding payment of arrearages in child support and alimony, and remanding for recalculation of the amount of arrearages.

81 . Harold F. Flint, Jr., Raymond A. Anderson, Bernard Talbott, Kenneth Wagner, Charles Clutter, George Baker, Michael Baker, Danny Dennison, and David L. Shaw v. The Board of Education of the County of Harrison, a West Virginia statutory corporation

No. 25898 Filed:12/10/99, (Per Curiam)(McGraw, J., dissenting in part and concurring in part)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In grievance matter concerning the terms of certain service employee contracts, the Court affirmed the circuit court's finding as to two of the employees, but reversed the circuit court with respect to the remaining employees.

82 . Gerald L. Reed and Debra L. Reed v. John L. Bord, d/b/a Bord & Bord

No. 26206 Filed:12/10/99, (Per Curiam)(Starcher, C.J. and McGraw, J., dissenting)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In action by telephone worker injured while installing a phone line in a law office, the Court affirmed the circuit court's grant of summary judgment in favor of the law office.

83 . The Board of Education of the County of Mercer v. Patricia Owensby

No. 25978 Filed:12/13/99, (Starcher, C.J.)(Hrko, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court and reinstating ALJ's ruling that the Mercer County BOE improperly denied a teaching position to appellant and directing the BOE to place the appellant in the teaching position with back pay and benefits.

84 . State of West Virginia ex rel. Department of health and Human Resources by Debra Kay Schwab, individually, and as her subrogee v. Jeffrey William Schwab

No. 25868 Filed:12/13/99, (Per Curiam)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court order requiring appellant to pay back child support accrued over a period of approximately 13 years.

85 . State of West Virginia v. Michael Von Richards

No. 26349 Filed:12/13/99, (McGraw, J.)(Starcher, C.J., concurring)(Stone, J., sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court and holding that West Virginia Code Section 25-4-1 to - 12 expressly forecloses the circuit court's ability to increase a defendant's original sentence upon the revocation of probation.

86 . The Arnold Agency v. West Virginia Lottery Commission

No. 25405 Filed:12/13/99, (McGraw, J.)(Workman, J., disqualified)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In matter carried over from the January 1999 Term of Court, the circuit court's grant of summary judgment in favor of the Lottery Commission was affirmed, in part and reversed, in part. The Court held that the Lottery commission is immune from suit and that Arnold's fraud claim is therefore barred, but further determined that the State's liability insurance potentially provides coverage for the breach of contract claim, and remanded for trial on that claim.

87 . Kent A. Gerver and Billie Joe Gerver v. Aurelio Benavides, M.D.

No. 26355 Filed:12/13/99, (Per Curiam)(Starcher, C.J., concurring)(Maynard, J., dissenting)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court order that set aside verdict in favor of plaintiff, and awarded defendant physician a new trial and remanding for entry of judgment on the jury's verdict.

88 . Charles Dunn and Florence Dunn, his wife v. John Doe, Allstate Insurance Company and Paul Brown

No. 26433 Filed:12/13/99, (Johnson, Judge, sitting by temporary assignment, delivered the Opinion of the Court)(Scott, J., did not participate).

Answering certified questions concerning the "physical contact" requirement of the uninsured/underinsured motorist statute.

89 . Lahoma Hunley Lester v. James Anthony Hunley

No. 26120 Filed:12/13/99, (Per Curiam)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court order transferring custody of three children to appellant's ex-husband.

90 . Jerimi Shroades v. Food Lion, Inc., et al

No. 25951 Filed:12/13/99, (Per Curiam)(McGraw, J., dissenting)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing jury verdict in favor of plaintiff in negligence action against Food Lion, and remanding for further proceedings in light of the fact that the circuit court erred by not granting Food Lion's motion for continuance to conduct additional discovery.

91 . Tom's Convenient Mart, Inc., d/b/a Whitewater Information v. The West Virginia Human Rights Commission and Charles Akins

No. 25950 Filed:12/13/99, (Per Curiam)(Starcher, C.J., concurring)(Maynard, J., dissenting)(McGraw, J., dissenting).

Affirming final order of the Human Rights Commission finding that employee was discharged as a result of age discrimination.

- 92 . **Peter S. Hartman v. The Morningstar Building Company, Inc., a West Virginia corporation; Gary Morningstar, individually and as Vice President of Morningstar Building Company; Cary Morningstar, individually and as President of Morningstar Building Company; and Judy Morningstar, Individually and as Secretary of Morningstar Building Company; The Morningstar Companies, Inc., a West Virginia corporation; The Morningstar Consulting Company, Inc., a West Virginia corporation; and The Village, LLC, a West Virginia limited liability company**

No. 25981 Filed:12/13/99, (Per Curiam)(Maynard, J., dissenting)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court's decision dismissing unpaid wage action of the ground that the appellant had failed to prosecute it and remanding for further proceedings.

- 93 . **William D.A., Sr v. Shawna Renee A. and Stephen Everett A., Renee A. C., intervenor below, appellant**

No. 25894 Filed:12/13/99, (Per Curiam)(Starcher, C.J., dissenting)(Davis, J., concurring)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's determination that a consent to adoption signed by the mother of two infant children was not obtained through the duress of the children's paternal grandfather.

- 94 . **Eva Diane Maikotter v. University of West Virginia Board of Trustees/West Virginia University**

No. 26110 Filed:12/14/99, (McGraw, J.)(Davis, J., concurring, in part and dissenting, in part)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court decision in favor of the university in grievance matter filed by an employee and remanding for a determination of the relief to which the employee is entitled.

- 95 . **Eva Diane Maikotter v. University of West Virginia Board of Trustees/West Virginia University**

No. 26110 Filed:12/14/99, (Davis, J., concurring in part and dissenting in part).

Concurring in part and dissenting in part opinion of Justice Davis.

96 . **Russie O'Brien Phares, James C. Phares, Jr., James C. Phares, Sr. v. Stanley N. Vandevender, Karen Vandevender, Ralph E. Moore and Ruth Moore; AND Stanley N. Vandevender and Karen Vandevender v. Ernest V. Morton, Jr., Executor of the Estate of Harry R. Damron, deceased and Rosemary Parson, in her own right and as executrix of the estate of Viola Meadows**

No. 26439 Filed:12/14/99, (Per Curiam)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

In appeal by third-party defendant, affirming circuit court's order denying appellant's motion for an accounting because she was not entitled to any interest in the estate at issue.

97 . **Joan Lipscomb v. Tucker County Commission**

No. 25847 Filed:12/15/99, (McGraw, J.)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court order denying employee new trial in action seeking certain employment benefits, and holding that the appellant was an employee of the county commission and therefore entitled to the benefits she sought.

98 . **Curniff Rowe, et al. V. Grapevine Corporation, et al.**

No. 26353 Filed:12/15/99, (Stone, Judge, sitting by temporary assignment, delivered the Opinion of the Court)(Scott, J., did not participate).

Affirming in part and reversing in part grant of summary judgment to apple grower employers of migrant workers.

99 . **Joe Bailey, et al. v. Norfolk and Western Railway Company; AND Eddie S. Caldwell, et al. v. Norfolk and Western Railway Company**

No. 26004 Filed:12/15/99, (McGraw, J.)(Davis, J. and Maynard, J., concurring in part and dissenting, in part)(Hrko, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming jury verdict finding that the railroad had discriminated against sixty-seven employees on the basis of age when it promoted those employees from brakemen to conductor and placed them at the bottom of the conductors' seniority roster.

- 100 . **H. Kenneth Carvey, Jr.; Dennis Caldwell; Leonard Allen; Carol Thom; West Virginia Association of Elementary and Middle School Principals; and West Virginia Association of Secondary School Principals, and their individual members v. West Virginia State Board of Education; Henry Marockie, in his official capacity as State Superintendent of Schools; and Principals Standards Advisory Council, The Center for Professional Development, defendant below, appellant**

No. 26217 Filed:12/15/99, (Davis, J.)(Stone, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming in part and reversing in part declaratory judgment in favor of the plaintiffs below related to payment of stipends to school principals participating in training programs and the constitutionality of the statute requiring such payments.

- 101 . **Joe Bailey, et al. v. Norfolk and Western Railway Company; AND Eddie S. Caldwell, et al. v. Norfolk and Western Railway Company**

No. 26004c/d Filed:12/15/99, (Davis, J., concurring in part and dissenting, in part).

Concurring in part and dissenting in part opinion of Justice Davis, joined by Justice Maynard.

- 102 . **Donald R. Adams and Mary Sue Adams v. Betty Ireland, in her capacity as Executive Secretary of the Consolidated Public Retirement Board; and Glen B. Gainer, III, in his capacity as State Auditor**

No. 26440 Filed:12/15/99, (Per Curiam)(Scott, J., did not participate).

Reversing circuit court's decision that dismissed a retired state employee's complaint that, by amending a retirement pension statute while the employee was working for the State, the state had unconstitutionally impaired the employee's contract with the State.

- 103 . **State of West Virginia ex rel. Dollie Huffman, Administratrix of the Estate of Kayla Rene Huffman v. Honorable Booker T. Stephens, Judge of the Circuit Court of McDowell County; Joseph P. Nieto, D.O.; Laoratory Corporation of America Holdings, a non-resident corporation; and Princeton Community Hospital Association, Inc., a West Virginia corporation.**

No. 26422d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

104 . State of West Virginia v. Lowell Eugene Paynter

No. 26205d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

105 . State of West Virginia v. Lawrence Edward Christian, III

No. 26438d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

106 . State of West Virginia v. Bobby Lee Nichols

No. 26009d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

107 . Deborah Hicks v. Kenneth P. Hicks

No. 25977c/d Filed:12/15/99, (Maynard, J., concurring in part and dissenting in part).

Concurring in part and dissenting in part opinion of Justice Maynard.

108 . Tom's Convenient Mart, Inc., d/b/a Whitewater Information v. The West Virginia Human Rights Commission and Charles Akins

No. 25950d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

- 109 . Peter S. Hartman v. The Morningstar Building Company, Inc., a West Virginia corporation; Gary Morningstar, individually and as Vice President of Morningstar Building Company; Cary Morningstar, individually and as President of Morningstar Building Company; and Judy Morningstar, Individually and as Secretary of Morningstar Building Company; The Morningstar Companies, Inc., a West Virginia corporation; The Morningstar Consulting Company, Inc., a West Virginia corporation; and The Village, LLC, a West Virginia limited liability company**

No. 25981d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

- 110 . State of West Virginia v. James Robert Stephens**

No. 25893d Filed:12/15/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

- 111 . CMC Enterprises, Inc. v. Ken Lowe Management Company**

No. 26431d Filed:12/16/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

- 112 . State of West Virginia v. Walter Lee Swafford, II**

No. 25844 Filed:12/16/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

- 113 . Kent A. Gerver and Billie Joe Gerver v. Aurelio Benavides, M.D.**

No. 26355d Filed:12/16/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

114 . Marvin T. Bowers, et al., as class representatives v. Gretchen Wurzburg, The Southland Corporation, et al.

No. 26218d Filed:12/16/99, (Maynard, J., dissenting).

Dissenting opinion of Justice Maynard.

115 . State of West Virginia ex rel. Stanley M. Meyers v. Honorable David H. Sanders, Judge

No. 26425c Filed:12/16/99, (Maynard, J., concurring).

Concurring opinion of Justice Maynard.

116 . Marvin T. Bowers, et al., as class representatives v. Gretchen Wurzburg, The Southland Corporation, et al.

No. 26218 Filed:12/16/99, (McGraw, J.)(Davis, J., and Maynard, J., dissenting)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing grant of summary judgment in favor of landowner/lessor in action for damages resulting from a gasoline leak at a convenience store.

117 . State of West Virginia v. Ronald Lynn Calloway

No. 26204 Filed:12/16/99, (McGraw, J.)(Starcher, C.J., concurring)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming conviction on six counts of second-degree sexual assault and one count of daytime entering without breaking.

118 . State of West Virginia ex rel. Roy David Vernatter v. Warden, West Virginia Penitentiary

No. 25952 Filed:12/16/99, (McGraw, J.)(Johnson, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Affirming circuit court's denial of petition for post-conviction habeas corpus relief.

119 . Health Management, Inc. v. Norman Lindell, in his capacity as Acting Director of the West Virginia Human Rights Commission

No. 26010 Filed:12/17/99, (McGraw, J.)(Risovich, Judge, sitting by temporary assignment)(Scott, J., did not participate).

Reversing circuit court's issuance of a writ of prohibition to prevent the Human Rights Commission from taking further enforcement action against an employer, and remanding for the Human Rights Commission, rather than the circuit court, to resolve certain disputed issues of fact regarding whether the employer had sufficient number of employees to be subject to the Commission's jurisdiction.

120 . Joe Bailey, et al. v. Norfolk and Western Railway Company; AND Eddie S. Caldwell, et al. v. Norfolk and Western Railway Company

No. 26004c/d Filed:12/17/99, (Maynard, J., concurring in part and dissenting in part).

Concurring in part and dissenting in part opinion of Justice Maynard, joined by Justice Davis.

121 . Tom's Convenient Mart, Inc., d/b/a Whitewater Information v. The West Virginia Human Rights Commission and Charles Akins

No. 25950c Filed:1/6/00, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

122 . State of West Virginia v. Michael Von Richards

No. 26349c Filed:1/6/00, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

123 . William D.A., Sr v. Shawna Renee A. and Stephen Everett A., Renee A. C., intervenor below, appellant

No. 25894d Filed:1/6/00, (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

124 . State of West Virginia v. Lawrence Edward Christian, III

No. 26438c Filed:1/6/00, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

125 . Gerald L. Reed and Debra L. Reed v. John L. Bord, d/b/a Bord & Bord

No. 26206d Filed:1/6/00, (Starcher, C.J., dissenting.).

Dissenting opinion of Chief Justice Starcher, joined by Justice McGraw.

126 . State of West Virginia v. Henry Theodore Allen, II

No. 25980d Filed:1/6/00, (Starcher, C.J., dissenting).

Dissenting opinion of Chief Justice Starcher.

127 . State of West Virginia v. Ronald Lynn Calloway

No. 26204c Filed:1/6/00, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

128 . William D.A., Sr v. Shawna Renee A. and Stephen Everett A., Renee A. C., intervenor below, appellant

No. 25894c Filed:1/6/00, (Davis, J., concurring).

Concurring opinion of Justice Davis.

129 . Kent A. Gerver and Billie Joe Gerver v. Aurelio Benavides, M.D.

No. 26355c Filed:1/7/00, (Starcher, C.J., concurring).

Concurring opinion of Chief Justice Starcher.

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