

FILED

December 11, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 13, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, Justice, concurring:

This defendant's addiction to Oxycontin pain medication has embroiled her in petty thefts and forgeries. (She is also borderline retarded.) How to protect others from her behavior (primarily her family, it seems, have been her "victims") is at this stage in the hands of the courts.

To seek to accomplish that protection by imposing a *minimum* of six years and a maximum of 60 years of costly prison incarceration is overkill. Her prison sentence could be suspended, and she could be given some jail time, plus required treatment and counseling. It's possible, even likely, that she will again "mess up," but on a probated sentence the court would have the flexibility to put her back in jail for periods of time – off and on – for years, if necessary. This would be more fair to her and certainly more cost-effective to the public fisc, rather than just giving her more prison time than one would get for manslaughter.

Moreover, this more flexible approach was the recommendation of all of the counselors and probation officers in her case. Accordingly, I concur in the judgment, but urge the lower court to follow this Court's suggestion in footnote 3 of the majority opinion.

I am authorized to state that Justice Albright joins in this separate opinion.