

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

CECIL HINZMAN,

Defendant.

) Case No.

) 12-F-45

Transcript of the hearing in the above-styled matter, held before the Honorable Thomas C. Evans, III, Judge of the Circuit Court of Jackson County, West Virginia, in the courtroom located in the Jackson County Courthouse, Ripley, West Virginia, on July the 1st, 2013.

A P P E A R A N C E S :

On behalf of the Plaintiff:

Kennad Skeen, II, Esquire, Prosecuting Attorney, Jackson County Courthouse, Ripley, West Virginia, Representing the State.

On behalf of the Defendant:

George Cosenza, Esquire, Parkersburg, West Virginia, Representing Mr. Hinzman.

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P R O C E E D I N G S

(Before the Honorable Thomas C. Evans, III,
Judge of the Circuit Court of Jackson County,
West Virginia, on July the 1st, 2013.)

THE COURT: Next is *State versus Cecil Hinzman*, please.

Okay. Sir, are you Cecil J. Hinzman?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. In 12-F-45, the record will show the defendant is present with George Cosenza. Also present is Kenny Skeen, prosecuting attorney, and Stephen Frum, probation officer.

This case comes on to take up a presentence investigation. On April 16th, 2013, the defendant appeared before the Court with counsel and presented a plea agreement and, pursuant to the plea agreement, pleaded guilty to sexual assault in the third degree, three separate counts as charged in the indictment. This was an *Alford* plea or a *Kennedy v. Frazier* plea. The Court conditionally accepted the plea agreement, ordered presentence investigation. I have received a report. It is dated June the 3rd, 2013.

So, did Counsel get that report?

1 MR. COSENZA: Yes, sir.

2 THE COURT: I also have a letter from the
3 defendant, a letter from other folks. It was given
4 to me by Mr. Frum on Thursday. Another series of
5 letters provided by Mr. Frum on Friday. And
6 another group of letters dated June 17th, 2013. I
7 assume the lawyers got those.

8 MR. SKEEN: Yes, your Honor.

9 MR. COSENZA: Yes, your Honor. We were the
10 ones who provided those letters to Mr. Frum.

11 THE COURT: Okay. I've read the letters.
12 They will be filed and made part of the record.
13 There is two more letters from a -- or one more
14 letter, maybe, signed by Karen Russell (phonetic),
15 Sandyville.

16 MR. COSENZA: You just received that letter
17 now, your Honor, from Mr. Frum.

18 THE COURT: Okay. It will be filed. Does the
19 defense have additions or corrections to this
20 report?

21 MR. COSENZA: We do not.

22 THE COURT: Okay. And I assume you went over
23 it in detail with your client.

24 MR. COSENZA: Yes, your Honor.

1 THE COURT: Okay. So the information there is
2 accurate and can be relied upon by the Court?

3 MR. COSENZA: Yes.

4 THE COURT: All right. Mr. Skeen, do you have
5 any objections or additions or corrections?

6 MR. SKEEN: No, your Honor.

7 THE COURT: Report is filed, made a part of
8 the record.

9 Mr. Cosenza, do you have evidence in
10 mitigation or a statement you wish to make on
11 behalf of your client?

12 MR. COSENZA: I have some evidence, a witness
13 I would like to call, your Honor.

14 THE COURT: Call your first witness.

15 MR. COSENZA: I'd like to call Mr. Carmichael.

16 (Witness sworn by the Clerk.)

17 **DIRECT EXAMINATION**

18 **BY MR. COSENZA:**

19 Q. Would you state your full name, please.

20 A. Mitch Brian Carmichael.

21 Q. And Mr. Carmichael, where do you reside?

22 A. 18 Colonial Drive, Ripley, West Virginia.

23 Q. And what is your occupation?

24 A. I'm an executive with Frontier

1 Communications, and a senator in the state
2 legislature.

3 Q. And how long have you been a senator in
4 the state legislature?

5 A. One year.

6 Q. All right. How is that going for you,
7 okay?

8 A. It's great.

9 Q. Good. I'm glad.

10 Do you know Cecil Hinzman?

11 A. I do.

12 Q. How do you know him?

13 A. Being a member of the Jackson County and a
14 resident here for many years. And Cecil's been
15 involved in many political activities and other
16 civic functions, which I've grown to know him over
17 the last, roughly, 20 years, probably.

18 Q. What are the type of civic functions, if
19 you will, that -- tell the Court about -- that
20 you've been involved in with Mr. Hinzman?

21 A. Primarily through political activities,
22 but there have been others. But many functions
23 that are public advocacy things, like the --
24 Republican issues, primarily, but at various ox

1 roasts, Lincoln Day dinner events, those type of
2 events.

3 Q. Okay. And during the period of time that
4 you've known him, have you come to learn about
5 certain character traits that Cecil has?

6 A. Well, I will say that I have known Cecil
7 to be extremely -- from my vantage point --
8 trustworthy, reliable, dependable in terms of
9 assignments and tasks that he would take on or be
10 involved with were always done, you know, very
11 promptly, forthrightly, and with a high degree of
12 competency.

13 Q. Okay. What about his character? Can you
14 give the Court some insight into that?

15 A. Well, from a character standpoint, I've
16 seen him interact with lots of different people in
17 and around the community, and have always noticed
18 him being very, you know, cordial, friendly. And
19 as I say, from my perspective, trustworthy.

20 And, you know, I know the context of
21 the -- of why I'm here and what we're talking about
22 and so forth, and I just -- you know, somebody
23 that -- accused of these type things, you seem to
24 live their lives in the shadows (sic), kind of, and

1 not so available and ready to volunteer for
2 different tasks and so forth. And it's been my
3 experience with Cecil that, you know, any time you
4 contact him, he's always ready, able to go, do the
5 things that you would ask him to do or if he would
6 be organized and involved with.

7 And so, you know, those are the type of
8 things that it's been my experience with him and
9 he's been very, you know, available, forthright,
10 honest, trustworthy. In fact, I've even -- you
11 know, he's been around my mother, who I, you know,
12 protect like anything. And so, from that
13 perspective, it's been -- I've had a good
14 experience with him from a character standpoint.

15 MR. COSENZA: Thank you, Mr. Carmichael. I
16 don't have any further questions.

17 MR. SKEEN: Yes, your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. SKEEN:**

20 Q. Mr. Carmichael, do you know Timothy Rogers
21 or Matthew Rogers?

22 A. I do not. I mean, if I do --

23 THE COURT: Hold on a second. Excuse me a
24 second here.

1 Do you object to this examination? Do you
2 believe it is in violation of the plea agreement?

3 MR. COSENZA: The State agreed to remain
4 silent, your Honor.

5 THE COURT: Well, that -- you didn't answer my
6 question.

7 MR. COSENZA: Well, I -- I guess, yes, I do.

8 THE COURT: Okay.

9 MR. SKEEN: It was just with respect to
10 recommendation, your Honor. I didn't know that we
11 weren't -- that this would be a violation. So I
12 can withdraw the question if --

13 THE COURT: Well, the plea agreement doesn't
14 really say whether you reserve the right to
15 cross-examine witnesses and present relevant
16 evidence to the Court. It could say that.

17 MR. SKEEN: Yes, your Honor.

18 THE COURT: I have seen that in other plea
19 agreements.

20 MR. SKEEN: It will from now on.

21 THE COURT: But it doesn't say it here, so on
22 objection, I'm going to sustain the objection.

23 MR. SKEEN: Yes, your Honor.

24 THE COURT: It is an honor to have you,

1 Mr. Carmichael. Of course, I know that before you
2 were a state senator, you served at least ten years
3 in the house of delegates.

4 THE WITNESS: Twelve.

5 THE COURT: Twelve years?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. I knew it was at least ten.
8 You ran it the year I did in 2000.

9 THE WITNESS: Yes.

10 THE COURT: Okay. Well, is it fair to say
11 that what you have testified to here is the extent
12 of your knowledge and understanding about the
13 issues?

14 THE WITNESS: It is. Yes.

15 THE COURT: Okay. So you don't know anything
16 specifically about the case here that is before the
17 court?

18 THE WITNESS: No.

19 THE COURT: Okay. Thank you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: You are excused.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness, please.

24 MR. COSENZA: No other witnesses, your Honor.

1 THE COURT: Okay. Do you have a statement you
2 want to make, Mr. Cosenza, on behalf of your
3 client?

4 MR. COSENZA: I do.

5 Your Honor, I have struggled with what I was
6 going say to the Court today. You've known me a
7 long time, and you know that I'm usually not at a
8 loss for words. But I've been really contemplating
9 this day for a long time, for weeks, and thinking
10 about what I was going to say on behalf of my
11 client because, you know, I've been in this court
12 and other courts around the state where men have
13 been convicted of crimes, violent crimes, drug
14 crimes, you know, horrible, horrible crimes and
15 have gotten alternate sentences.

16 THE COURT: Wait a minute. In this court?

17 MR. COSENZA: Yeah, in this court as well.
18 And when it comes to charges like this, where you,
19 you know, you've got that third rail almost, this
20 -- you know, these sex charges, and it just adds an
21 extra dimension to it. And I've been trying to
22 think about what I was going to say to you today to
23 convince you not to send my client to prison
24 because I don't really believe he -- that is where

1 he belongs.

2 We're supposed to be detached, and supposed to
3 be, you know, unemotional. Me, as his lawyer,
4 objective, and you as the judge, and you're
5 supposed to try to put your -- you know, look at
6 this case as objectively as you can and not be
7 swayed by passion or sympathy. One of the reasons
8 Cecil took an *Alford* plea here was not to have a
9 jury make a decision about his case because the
10 charges that he might have been convicted of were
11 much more serious than the charges that he entered
12 his *Alford* plea to.

13 And I know from experience, and I think the
14 Court does too, that juries really have a difficult
15 time with these kind of cases, more difficult time
16 with these cases than many other type of cases.
17 And he just simply did not want to take that risk.

18 You look at this presentence report, and if
19 you were looking at this presentence report for a
20 person who was charged said with drugs, with theft,
21 or even malicious assault perhaps, this presentence
22 report would present somebody to you that really
23 deserves a serious look at an alternative
24 sentence. No prior criminal record, served his

1 country with honor, been a good citizen in this
2 community.

3 Look at the people around him in this
4 courtroom. There are so many people here in
5 support of him, I'm not sure I can be more eloquent
6 than the people who you, I'm sure, recognize their
7 names on the letters that have been written on his
8 behalf.

9 He's already spent time in jail. He spent
10 time on home confinement. We couldn't ask for
11 probation in this case, because without his
12 admission that he actually committed these acts,
13 which he has not done, we couldn't -- you know, we
14 can't present the type of report and treatment plan
15 to you that is required by the statute. So we're
16 left with prison or home confinement, and I think
17 that if the Court looks at this -- looks at this in
18 the most objective way, that home confinement is
19 clearly the way to go here.

20 He is looking at 3 one-to-five's. If you
21 wanted, you could back those up and put him on home
22 confinement for three years, which would be
23 significant punishment. He knew when he entered
24 his Alford plea, he knew that he would have to

1 register as a sex offender for the rest of his
2 life, and therefore, would be prohibited from
3 having contact with minors. And he knew that when
4 he entered into his *Alford* plea, again, and that,
5 again, is another punishment, you know, having --
6 you know, having to register as a sex offender is a
7 very serious thing.

8 Cecil is elderly. He is alone in this world
9 but for his friends. And all I can tell you is my
10 contact with him, my experience with him, has been
11 nothing -- nothing but positive. I think I know
12 people's character pretty well, I've been doing
13 this for 37 years, I've interviewed thousands of
14 witnesses, I've represented thousands of clients,
15 hundreds of cases like this. Cecil, was afraid to
16 go to trial and that prompted his plea here, but he
17 has always maintained that he was innocent. He has
18 always maintained that and maintained it up even to
19 the point where he entered his plea.

20 So I'm going to ask the Court to look at this
21 in the most objective way -- I know how you feel
22 about these cases, I've been in front of you enough
23 to know -- but ask you to look at this in the most
24 objective way, look at the support that he has in

1 this community, look at the letters that have been
2 written on his behalf telling you what kind of
3 person Cecil Hinzman is. I think the Court could
4 be satisfied with an alternative sentence of home
5 confinement.

6 I think the Court could easily justify that to
7 the public, which again, you know, part of your
8 sentencing is not just about him but it's about the
9 community. It is about the public. But you've got
10 a good representation of the community right here
11 today in these letters, people who are here,
12 testimony of a state senator, all of these people
13 here, your community, telling you that you should
14 not send Cecil to prison.

15 And so I'm asking you on his behalf, and on
16 behalf of all of those people who I've talked to
17 and all of those people who care about Cecil
18 Hinzman to please give him an alternative sentence
19 and place him on home confinement.

20 THE COURT: Thank you. Mr. Hinzman, do you
21 have a statement that you wish to make to the
22 Court?

23 THE DEFENDANT: Your Honor, I would.

24 THE COURT: You're not required to, but if

1 you --

2 THE DEFENDANT: I know, but -- but it's like
3 this: I've maintained from day one when I come in
4 here I've not done anything to anybody. All I've
5 ever done is try to help people. And every time I
6 help somebody, it comes back to bite me. As we
7 stand and you sit in your seat up there, if I go
8 down the road and see a car on fire, I won't stop.
9 I have before, and I've extricated people from
10 those cars. If I see a house on fire, I'm not
11 going to stop and try to help, I'm just going to
12 pull over to the side of the road and call 911,
13 because I have learned a lesson that I won't be
14 readily to forget. You can't be good to people,
15 because it comes back to bite you.

16 The old saying is, "No good deed goes
17 unpunished." I've not done anything to anybody.
18 God is my witness. I've not done anything to
19 anybody. I feel sorry for people. I've tried to
20 help people. And those children that says that I
21 did this to them, I have forgiven them and their
22 family. It is in God's hands, not mine.

23 But I'm here to tell you, as sure as you're
24 the judge of this court and I'm standing here, I am

1 as innocent as anybody in this courtroom. There is
2 people setting back there that have knowed me for
3 40 years. There is people in this building that I
4 have worked for in campaigns that have asked me to
5 do things that I have done. There are people
6 sitting in here that I've worked for in campaigns,
7 you included, that got elected.

8 I have not done anything. If I give a man my
9 word, I keep it.

10 THE COURT: I don't remember you working for
11 me in any campaign, Mr. Hinzman.

12 THE DEFENDANT: When you run for judge.

13 THE COURT: Well, yeah, you worked for Mitch
14 Carmichael. No, not Mitch -- Mitch, what is the
15 other Mitch?

16 AUDIENCE MEMBER: Morrison.

17 THE COURT: Morrison.

18 THE DEFENDANT: He wasn't running for sheriff
19 -- for -- he was running for sheriff.

20 THE COURT: I know he was and that is who you
21 were working for. So go ahead. Do you have
22 anything else you want me to consider?

23 THE DEFENDANT: But I would consider it that
24 if you put me on home confinement -- which I hope

1 you do -- and that I would like to have contact
2 with my legal grandson Phillip, Phillip Williams.
3 Judge Nibert give -- give him to me and Bruce way
4 back yonder, and I sit there in that booth and said
5 I would always support Phillip. I support Dillon,
6 and I would like to help support Phillip.

7 I don't have anybody to look after that place
8 over there. It got broke into. I lost \$30,000
9 worth of guns. I've not found none of those guns.
10 They broke the door down. It took \$1,000 to fix
11 the door back and took it -- and fix the gun
12 cabinets were not jimmied, they were unlocked.
13 Unlocked. The insurance company that I've had
14 insurance with 50 years canceled my homeowners on
15 account of that break-in. They also wrote me a
16 letter and said, while I was incarcerated at South
17 Regional, that we're going to cancel your vehicle
18 insurance because your vehicle is not garaged at
19 217 O'Neil Drive, Sandyville. How could I put it
20 at 217 O'Neil Drive when I weren't there?

21 Now, I thank you, your Honor, for your time
22 and the Court's time, but that is all I have to
23 say.

24 THE COURT: Thank you, Mr. Hinzman.

1 Is there a representative here from any victim
2 in this case that wishes to be heard?

3 MR. SKEEN: There is, your Honor.

4 THE COURT: Would you have that person come
5 forward, please.

6 MR. SKEEN: Yes, your Honor. This is
7 David Rogers. This is the father of Matthew and
8 Timothy Rogers.

9 THE COURT: Would stand in front of the clerk
10 here? You don't have to take the witness stand.
11 Just sort of turn your body, like that, so
12 everybody -- right -- everybody can hear what
13 you're saying.

14 What do you want the Court to know, Mister --
15 it's David Rogers?

16 THE WITNESS: Yeah.

17 THE COURT: David, what do you want the Court
18 to know about how this case has affected or
19 impacted your son?

20 THE WITNESS: Okay. He just don't trust guys
21 very much any more. He just -- I don't know, he
22 just -- oh, he hang out with me all the time, but
23 he don't like going anywhere and stuff. And it
24 just you could tell the difference when you go to

1 stores and people looking at him and stuff.

2 THE COURT: How old is your son now?

3 THE WITNESS: Matthew is -- will be 18 in
4 October, but Timothy will be 12 in August.

5 Mostly, it bothered Timmy, the youngest one.
6 Matthew's talking about it. He's doing better.
7 But Timmy just keep everything bottled up and
8 stuff.

9 THE COURT: All right. Do you have anything
10 else?

11 THE WITNESS: Yeah, I would like for him to go
12 to jail for a long time, because as a parent and
13 stuff, you let them watch your kids, you trust them
14 and stuff, and when something happened to them
15 kids, you don't trust nobody and stuff. That makes
16 the parent feel real bad if something happened to
17 their kids.

18 So I don't think he should be able to be on
19 home confinement or anything. I think he need to
20 go to jail. That would be the best place for him,
21 and that way nobody else is going to get hurt.

22 And that is all I got to say.

23 THE COURT: Thank you very much.

24 THE WITNESS: Thank you.

1 THE COURT: You can go ahead and take your
2 seat.

3 The State's agreed to remain silent, so I
4 think we're ready to go here, right?

5 MR. SKEEN: Yes, your Honor.

6 MR. COSENZA: Yes, sir.

7 THE COURT: Okay.

8 Now, it is the duty of the judge to look at
9 all the circumstances in a case and come up with a
10 sentence that is fair and just in consideration of
11 all issues and circumstances in the particular
12 case. And a lot of people think that's all judges
13 do is sentence people, but there is a whole lot
14 more. I want to share with you, the judge has to
15 look at all sides, not just the defendant's side,
16 not just the character and history of the
17 defendant, you've got to look at all sides. You've
18 got to look at the victims -- from the victims'
19 side of it.

20 When I got elected judge, I started in January
21 2001 and the desk back here was piled sky high with
22 child abuse and neglect cases, and some of them
23 were huge. And in those days, the emphasis on
24 turning those cases around and getting those kids

1 adopted wasn't like it is today. Some of these
2 cases lingered. I think some of Judge McCarty's
3 cases, child abuse cases, were from 1993.

4 Well, I was in charge of those cases, so I had
5 read every one of them, cover to cover, and I did.
6 And those kids that remained in foster care, you
7 know, a case that is started in 1993, in 2001 they
8 were still in foster care. And those kids stayed
9 in foster care until they turned 18, and that just
10 doesn't happen any more. And you know, God bless
11 the Supreme Court and the legislature that's pushed
12 the system so that we expedite those cases faster.

13 But my point is this: A lot of Judge
14 McCarty's old cases were young girls that had been
15 sexually assaulted when they were young kids. And
16 I started to see a pattern when I was reading these
17 case files, and the pattern was promiscuity,
18 beginning at an early age, drug use, and basic
19 dysfunction. Some of the young girls, they cut
20 themselves, I don't know what that means, I know it
21 is some psychological issues. These were kids that
22 weren't really available for adoption because their
23 behavior was so dysfunctional that they just
24 didn't -- they just weren't adopted, so they stayed

1 in the system and I never forgot that.

2 And as far as I'm concerned, what we have to
3 look at in these cases, is the damage done to
4 children, not physical damage -- although there is
5 in some cases physical damage -- but emotional,
6 life-long, permanent psychological damage done to
7 child sexual abuse victims. So it is for that
8 reason I considered these cases to be extremely
9 serious, and I think most people in the public look
10 at them as very serious cases.

11 Children believe that the person molesting
12 them loves them and that this is some expression of
13 love, when it is really taking advantage of a child
14 and violating the duty to protect and to provide
15 safety for a child and to nurture and to really
16 love a child. Child sexual assault is a selfish
17 crime. It is pure selfishness, that is all it
18 really is. And, you know, we've got to look at
19 that in every case.

20 In this case, the defendant was charged with
21 multiple victims, several counts of child sexual
22 assault -- actually, 21 counts. If convicted of
23 all of these charges, the possible sentence that
24 the defendant would have received would just -- it

1 would be more than 100 years in jail. I mean, it
2 just -- these are very serious crimes.

3 The legislature in this state has enacted
4 these statutes and placed these penalties on people
5 who commit these crimes. The legislature
6 understands the damage done to children by these
7 crimes and that is reflected in the penalties that
8 go with the statutes that make this conduct
9 criminal.

10 This case, I fully expected this case to be
11 tried. I was looking for a trial. I was shocked
12 when the lawyers brought a plea bargain into
13 court. The defendant stood before this court and
14 pleaded guilty to three counts of sexual assault in
15 the third degree, which means -- if accepted by the
16 Court -- 18 felony charges are dismissed. Eighteen
17 felony charges.

18 The defendant stands before the Court and
19 says, "Judge, I'm pleading guilty but I'm really
20 not guilty," and I hear it today, and the
21 probation officer heard it in the interview of the
22 defendant during the presentence investigation
23 process. I told Cecil Hinzman, "Look, this is what
24 we have juries for, to determine whether people are

1 guilty or not guilty. You plead guilty in front of
2 me to sexual assault in the third degree, you are
3 going to be sentenced as a person guilty of sexual
4 assault in the third degree with these minors as
5 victims."

6 So everybody understands that, you know, you
7 just can't run the system and sentence people who
8 plead guilty on the basis that they're not guilty.
9 I mean, I'm just not going to do that. If the man
10 is not guilty, that is what we have juries for.
11 And Mr. Cosenza is right, juries do struggle with
12 this kind of case, and the reason is, is because it
13 is always committed in secret where there are no
14 witnesses. The victims are children. In this
15 case, I think maybe developmentally delayed
16 children, or at least one. Children who have
17 speech impediments. Children that aren't going to
18 be believed. This is the reason juries have
19 trouble with the cases is because you usually have
20 the uncorroborated testimony of a child versus an
21 adult who denies the charge, and they are very
22 difficult.

23 Where there are multiple victims and both
24 victims testify, then the State's case I think

1 maybe gets a little stronger, but all in all,
2 juries know the draconian penalties for these
3 crimes, they know that their job is very serious.
4 I've sat in jury trials, Mr. Cosenza was in one of
5 them, and I walked off the bench when the jury got
6 the case and went back to deliberate, and I said to
7 myself -- I didn't say it to anybody else -- I said
8 to myself, "I'm very glad I was not on that jury or
9 I'm very glad, you know, they didn't waive jury
10 trial and make me try the case." They are very
11 difficult cases for juries.

12 When we get to this point, though, the man's
13 pleaded guilty to three counts sexual assault in
14 the third degree, and I'm going to do what I'm
15 required to do, and that is, as a public official,
16 elected to do this job, my job is to do it as
17 fairly and honestly plea as I can, and to impose a
18 sentence that is fair. Fair to everyone. Not just
19 to Cecil Hinzman, fair to everyone. And also
20 impose a sentence that is consistent with the
21 public interest in the fair administration of
22 justice.

23 Cecil Hinzman is an intelligent individual.
24 It's been represented to me he's got a college

1 degree. He is a Vietnam veteran. I think he's got
2 a Vietnam good service medal, I assume he's a
3 Vietnam veteran. But that really doesn't -- that
4 doesn't really go to the key issue in the case
5 because people who have a sexual interest in
6 children can be intelligent, they can have all
7 aspects of their life be exemplary, and yet have an
8 issue with children. And I think this is just such
9 a case, I really do, there is just too much here.

10 More importantly, the man has pleaded guilty
11 to sexual crimes against children. He is not gone
12 before a jury. He's not testified in front of a
13 jury. He's not called character evidence in front
14 of a jury. He's waived that. He has a right to do
15 all of those things, but the case gets resolved
16 with a settlement that's very beneficial to the
17 defendant. He is no longer exposed to all of these
18 other charges that carry greater, much greater
19 penalties than the charges to which he's pleaded
20 guilty here. All right? Everybody clear about
21 that? Okay.

22 The defendant takes no responsibility for
23 anything. If you looked at the circumstances of
24 this specific case, you will see that Mr. Hinzman

1 ingratiated himself to the family of the victims.
2 He did things for them. He helped them. What he
3 really did, in my opinion, is gain their trust and
4 as Mr. Rogers pointed out, this happened and he
5 says that a parent who -- I don't want misstate
6 what he said, but I got the impression that he was
7 very upset that he had permitted this to happen,
8 permitted Cecil Hinzman to have access to his
9 children.

10 The Court carefully considered all of these
11 letters and -- you know, of course, now, I've been
12 around the community for years in politics and all
13 of that. I know Cecil's been very active in
14 politics. I know that Cecil's done good things in
15 his life, positive things in his life. In my
16 opinion, though, it doesn't outweigh the
17 seriousness of the crimes that he stands before the
18 Court to be sentenced on this morning. It may
19 justify the plea bargain, which the Court has
20 overall supervisory control over -- although, I
21 think it is illusory because the judge is not the
22 prosecuting attorney, the judge can't call
23 witnesses.

24 I'm going to approve the plea agreement and

1 unconditionally adjudge the defendant guilty of
2 three counts of sexual assault in the third
3 degree. Given the seriousness of the crime, the
4 impact of sexual abuse on victims, the motion for
5 home incarceration is denied. It is the judgment
6 of the Court that the defendant on each count of
7 sexual assault in the third degree be sentenced to
8 the custody of the Commissioner of the Division of
9 Corrections for the indeterminate period of not
10 less than one nor more than five years, that each
11 sentence is to be -- each sentence be served
12 consecutively to the other sentences.

13 The defendant is to receive credit for actual
14 custody from the date of his arrest up until
15 today. The Court excludes home confinement from
16 part of the credit for time served, primarily
17 because he violated it. The Court orders extended
18 supervision for 20 years upon the terms and
19 conditions that -- I believe they've been
20 standardized.

21 I do not find that there is no real basis for
22 finding the defendant to be a predator as defined,
23 I have no request to do that from the State, so
24 there is a set of conditions that he will be

1 subject to when he is paroled or discharges his
2 sentence at the penitentiary.

3 Court orders a fine on each count of \$1,000,
4 orders that he pay court costs. Further orders as
5 required that the defendant register as a sex
6 offender.

7 Have you been over this long form with your
8 client?

9 MR. COSENZA: No.

10 THE COURT: Well, he is required to register
11 after he is released from actual incarceration,
12 three business days, that is all he's got and then
13 he has to register. Registration is in the county
14 of his residence, which I assume would be Jackson
15 County. The registration place is the state police
16 detachment in the county of his residence. Because
17 the victims are minors, the registration is for
18 life according to the statute dealing with
19 registration by sex offenders.

20 Mr. Cosenza, this is the new form is -- it
21 would probably take me 30 minutes to read it here.
22 Your client is very intelligent. I would like for
23 you and your client to go over this and sign it,
24 acknowledging that he's received the information

1 that is in this notice, and then if there are
2 additional questions, to -- we'll just bring it on
3 and I'll answer any questions he might have about
4 what is in this form.

5 But he's required to register for life, and
6 the registration's in the county of his residence,
7 if he moves, you know, you've got to give advance
8 notice to the state police. You've got to give
9 notice in the county to which you do move.

10 So would the Clerk give this notice to the
11 defendant's lawyer and just ask that it come back
12 on here today, and I'll answer any questions that
13 the defendant may have about what is contained in
14 that notice.

15 Is there anything else I'm required to rule on
16 today?

17 MR. SKEEN: That's all I can think of, your
18 Honor.

19 MR. COSENZA: No, your Honor.

20 THE COURT: Hearing is concluded. The
21 defendant is remanded.

22 (WHEREUPON the hearing was concluded.)
23
24

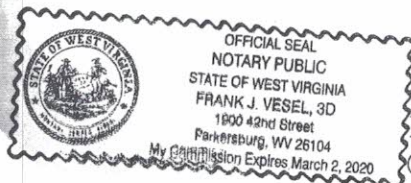
1
2 STATE OF WEST VIRGINIA, To-wit:
3

4 I, Frank J. Vesel 3d, a Notary Public
5 within and for the State aforesaid, duly
6 commissioned and qualified, do hereby certify that
7 the foregoing proceedings were duly taken by me and
8 before me at the time and place specified in the
9 caption hereof.

10 I do further certify that said proceedings
11 were correctly taken by me in stenotype notes, that
12 the same were accurately transcribed in full using
13 computer-aided transcription.

14 My commission expires the 2nd day of
15 March, 2020.

16 Given under my hand and seal this 21st day
17 of August, 2013.
18



FRANK J. VESEL 3D
OFFICIAL COURT REPORTER