

**FILED**

**December 4, 2003**

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

Davis, J., dissenting:

The majority has concluded that Judge Hatcher acted improperly when he sanctioned the petitioner without providing an opportunity to be heard and by assessing jury costs against the petitioner. I respectfully dissent from the majority opinion. We have recognized that “[t]rial courts have the inherent power to manage their judicial affairs that arise during proceedings in their courts, which includes the right to manage their trial docket[.]” Syl. pt. 2, *B.F. Specialty Co. v. Charles M. Sledd Co.*, 197 W. Va. 463, 475 S.E.2d 555 (1996), and that “[w]e review any trial court’s decision in its management of a trial for an abuse of discretion.” *State v. Snider*, 196 W. Va. 513, 516 n.9, 474 S.E.2d 180, 183 n.9 (1996) (per curiam). Here, Mr. Rees never articulated to Judge Hatcher what information a hearing would produce that could show Judge Hatcher’s sanction to be wrong. Thus, I cannot conclude that Judge Hatcher’s rulings in this case rise even to the level of a simple abuse of discretion, much less the higher threshold required to issue a writ of prohibition. *See, e.g.*, Syl. pt. 2, *State ex rel. Peacher v. Sencindiver*, 160 W. Va. 314, 233 S.E.2d 425 (1977) (“A writ of prohibition will not issue to prevent a simple abuse of discretion by a trial court. It will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers. *W. Va. Code*, 53-1-1.”). For these reasons, I respectfully dissent.