

# IN PURSUIT OF JUSTICE: THE RIGHT TO APPEAL A LIFE SENTENCE OR ITS EQUIVALENT IN WEST VIRGINIA

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## INTRODUCTION

It is not an uncommon occurrence in West Virginia. A defendant, by way of trial or plea, is convicted of a gravely serious offense which subjects the defendant to a sentence of life imprisonment. It is also not uncommon that sentences for these offenses, or other offenses which do not carry a life sentence, are imposed in such a manner as to be tantamount to a life sentence ( i.e., three consecutive 15 to 35 year sentences, or a 120 year sentence for armed robbery).

Unquestionably, a defendant convicted in West Virginia has the “right” to appeal his or her conviction and sentence. However, the West Virginia Supreme Court of Appeals does not have to grant the defendant’s petition for appeal. Thus, a defendant in West Virginia has no right to a mandatory review of a conviction and sentence resulting in the defendant spending the remainder of his or her life in a penal institution.

West Virginia is one of only two states which do not have either a right to mandatory review of life sentences or an intermediate appellate court system. The purpose of this article is to emphasize the importance of prompt reform to mandate review of any and all convictions resulting in the imposition of a life sentence or its equivalent.

## AN EXAMPLE OF THE NECESSITY OF MANDATORY REVIEW

Proponents argue that the present system of review, while imperfect, is nonetheless efficient and functional. A few of these proponents note that the present system has been held to meet constitutional muster by federal courts, and they point to the low numbers of convictions overturned by federal courts as evidence that the system “works”.

This argument ignores two basic concepts: (1) appellate procedures should not require the federal courts to repair errors made in West Virginia trial courts, and (2) West Virginia’s judiciary should create a system which provides the greatest number of constitutional protections to those individuals who, if they are properly convicted, will be wards of the state for the remainder of their natural lives.

West Virginia’s system of appellate review in such cases received a clanging wake-up call in 1999, when the United States Supreme Court decided Flippo v. United States, 528 U.S. 11, 120 S. Ct. 7, 145 L. Ed 2d 16 (1999). While on its face an innocuous *per curiam* reversal because of the improper search of a crime scene, the Flippo case alerted many to the dangers of a lack of appellate review in West Virginia.

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The defendant in Flippo was convicted of the first-degree murder of his wife at a state park and was sentenced to life imprisonment. Following his conviction, the defendant filed his petition for appeal with the Supreme Court of Appeals. The Court, exercising its' right of discretionary review, decided by a vote of 5-0 to refuse Mr. Flippo's appeal. The defendant sought and was granted certiorari by the United States Supreme Court. The United States Supreme Court decided unanimously to reverse the defendant's conviction and remanded the case back to circuit court.

The problem presented in Flippo is evident: there was no mandatory review of Flippo's conviction between the trial court and the United States Supreme Court. As one of the Justices has noted, it seems rather embarrassing to have the United States Supreme Court decide unanimously to reverse a case that the West Virginia Supreme Court of Appeals voted unanimously not to review.

### **THE "RIGHT TO APPEAL" IN WEST VIRGINIA**

The Constitution provides in Article VIII, Section 1 that the judicial power of the State "shall be vested solely in a supreme court of appeals... and in such intermediate appellate courts...as shall be hereinafter established by the Legislature[.]"<sup>2</sup> Article VIII, Section 3 of the Constitution provides that the Supreme Court of Appeals shall have "appellate jurisdiction in criminal cases[.]"

West Virginia Code § 58-5-1(j) provides for appellate relief in the Supreme Court of Appeals. This section provides, *inter alia*, that "[a] party to a controversy in any circuit court may obtain from the supreme court of appeals...an appeal from...a judgment, decree or order of such circuit court ... in any criminal case where there has been a conviction in a circuit court [or where a conviction in a lesser court has been affirmed by the circuit court]". The specific procedures regarding the filing of appeals are enumerated in the Rules of Appellate Procedure for the West Virginia Supreme Court of Appeals.

It is generally recognized that the right to an appeal is not required by the Constitution. This right is a statutory construction, but constitutional principles still apply. For instance, if a state makes the right to an appeal open to a defendant, the state must be prepared to provide appointed counsel to assist an indigent defendant. Griffin v. Illinois, 351 U.S. 12, (1956); Douglas v. California, 372 U.S. 353 (1963).

One of the primary cases in West Virginia on this issue is State v. Legg, 151 W. Va. 401 (1966). Legg notes that West Virginia's constitution and the relevant statutes do not afford a defendant a mandatory right of appellate review; they merely provide a defendant with a right to *apply* for such review. The result is that a defendant in West Virginia receiving a life sentence has no greater right to have his or her case heard by the Supreme Court of Appeals than a person who has been found liable for a \$100.00 judgment in a magistrate court civil action.

### **THE "RIGHT TO APPEAL" IN OTHER JURISDICTIONS**

The vast majority of states have established both an intermediate appellate court and have recognized a defendant's right to at least one level of mandatory appellate review. The Appendix in the case of

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<sup>2</sup>Obviously, this has not been done in the context of an intermediate appellate court. There has been a recent revision of a court system, as demonstrated by the restructure of the Family Law Court system.

Bundy v. Wilson, 815 F. 2d 125 (1987), and a review of materials published by the National Center for State Courts, provides a helpful perspective on the various statutory provisions throughout the United States.

STATE	INTERMEDIATE APPEALS COURT?	MANDATORY APPEAL?
Alabama	yes	yes
Alaska	yes	yes
Arizona	yes	yes
Arkansas	yes	yes
California	yes	yes
Colorado	yes	yes
Connecticut	yes	yes
Delaware	no	yes
Dist. Columbia	no	yes
Florida	yes	yes
Georgia	yes	yes
Hawaii	yes	yes
Idaho	yes	yes
Illinois	yes	yes
Indiana	yes	yes
Iowa	yes	yes
Kansas	yes	yes
Kentucky	yes	yes
Louisiana	yes	yes
Maine	no	yes
Maryland	yes	yes
Massachusetts	yes	yes
Michigan	yes	yes
Minnesota	yes	yes
Mississippi	yes	yes
Missouri	yes	yes
Montana	no	yes
Nebraska	yes	yes
Nevada	no	yes
New Hampshire	no	no
New Jersey	yes	yes
New Mexico	yes	yes
New York	yes	yes
North Carolina	yes	yes
North Dakota	yes	yes
Ohio	yes	yes

Oklahoma	yes	yes
Oregon	yes	yes
Pennsylvania	yes	yes
Rhode Island	yes	yes
South Carolina	yes	yes
South Dakota	no	yes
Tennessee	yes	yes
Texas	yes	yes
Utah	yes	yes
Vermont	no	yes
Virginia	yes	no
Washington	yes	yes
West Virginia	no	no
Wisconsin	yes	yes
Wyoming	no	yes

Or, to put it another way:

**STATES WITH INTERMEDIATE APPELLATE COURT AND RIGHT OF APPEAL (40)**

Alabama - Alaska - Arizona - Arkansas - California - Colorado - Connecticut - Florida - Georgia - Hawaii - Idaho - Illinois - Indiana - Iowa - Kansas - Kentucky - Louisiana - Maryland - Massachusetts - Michigan - Minnesota - Mississippi - Missouri - Nebraska - New Jersey - New Mexico - New York - North Carolina - North Dakota - Ohio - Oklahoma - Oregon - Pennsylvania - Rhode Island - South Carolina - Tennessee - Texas - Utah - Washington - Wisconsin

**STATE(S) WITH INTERMEDIATE APPELLATE COURT BUT NO RIGHT TO APPEAL (1)**

Virginia (but requires mandatory review of death penalty cases)

**STATES WITH NO INTERMEDIATE COURT, BUT RIGHT OF APPEAL (8)**

Delaware - District of Columbia - Maine - Montana - Nevada - South Dakota - Vermont - Wyoming

**STATES WITHOUT INTERMEDIATE COURT OR RIGHT OF APPEAL (2)**

New Hampshire - West Virginia

Thus, only West Virginia and New Hampshire do not have an intermediate appellate court or offer a defendant an automatic right of appeal. New Hampshire does, however, permit a mandatory appeal of

death sentences.<sup>3</sup> Further, the Office of the Clerk of the New Hampshire Supreme Court reports that New Hampshire has adopted an informal policy of granting appeals in all first-degree murder cases, a policy to which West Virginia does not subscribe. The Clerk's Office also reports that a case may be accepted for full appellate review if only one of the five justices vote to accept the matter.

### **LIFE IMPRISONMENT, OR ITS EQUIVALENT**

It is therefore established that West Virginia is in the slimmest of minorities in providing no mandatory appellate review of cases resulting in life imprisonment. The same is also true with regard to convictions resulting in sentences which are so lengthy as to effectively represent a life sentence.

For example, note the case of State v. Woodall, 182 W. Va. 15, 385 S.E. 2d 253 (1989). Mr. Woodall was convicted of a number of offenses arising out of the kidnaping and sexual assault of two women at a shopping mall. In this case the Court affirmed a sentence of 203 to 335 years, which was to be served *consecutively* to two sentences of life without the possibility of parole. [Even if the life sentences were discounted, under the parole eligibility provisions in effect at the time of Woodall's conviction, Mr. Woodall would have had to serve in excess of fifty years before he would have been eligible for parole.]. The Court found the sentences imposed to be constitutionally permissible.

Ironically, Mr. Woodall was subsequently exonerated of all charges by DNA testing. His case was the origination point of the "Zain" cases, which revealed the wrongful conviction and imprisonment of a number of defendants based upon false testimony of a State Police serologist. In the Matter of an Investigation of the West Virginia State Police Crime Laboratory, Serology Division, 190 W. Va. 321, 438 S.E. 2d 501 (1993). While the Court in this instance did choose to hear Mr. Woodall's appeal, under the present system the court could have easily voted to refuse the appeal, and would have been well within the confines of the law.<sup>4</sup>

As Woodall demonstrates, it is not necessary for a defendant to be convicted of murder to receive a sentence of life imprisonment or a sentence that amounts to the equivalent of life imprisonment. A conviction for the offense of kidnaping subjects a defendant to a life sentence (W. Va. Code, § 61-2-14a). A defendant sentenced under the Habitual Offender statute (W. Va. Code, § 61-11-18) may also receive a sentence of life imprisonment, regardless of the triggering felony offense. In addition, an inmate who takes part in an action resulting in the death of a person is also subject to a life sentence without the possibility of parole. (W. Va. Code, § 62-8-5).

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<sup>3</sup>New Hampshire's retention of the automatic right to appeal a death sentence is largely symbolic, as New Hampshire has not executed a defendant since 1939. New York Times, *New Hampshire Veto Saves Death Penalty*, May 20, 2000.

<sup>4</sup>While Mr. Woodall may have received relief through habeas corpus proceedings, it is well established in West Virginia that, "[a] habeas corpus proceeding is not a substitute for a writ of error in that ordinary trial error not involving constitutional violations will not be reviewed." State ex rel. Phillips v. Legursky, 187 W. Va. 607, 420 S.E. 2d 743 (1992) citing Syl. Pt. 4, State ex rel. McMannis v. Mohn, 163 W. Va. 129, 254 S.E. 2d 805 (1979).

It is evident that depending upon the sentencing structure, a defendant could be imprisoned for the remainder of his or her life for offenses which do not formally carry a term of life imprisonment. One prime example is aggravated robbery, which permits a sentencing judge to impose a sentence of “not less than ten years”. The Court has reviewed and affirmed a number of sentences for aggravated robbery where the sentencing courts have imposed substantial prison sentences. State v. Ross, 184 W. Va. 579, 402 S.E. 2d 248 (1990) (100 year sentence affirmed); State v. Glover, 177 W. Va. 650, 355 S.E. 2d 631 (1987) (affirming a 75 year sentence); State v. Phillips, 199 W. Va. 507, 485 S.E. 2d 676 (1997) (affirming a 140 year sentence for two counts of aggravated robbery and one count of kidnapping); and State v. Adams, \_\_\_ W. Va. \_\_\_, 565 S.E. 2d 353 (2002) (90 year sentence affirmed, in what the concurring opinion noted was “probably a life sentence for this 45 year old defendant.”). The Court has also held that the imposition of a life sentence under this statute is permissible. State v. England, 180 W. Va. 342, 376 S.E. 2d 548 (1988).

Sentences imposed for sexual offenses are also fertile ground for extremely lengthy sentences. Given that the penalty for first-degree sexual assault is a prison term of 15 to 35 years, more than two sentences imposed consecutively can easily constitute a term of imprisonment for the remainder of a defendant’s life. This is particularly true given the unpleasant truths regarding the problems faced by convicted sex offenders in the prison system.

As noted in Adams, depending on the age of the defendant, a prison term for a designated term of years can be the functional equivalent of a life sentence. Had this same defendant killed the robbery victim, and received a recommendation of mercy from his jury, he would be eligible for release in 15 years, or in half the time that he would have served on the robbery conviction alone. Therefore, it would be erroneous to look only at a “life” sentence as a subject for mandatory review.<sup>5</sup>

Twenty-three states offer a mandatory appeal to the highest appellate court under circumstances involving the imposition of a death sentence, a sentence of life imprisonment, or a sentence in excess of a designated number of years. For example, Indiana offers a direct appeal to the Indiana Supreme Court when a defendant has been sentenced to death, life imprisonment, or a sentence in excess of fifty (50) years.

### **THE COURT’S PRESENT VIEWPOINT**

Between September 1999 and July 2002, the Supreme Court of Appeals was presented with approximately forty-four (44) petitions for direct appeal of life sentences. The Court granted appellate review in nine of these cases, one of which was subsequently dismissed as improvidently granted. The remaining thirty-five cases, including twenty-two sentences of life without mercy, were refused.<sup>6</sup> Thus, by these figures, the Court granted appellate review of only approximately 18% of the life sentences presented to the Court on direct appeal.

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<sup>5</sup>Recent examples of significant sentences which were denied appellate review include State v. Swager, No. 010697, *review denied*, November 6, 2001 (56 to 120 year sentence); State v. Barbe, No. 001865, *review denied*, February 6, 2001 (80 to 190 year sentence); State v. Jones, No. 992803, *review denied*, December 9, 1999 (49 to 115 year sentence).

<sup>6</sup>See Appendix.

Recently, the Court examined the divergent opinions on the issue of mandatory appellate review of life imprisonment cases in SER Penwell v. Painter, (No. 012191), a non-published opinion from the Court. In this opinion, the court refused Penwell's petition for appeal, but discussed the issue of providing full appellate review to those persons sentenced to life imprisonment.

In Penwell, Justices Starcher and Albright reiterated a view that they have stated repeatedly in other appeals where the Court had denied appellate review of first-degree murder convictions. (ex., State v. Shepard, No. 010903, *review denied*, November 6, 2001; State v. Gelis, No. 010665, *review denied*, September 5, 2001; State v. Holley, No. 010461, *review denied*, May 8, 2001; State v. Mugnano, No. 002378, *review denied*, April 3, 2001). Their opinion is set forth below.

"We believe that the Court should give full appellate review, with full briefing and oral argument, to all cases involving life imprisonment. Our reasons are somewhat overlapping.

"First, without full state court appellate review, such criminal convictions do not have any sort of "stamp of approval" or presumption of correctness, in any subsequent or collateral proceeding - for example, in federal or state habeas corpus. As an example, this Court recently refused to review a life-with-no-parole murder conviction. Then, the Supreme Court of the United States reversed this Court, saying that the conviction may have violated established law, and remanded the matter for further proceedings. *Flippo v. W. Va.*, 528 U.S. 11, 120 S. Ct. 7, 145 L. Ed. 2d 16 (1999). (Justice Starcher notes that he voted not to review this case, a vote of which he now repents.) The Supreme Court noted that *the last court to rule on the merits of the case was the Circuit Court of Fayette County*. We find this rather embarrassing - to have a West Virginia trial court's errors fixed by "the U. S. Supremes" -- without this Court even taking a look at the issues first. Moreover, the day may well come when the Supreme Court of the United States (or even this Court) requires full appellate review of such cases as a matter of due process. We would support such a position. If that day comes, this Court does not want to find itself in a position of having to deal with whether such a ruling might be retroactive.

"Second, merely looking at the appeal petitions in these cases means we do not get the benefit of the West Virginia Attorney General's review - as is ordinarily the case when a petition is accepted, briefed and argued. When there is a full review, the Attorney General's office will often recognize and acknowledge clear error when it is present - although they may argue that such error was harmless. Simply put, Attorney General involvement means better quality briefs and argument, and improves the quality of justice.

"Third, full appellate review assures that important issues in these "life imprisonment" cases are brought to the attention of the bar generally, and can be followed by interested lawyers. When cases are briefed and argued and an opinion is to be written, amici or other voices may ask to be heard on important issues.

"Fourth, our criminal jurisprudence is better reasoned and developed when such cases are briefed and dealt with in an opinion. Where we uphold a conviction (as we do in most cases), opinion writing forces the Court to consciously recognize and articulate its reasoning. Additionally, as one of the three co-equal branches of government, we have a duty to reflect on what is going on in our court system and our broader society, that leads to such severe criminal sentences.

"Fifth, when the Court accepts life imprisonment cases for full briefing and argument, we can (in appropriate cases) appoint new counsel, so that exceptionally important issues will be properly

presented. It is apparent to us that some defendants do not have their issues well raised, due to inexperienced counsel preparing their petitions. Regrettably, but inescapably, the quality of an appeal petition can make some difference as to whether or not we accept a case for full argument.

“Finally, we should have these cases argued and briefed because the consequences of error at trial are so extreme. In Illinois, since the reinstatement of the death penalty, as many people as have been executed have been *freed from death row*, due to trial errors. Here in West Virginia, we know all about the Fred Zain case. We know that trials can be unfair, and criminal convictions can be downright wrong. Where the sentence is one of life imprisonment, simple fairness means that we must take the steps that will try to detect any unfairness in the proceedings that led to the sentence.”[emphasis in original.]

Justices Davis and Maynard disagreed with these concepts. They noted in their portion of the Penwell opinion: (1) that the Court’s system of discretionary review of sentences involving life imprisonment had been previously affirmed by the Court in Billotti v. Dodrill, 183 W. Va. 48,394 S.E. 2d 32 (1990); (2) that the Fourth Circuit had affirmed the constitutionality of such discretionary review in Billotti v. Legursky, 975 F. 2d 113 (4<sup>th</sup> Cir. 1992); (3) that it would be “unfair” to create a special review policy on cases involving life imprisonment, when such an opportunity would not be afforded to litigants in other cases, such as abuse/neglect, personal injury or wrongful death cases; and (4) that the system of discretionary review “works”, as evidenced by the minimal number of cases overturned by federal courts.

The arguments put forth by Chief Justice Davis and Justice Maynard fail, however, to address or even recognize the primary underlying issues.

First, simply because a system or procedure has been pronounced by your Court and a federal appeals court to pass Constitutional muster does not mean that it is a good system. *In other words, just because it is legal does not make it right.* A stamp of constitutional approval does not mean that our system must remain immune to qualitative change.

Second, claiming that the present system “works” because there have been few reversals by the federal courts is akin to a parent allowing a child to play on a highway, and then claiming that he is a good parent because none of his children died or suffered serious injury during their play. The “no-harm, no problem” approach should not be accepted as a sensible rationale for avoiding judicial review. And in the Flippo case, at least, the Supreme Court of the United States had to correct the problem.

Finally, and perhaps most disturbing, is the manner in which it is considered “unfair” to afford to a defendant facing a life sentence a right that other litigants do not enjoy. There is one simple, inescapable, irrefutable fact about these defendants: *they face the loss of their liberty for the remainder of their natural lives.* No other “litigant”, in any other kind of case, faces what is in West Virginia this ultimate penalty. The loss of money or the termination of parental rights are important to these litigants, but their loss is not as significant as that of a defendant who faces the remainder of his/her life in a penal institution.

It is appealing to subscribe to the position that a person who has lost a loved one in an accident, and who desires to appeal an adverse ruling to the Court, has suffered a greater loss and should not have lesser rights than a “common criminal”. However, the extension of an appeal-of-right to criminal defendants would in no way limit the authority of the Court to accept other cases for appellate review.

Chief Justice Davis and Justice Maynard note that research revealed “only” four cases where habeas relief

was granted after the Court denied appellate review, and that one of the petitioners was eventually convicted upon retrial. While it may be tempting to rationalize the denial of appellate review by noting the fact of the defendant's eventual conviction, this "clearly guilty" mentality should not be the standard. *The deprivation of a widely-acknowledged right cannot be justified because the person was subsequently found guilty.*

## **RECOMMENDATIONS OF THE COMMISSION ON THE FUTURE OF THE WEST VIRGINIA JUDICIAL SYSTEM: POSSIBLE SOLUTIONS**

In the fall of 1997, the Supreme Court of Appeals appointed thirty-eight individuals to constitute the membership of the Commission on the Future of the West Virginia Judicial System. The Commission was charged with reporting upon the state of the court system within West Virginia and recommending improvements to meet the demands of society and to better serve the citizens of West Virginia. The Commission's final report was delivered to the Court on December 1, 1998.

In a section of the report entitled, "Access to Justice", the Commission noted a number of issues bearing on equal access to justice by all citizens. Issue #5, which addressed "Accessibility and Efficiency of the Appellate Process", observed that the "appellate process is now threatened by a continuously increasing caseload that undermines the ability of the Court to spend adequate time considering, deciding and writing its opinions." The Commission noted that, based on figures provided by the Court, that the West Virginia Supreme Court of Appeals is the "busiest appellate court of its type in the nation."

The Commission also noted that the Court's caseload was expected to continue to grow. For example, the Commission cited figures from the Court noting that workers compensation filings had risen by more than 11% in 1997, and that "workers compensation appeals will continue to represent more than 50% of the Court's docket."

It is intriguing to compare and contrast the relative appeal rights of workers compensation claimants and criminal defendants. Workers compensation claimants can invoke a three-tiered appeals process. For example, a worker receives a compensable injury to his back. A claim is filed and the worker is granted temporary-total disability benefits and a permanent -partial disability award. Dissatisfied with this award from the Commissioner, the claimant can file for a mandatory appeal of the decision to the Workers Compensation Office of Judges. If the Office of Judges affirms the Commissioner, the claimant can file for another mandatory appeal of this decision to the Workers Compensation Appeal Board [W. Va. Code, §23-5-11]. If the claimant does not prevail with the Appeal Board, the claimant may petition the Supreme Court of Appeals [W. Va. Code, §23-5-15]. In short, a workers compensation claimant has the benefit of a three-level appeals process, and is entitled to mandatory full review at the first two levels. Therefore, by the Court's records, cases involving claimants who have already had the benefit of *two* mandatory appeals make up over 50% of the Court's *discretionary* docket. In comparison, an individual accused of first-degree murder and facing a sentence of life imprisonment without the possibility of parole may only file for discretionary review with the Supreme Court.

The Commission's Report contains a number of recommendations toward ensuring the accessibility and efficiency of the appellate process. The first of these recommendations, 5.1, states: "The Legislature should create an Intermediate Court of Appeals as soon as possible[.]" (emphasis added). Recommendation

5.1[f] states, however, that [c]riminal appeals...would continue to be filed with the Clerk of the Supreme Court." The Court would then "determine which...criminal appeals it would keep and which would be sent to the Intermediate Appellate Courts." By this statement, the Commission appears to suggest that the Court retain primary jurisdiction over criminal appeals instead of relegating such jurisdiction exclusively to the Intermediate Appellate Court.

Most noteworthy is Recommendation 5.1[h], which provides that, "[e]ach litigant should be guaranteed one appeal-of-right either at the Intermediate Court of Appeals or at the Supreme Court." With the adoption of this recommendation, West Virginia would join the vast majority of states in providing at least one appeal-of-right to a criminal defendant. No distinction is made regarding the sentence imposed; a defendant ordered to pay a small fine would have the same appeal-of-right as a defendant sentenced to life imprisonment. This provision, if adopted, would also address the concerns of Justice Maynard and Chief Justice Davis regarding the "unfairness" of providing an appeal-of-right only to criminal defendants. Under this provision, all litigants would be entitled to review, regardless of the nature of their case.

In the years since the Commission's report was delivered to the Court, none of the Commission's recommendations have been adopted by the Legislature. Only one piece of legislation addressing the Commission's recommendations has been introduced since 1999. House Bill 3008, introduced in the 1999 Regular Session, would have created an intermediate appellate court solely to hear administrative appeals, primarily workers compensation cases.<sup>7</sup> Without Legislative action, these recommendations cannot be put into action.

## CONCLUSION

West Virginia remains in the smallest of minorities in providing neither an intermediate appellate court nor an appeal-of-right for persons receiving life sentences or substantial prison terms. Our court system should not remain static and impervious to changes designed to improve the efficiency and quality of its service to the citizens of West Virginia. Recent modifications to the family court system have demonstrated that the Court and the Legislature can work together to bring about improvements in the judicial system.

As unsympathetic as many of the appellants may be, it is crucial that individuals convicted of heinous offenses receive the best possible appellate system that the state can provide, including a mandatory right of appeal. An improved appellate system would not only provide these defendants with substantial due process protections, but it would provide the State and the victims of crime with a sense of finality, an assurance that the right person was convicted, and the State of West Virginia would not have to depend on federal courts to correct its errors.

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<sup>7</sup>Originating in the House Judiciary Committee, H.B. 3008 was introduced and referred to the House Finance Committee. The bill remained before the Finance Committee until the adjournment of the Regular Session.