

In the Circuit Court of Berkeley County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-02-2021-F-235
Judge Bridget Cohee

Kyle John Schober,
Defendant

Order Denying Defendant's Renewed Motion to Modify Probation Conditions

This matter came before the Court on the 10th day of November, 2022, for a hearing on the Defendant's Renewed Motion to Amend Probation Conditions. The State of West Virginia appeared by Assistant Prosecuting Attorney, Garrett Robertson. The Defendant, Kyle Schober, appeared in person and by counsel, Jonathan O'Dell, Esq.

Whereupon the Court noted that by order entered on June 10, 2022, the Court denied the Defendant's previous motion to modify the Defendant's probation conditions, in which the Defendant sought leave from the Court to use medical cannabis during his probationary period. In the same order, the Court indicated it would allow the Defendant to revisit the issue if the Defendant addressed the Courts findings regarding the relevant factors as spread upon the record and incorporated into its previous order.

Counsel for the Defendant advised that the Defendant had filed under seal additional exhibits, which had been tendered to the State prior to the hearing, and then proceeded to call as a witness the Defendant's therapist, Emma Snyder, M.A. Ms. Snyder testified that she had previously interned at Potomac Highlands Guild, Inc. and recently obtained a master's degree from Liberty University and that she was employed as a therapist, specifically a substance abuse counselor, at Potomac

Highlands Guild, Inc. Ms. Snyder further testified that she had been working with the Defendant as his therapist since July of 2022 to treat his Post-Traumatic Stress Disorder ("PTSD"), and that she initially met with him once a month and that the Defendant had been participating in therapy regularly, and had recently begun seeing her twice a week. Ms. Snyder testified that she believed the Defendant had been making some progress in his treatment. Additionally, Ms. Snyder testified that apart from PTSD, the Defendant had been diagnosed with cannabis abuse and cocaine abuse.

On cross-examination, Ms. Snyder testified that she was unaware that apart from the Defendant's conviction of possession with the intent to deliver cocaine in this case, that the Defendant had also been charged with possession with the intent to deliver marijuana in the same matter, a charge that was dismissed pursuant to the Defendant's plea. Ms. Snyder acknowledged her concern with the Defendant having been charged with a felony offense involving marijuana, and additionally expressed some concern of the Defendant using medical cannabis for purposes of treatment, given one of his diagnoses was cannabis abuse. Ms. Snyder testified that she believed the Defendant's progress he had made in his treatment could potentially be adversely affected by his use of medical cannabis, which she advised she would address should she deem it to negatively affect his treatment. Following cross-examination, the Court inquired of Ms. Snyder as to her educational background and questioned her as to whether she had gone through any licensure proceeding to be a therapist and substance abuse counselor. Ms. Snyder testified that while she had obtained a master's degree, she had yet to complete licensing of any sort, but was in the process of obtaining the status of a licensed substance abuse therapist.

The Defendant next testified, and stated his belief that medical marijuana would help in his treatment of PTSD. Following the testimony of Ms. Snyder and the

Defendant, the Court then heard argument from counsel. Counsel for the Defendant incorporated his previous arguments and exhibits submitted at the May 13, 2022 hearing and made further argument for the modification of the Defendant's probation conditions to allow for his use of medical cannabis. The State argued that the Defendant's own therapist expressed concern over his use of medical cannabis, especially given that one of the Defendant's diagnoses is for cannabis abuse, and further argued against the Defendant's probation conditions being modified to allow the use of medical cannabis when one of his original charges was felony possession with the intent to deliver marijuana.

After counsel made argument, the Court next made findings as to the twelve (12) factors that the Court previously directed the Defendant to address in its May 6, 2022 order. Specifically, those factors consist of:

- Nature of the instant offense
- The Defendant's past record
- The Defendant's past substance use disorder issues, to include treatment
- The ailment that the Defendant seeks to treat with medical marijuana
- The frequency of the contact with the physician treating the condition
- Other potential mental health factors including mental health issues
- The availability and advisability of other medications
- The impact on rehabilitation, community safety and sentencing goals
- The impact on deterring future criminality
- The facts and circumstances a court normally considers for modification of probation terms
- The validity of a medical marijuana card, and its verification for authenticity; and
- The History of lawfully using Medical Marijuana – verified with authentic medical

records.

The Court's findings concerning each of the twelve (12) factors were placed upon the record. Based upon the evidence adduced by the testimony of Ms. Snyder and the Defendant, the arguments or counsel, and the Court's weighing of the above factors, the Court then did **ORDER** that the Defendant's renewed motion to modify probation conditions be **DENIED**. The Court noted the Defendant's objections and exceptions.

The Clerk shall enter this order and send copies to counsel of record and the Berkeley County Probation Department.

/s/ Bridget Cohee
Circuit Court Judge
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courts.wv.gov/e-file/ for more details.

Case Docket Entries

CC-02-2021-F-235

Court: Circuit County: 02 - Berkeley Created Date: 10/15/2021 Security Level: Public
 Judge: Bridget Cohee Case Type: Felony Case Sub-Type: ----- Status: Open
 Related Cases: 21-M02F-00754, CC-02-2021-B-348
 Style: State of West Virginia v. Kyle John Schober

	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
1	9/17/2021 4:45:35 PM 1-1 9/17/2021	E-Docketed Magistrate Paperwork - 21-M02F-00754		Criminal - Boundover
2	9/17/2021 4:45:35 PM	Judge Assigned	J-02006	Michael Lorenson
3	9/17/2021 4:45:35 PM	Party Added	P-001	State of West Virginia
4	9/17/2021 4:45:35 PM	Party Added	D-001	Kyle John Schober
5	9/17/2021 4:45:35 PM	Criminal Charge Listed	D-001	Filing Charge, 2 counts - 60A-04-401(a)(i) - Prohibited acts A; penalties. Manufacture (Schedule I and II Narcotic)
6	9/17/2021 4:45:35 PM	Criminal Charge Listed	D-001	Filing Charge, 2 counts - 60A-04-409(b)(1) - Prohibited acts -- Transportation of controlled substances (Schedule I, II Narcotic)
7	9/17/2021 4:45:35 PM	Magistrate Court Case Listed		21-M02F-00754
8	9/17/2021 4:46:04 PM	Judge Assigned	J-33001	Laura Faircloth
9	9/17/2021 4:46:09 PM 9-1 9/17/2021	E-Filed Transmittal		Notice of Judge Reassignment
10	9/17/2021 4:46:23 PM	Attorney Listed	P-001	G-2123 - Lisa B Farmer
11	9/17/2021 4:46:32 PM	Attorney Listed	P-001	G-140 - Catie Wilkes Delligatti
12	9/17/2021 4:46:50 PM	Attorney Listed	D-001	A-12498 - Jonathan Thomas O'Dell
13	9/17/2021 4:47:07 PM	Bond Added	D-001	Description: Property/Surety Bond, Bond Type: Surety, Bond Status: Set, Amount: \$30,000.00
14	10/5/2021 11:25:56 AM 14-1 10/5/2021 14-2 10/5/2021	E-Filed Notice of Appearance - Notice of Appearance Transmittal		Notice of Appearance - Notice of Appearance
15	10/6/2021 9:59:58 AM	Bond Posted	D-001	Description: Property/Surety Bond
16	10/6/2021 10:00:26 AM	Bond Fee Paid	D-001	Description: Property/Surety Bond
17	10/6/2021 10:05:21 AM 17-1 10/6/2021	Scanned Document Supporting Document - Fax confirmation-sent to ERJ (Surety Bond for defendant to sign)		Supporting Document - Fax confirmation-sent to ERJ (Surety Bond for defendant to sign)
18	10/6/2021 11:22:07 AM 18-1 10/6/2021 18-2 10/6/2021	E-Filed Supporting Document - Notice of Address Change of Defendant Transmittal		Supporting Documents - Notice of Address Change of Defendant
19	10/6/2021 11:49:04 AM 19-1 10/6/2021	Scanned Document Bond Form - Signed Surety Bond-After Hours Bonding-\$30,000.00		Bond Form - Signed Surety Bond-After Hours Bonding-\$30,000.00
20	10/6/2021 11:49:20 AM	Document Emailed		Court user emailed eric.d.tomlinson@wv.gov document 19-1 - Bond Form - Signed Surety Bond-After Hours Bonding-\$30,000.00
21	10/6/2021 11:53:05 AM 21-1 10/6/2021	Scanned Document Supporting Document - Fax confirmation-sent to ERJ (signed and sealed surety bond)		Supporting Document - Fax confirmation-sent to ERJ (signed and sealed surety bond)
22	10/7/2021 10:24:52 AM 22-1 10/7/2021 22-2 10/7/2021	E-Filed Supporting Document - Notice of Address Change of Defendant Transmittal		Supporting Documents - Notice of Address Change of Defendant
23	10/7/2021 10:24:52 AM	Attorney Listed	D-001	A-3528 - Homer A. Speaker

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	Entered Date	Event	Ref. Code	Description
24	10/15/2021 3:00:39 PM 24-1 10/15/2021 24-2 10/15/2021	E-Docketed Information - Information of Prosecuting Attorney Transmittal		Criminal - Information (Boundover)
25	10/15/2021 3:00:39 PM	Judge Assigned	J-19002	Steven Redding
26	10/15/2021 3:00:39 PM	Party Added	P-001	State of West Virginia
27	10/15/2021 3:00:39 PM	Attorney Listed	P-001	G-2214 - Garrett Matthew Robertson
28	10/15/2021 3:00:39 PM	Criminal Charge Listed	D-001	Filing Charge, 1 count - 60A-04-401(a)(i) - Prohibited acts A; penalties. Manufacture (Schedule I and II Narcotic)
29	10/15/2021 3:00:39 PM	Magistrate Court Case Listed		21-M02F-00754
30	10/15/2021 3:01:50 PM	Judge Assigned	J-02010	Bridget Cohec
31	10/15/2021 3:01:52 PM 31-1 10/15/2021	E-Filed Transmittal		Notice of Judge Reassignment
32	10/15/2021 3:02:35 PM	Attorney Removed	P-001	G-140 - Catie Wilkes Delligatti
33	10/15/2021 4:34:35 PM 33-1 10/15/2021 33-2 10/15/2021	E-Filed Letter - SIGNED PLEA AGREEMENT Transmittal		Letter to Judge - SIGNED PLEA AGREEMENT
34	10/15/2021 4:36:22 PM 34-1 10/15/2021 34-2 10/15/2021	E-Filed Supporting Document - WAIVER OF INDICTMENT Transmittal		Supporting Documents - WAIVER OF INDICTMENT
35	10/18/2021 9:44:36 AM 35-1 10/18/2021 35-2 10/18/2021	E-Filed Notice of Appearance - Notice of Appearance Transmittal		Notice of Appearance - Notice of Appearance
36	10/18/2021 9:46:18 AM 36-1 10/18/2021 36-2 10/18/2021	E-Filed Letter - Memo to Clerk remove Homer A. Speaker from E-filings Transmittal		Letter to Clerk - Letter to Clerk Remove Homer A. Speaker from E-filings
37	10/18/2021 10:58:07 AM	Attorney Removed	D-001	A-3528 - Homer A. Speaker
38	10/18/2021 3:19:06 PM 38-1 10/18/2021 38-2 10/18/2021	E-Filed Certificate of Service - COS - NCIC, CRIMINAL COMPLAINT, POLICE REPORT, DASH CAMERA VIDEO Transmittal		Certificate of Service - COS - NCIC, CRIMINAL COMPLAINT, POLICE REPORT, DASH CAMERA VIDEO
39	10/20/2021 9:48:46 AM 39-1 10/20/2021 39-2 10/20/2021	E-Filed Order - ORDER SCHEDULING HEARING AND PRE-PLEA INVESTIGATION Transmittal		Order - Case - ORDER SCHEDULING HEARING AND PRE-PLEA INVESTIGATION cc: L. Farmer; G. Robertson; J. O'Dell
40	10/25/2021 10:24:36 AM	Attorney Listed	P-001	G-2124 - Tracy Newsome
41	12/21/2021 10:48:26 AM 41-1 12/21/2021	Scanned Document Pre-Sentence Investigation Report - PSI		Pre-Sentence Investigation Report - PSI
42	12/22/2021 3:27:42 PM 42-1 12/22/2021	Scanned Document Plea - Signed Guilty Plea		Plea - Signed Guilty Plea
43	12/23/2021 10:18:53 AM 43-1 12/23/2021 43-2 12/23/2021	E-Filed Order - CONVICTION AND SENTENCING ORDER Transmittal		Order - Case - CONVICTION AND SENTENCING ORDER cc: L. Farmer; G. Robertson; J. O'Dell; T. Newsome; BC SO
44	12/23/2021 11:27:59 AM	Assessment Date Assigned		Date: 12/23/2021
45	12/23/2021 11:30:01 AM 45-1 12/23/2021	E-Docketed Supporting Document - Statement of Cost - \$442		Supporting Documents - Statement of Cost - \$442

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<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
45-2 12/23/2021	Transmittal		
46 1/3/2022 9:05:12 AM	Attorney Removed	P-001	G-2123 - Lisa B Farmer
47 1/3/2022 9:05:14 AM	Attorney Removed	P-001	G-2124 - Tracy Newsome
48 1/3/2022 9:05:26 AM	Attorney Listed	P-001	G-2120 - Brooke Taylor Sowers (per L. Farmer)
49 4/25/2022 4:11:28 PM	E-Filed		Motion - Other
49-1 4/25/2022	Motion - MOTION TO AMEND PROBATION CONDITIONS		
49-2 4/25/2022	Transmittal		
50 5/6/2022 10:35:13 AM	E-Filed		Order - Motion - ORDER SETTING HEARING ON MOTION FOR MODIFICATION OF PROBATION TERMS cc: G. Robertson; J. O'Dell; B. Sowers
50-1 5/6/2022	Order - ORDER SETTING HEARING ON MOTION FOR MODIFICATION OF PROBATION TERMS		
50-2 5/6/2022	Transmittal		
51 5/11/2022 11:19:48 AM	E-Filed		Motion - Other
51-1 5/11/2022	Motion - MOTION TO FILE DOCUMENTS UNDER SEAL		
51-2 5/11/2022	Transmittal		
52 5/12/2022 11:01:58 AM	E-Filed		Order - Motion - ORDER FILING DOCUMENTS UNDER SEAL cc: G. Robertson; J. O'Dell; B. Sowers
52-1 5/12/2022	Order - ORDER FILING DOCUMENTS UNDER SEAL		
52-2 5/12/2022	Transmittal		
53 5/12/2022 11:39:22 AM	Scanned Document		Supporting Document - Memorandum In Support of Motion To Amend Probation Conditions
53-1 5/12/2022	Supporting Document - Memorandum In Support of Motion To Amend Probation Conditions		
54 5/13/2022 3:25:51 PM	Scanned Document		Exhibit - Defendant's Exhibit #1 (Evaluations)
54-1 5/13/2022	Exhibit - Defendant's Exhibit #1 (Evaluations)		
55 5/13/2022 3:26:28 PM	Scanned Document		Supporting Document - Verification
55-1 5/13/2022	Supporting Document - Verification		
56 6/10/2022 9:38:04 AM	E-Filed		Order - Case - Order Denying Motion to Modify Probation Conditions cc: G. Robertson; J. O'Dell; B. Sowers
56-1 6/10/2022	Order - Order Denying Motion to Modify Probation Conditions		
56-2 6/10/2022	Transmittal		
57 10/11/2022 1:54:08 PM	E-Filed		Motion - Other
57-1 10/11/2022	Motion - MOTION TO FILE DOCUMENTS UNDER SEAL		
57-2 10/11/2022	Transmittal		
58 10/13/2022 10:52:08 AM	E-Filed		Order - Motion - ORDER FILING DOCUMENTS UNDER SEAL cc: G. Robertson; J. O'Dell; B. Sowers
58-1 10/13/2022	Order - ORDER FILING DOCUMENTS UNDER SEAL		
58-2 10/13/2022	Transmittal		
59 10/13/2022 11:45:49 AM	Scanned Document		Supporting Document - Renewed Motion to Amend Probation Conditions and Exhibits
59-1 10/13/2022	Supporting Document - Renewed Motion to Amend Probation Conditions and Exhibits		
60 10/20/2022 9:09:31 AM	E-Filed		Order - Case - ORDER SETTING HEARING ON RENEWED MOTION TO AMEND PROBATION CONDITIONS cc: G. Robertson; J. O'Dell; B. Sowers
60-1 10/20/2022	Order - ORDER SETTING HEARING ON RENEWED MOTION TO AMEND PROBATION CONDITIONS		
60-2 10/20/2022	Transmittal		
61 10/27/2022 11:33:54 AM	E-Filed		Motion - Other
61-1 10/27/2022	Motion - SUPPLEMENTAL MOTION TO FILE DOCUMENT UNDER SEAL		
61-2 10/27/2022	Transmittal		
62 10/27/2022 11:39:43 AM	E-Filed		Order - Motion - ORDER FILING SUPPORTING DOCUMENT UNDER SEAL cc: G. Robertson; J. O'Dell; B. Sowers
62-1 10/27/2022	Order - ORDER FILING SUPPORTING DOCUMENT UNDER SEAL		
62-2 10/27/2022	Transmittal		

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	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
63	10/27/2022 11:41:29 AM	E-Filed		Motion - Other
	63-1 10/27/2022	Motion - MOTION TO ALLOW WITNESSES TO APPEAR BY TELEPHONE		
	63-2 10/27/2022	Transmittal		
64	10/27/2022 11:48:31 AM	E-Filed		Order - Motion - ORDER ALLOWING WITNESSES TO APPEAR BY TELEPHONE cc: G. Robertson; J. O'Dell; B. Sowers
	64-1 10/27/2022	Order - ORDER ALLOWING WITNESSES TO APPEAR BY TELEPHONE		
	64-2 10/27/2022	Transmittal		
65	10/27/2022 2:36:56 PM	Scanned Document		Supporting Document - Updated Treatment Plan
	65-1 10/27/2022	Supporting Document - Updated Treatment Plan		
66	1/6/2023 5:05:30 PM	E-Filed		Order - Case - Order Denying Defendant's Renewed Motion to Modify Probation Conditions cc: G. Robertson; J. O'Dell; B. Sowers
	66-1 1/6/2023	Order - Order Denying Defendant's Renewed Motion to Modify Probation Conditions		
	66-2 1/6/2023	Transmittal		
67	1/30/2023 8:22:35 AM	Attorney Listed	P-001	G-59 - Sean Bryner

A TRUE COPY
ATTEST

Michelle R. Schoppert
Clerk Circuit Court

By: _____

Deputy Clerk