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CC-06-2025-M-30
Cabell County Circuit Clerk
Michael J. Woelfel

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

Plaintiff,

Case No. 25-M-30

v.

JAN HITE KING,

Defendant.

DEFENDANT'S REPLY TO THE STATE OF WEST VIRGINIA'S ANSWER TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT

COMES NOW the Defendant Jan Hite King, by and through counsel Tyler C. Haslam and Haslam Law Firm LLC, and hereby replies to the State of West Virginia's "Answer" to her motion to dismiss the indictment in this matter pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the West Virginia Rules of Criminal Procedure.

I. INTRODUCTION

The State of West Virginia's reliance upon W. Va. Code § 3-9-24 as justification for continuing with this prosecution is misplaced. Because § 61-11-9 is a statute of specific application relevant to misdemeanors, and because it was last adopted twenty-four years after § 3-9-24, § 61-11-9 is the controlling provision for the prosecution of all alleged misdemeanor offenses within the State of West Virginia.

II. LAW & ARGUMENT

a. The One Year Statute of Limitation for Misdemeanors Contained Within W. Va. Code § 61-11-9 is Not Ambiguous and it Controls Prosecutions for All Alleged Misdemeanors in the State of West Virginia.

The West Virginia Supreme Court of Appeals has explicitly recognized that § 61-11-9 is specific to all alleged misdemeanors in West Virginia. "**Our legislature created a *specific statute of limitation* for misdemeanors**." *State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (2000) (emphasis added).

The language of W. Va. Code § 61-11-9 could not be any less ambiguous. "A prosecution for a misdemeanor shall be commenced within one year after the offense was committed." W. Va. Code § 61-11-9.

"Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation." Syl. Pt. 4, *State v. Legg*, 243 W. Va. 372, 374, 844 S.E.2d 143, 145 (2020) (quoting Syl. Pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970)). "It is a well known rule of statutory construction that the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning." *State ex rel. Johnson v. Robinson*, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979); *accord State ex rel. Morgantown Operating Co., LLC v. Gaujot*, 245 W. Va. 415, 427-28, 859 S.E.2d 358, 370-71 (2021).

The clear intent of the Legislature in enacting W. Va. Code § 61-11-9 was to standardize the limitation period for misdemeanors by providing a uniform rule for misdemeanor prosecutions in West Virginia.

In comparison, § 3-9-24 does not distinguish between alleged misdemeanor and felony offenses. In fact, § 3-9-24 sets forth a five-year limitation for all alleged crimes under Chapter 3, and its earlier enactment in 1978 predates the Legislature's move towards specific uniformity for misdemeanor prosecutions in 2002. The Legislature's

decision to establish a specific one-year rule for all misdemeanors in § 61-11-9 demonstrates a clear intent to abrogate older, non-uniform statute of limitation provisions like § 3-9-24.

Further, § 61-11-9, as well as 2002 H.B. 4044, is devoid of any evidence of legislative intent to preserve the possible applicability of § 3-9-24 to misdemeanors. *See* H.B. 4044, 2002 Leg. 77th Sess. (W. Va. 2002) (effective Mar. 9, 2002).

When the Legislature enacted § 61-11-9 in 2002, it must be presumed that the Legislature was also aware of then-existing statutes of limitation throughout the West Virginia Code like § 3-9-24. "'The Legislature, when it enacts legislation, is presumed to know its prior enactments.'" Syl. Pt. 1, *Stamper by Stamper v. Kanawha Cty. Bd. of Educ.*, 191 W. Va. 297, 298, 445 S.E.2d 238, 239 (1994) (citing and quoting Syl. Pt. 12, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953); Syl. Pt. 5, *Pullano v. City of Bluefield*, 176 W. Va. 198, 342 S.E.2d 164 (1986)).

Yet, when § 61-11-9 was last enacted in 2002, the Legislature did not take any steps to preserve the applicability of § 3-9-24 to misdemeanors (even assuming, *arguendo*, that the original intent was for § 3-9-24 to apply equally to felonies and misdemeanors). The lack of preservation for § 3-9-24's possible applicability to misdemeanors is consistent with the intent to harmonize misdemeanor statutes of limitation under the 2002 law.

If the intent of § 3-9-24 was for that statute to apply equally to both felonies and misdemeanors, had the Legislature wished to retain a five-year period for

misdemeanors under Chapter 3 of the Code, the Legislature could have either a) explicitly exempted Chapter 3 offenses from the application of the one-year statute of limitation in § 61-11-9 in 2002 or b) amended and reenacted § 3-9-24 in 2002 (or at any point in the last 23 years) to reaffirm its applicability to Chapter 3 misdemeanors. By not doing either of those things, and by not taking any other steps to maintain the possible application of § 3-9-24 to misdemeanors, the plain language of § 61-11-9 must be given effect here.

In fact, when § 61-11-9 was amended in 2002, it specifically removed language stating, ". . . except that a prosecution for petit larceny may be commenced within three years after the commission of the offense[.]" W. Va. Code § 61-11-9 (2001). The legislative intent is clear following the 2002 amendment - misdemeanor offenses are to have a uniform one-year statute of limitation in West Virginia.

The plain language of § 61-11-9 is unambiguous. The one-year statute of limitation controls and the indictment must be dismissed.

b. W. Va. Code § 61-11-9 Must Be Applied Here Because it is a Statute of Specific Application.

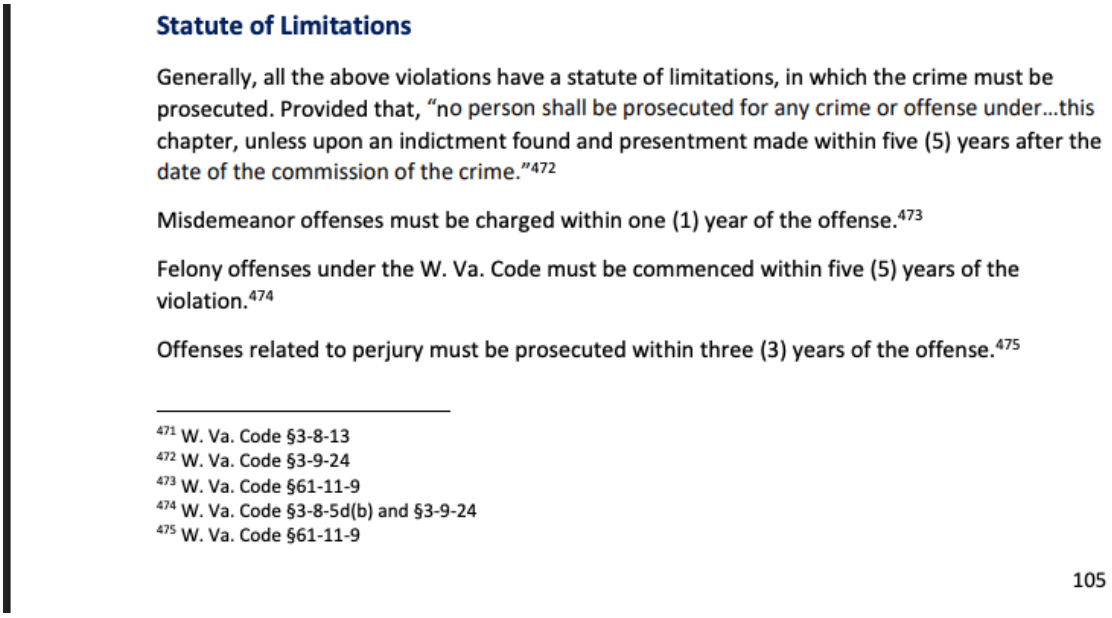
Crimes in West Virginia are either felonies or misdemeanors. W. Va. Code § 61-11-1 ("Offenses are either felonies or misdemeanors. Such offenses as are punishable by confinement in the penitentiary are felonies; all other offenses are misdemeanors."). There is no disagreement from the State in its *Answer to Defendant's Motion to Dismiss the Indictment* that it **seeks misdemeanor convictions** against Mrs. King.

"Our legislature created a **specific statute of limitation** for misdemeanors." *State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (2000) (emphasis added).

§ 61-11-9 is titled as "Limitation of prosecution; lost indictment" and sets forth, in part, "A prosecution for a misdemeanor shall be commenced within one year after the offense was committed." Numerous cases discuss § 61-11-9 and the applicable one-year statute of limitation for misdemeanor offenses. *See id.*; *see e.g. State v. Boyd*, 209 W. Va. 90 n.1, 543 S.E.2d 647 (2000).

In comparison, § 3-9-24 is titled as "Limitations on prosecutions" and sets forth that "No person shall be prosecuted for **any** crime or offense under any provision of this chapter, unless upon an indictment found and presentment made within five years after the date of the commission of the crime or offense." W. Va. Code § 3-9-24 (emphasis added). Unlike § 61-11-9, § 3-9-24 is a general statute of limitation (again assuming, *arguendo*, that it was meant to apply to alleged misdemeanor offenses under Chapter 3).

Even the Secretary of State's own *Manual for Election Officials*, last revised in January 2024, acknowledges that misdemeanors under Chapter 3 have a one-year statute of limitation, while Chapter 3 felonies have a five-year statute of limitations.



Statute of Limitations

Generally, all the above violations have a statute of limitations, in which the crime must be prosecuted. Provided that, "no person shall be prosecuted for any crime or offense under…this chapter, unless upon an indictment found and presentment made within five (5) years after the date of the commission of the crime."[472]

Misdemeanor offenses must be charged within one (1) year of the offense.[473]

Felony offenses under the W. Va. Code must be commenced within five (5) years of the violation.[474]

Offenses related to perjury must be prosecuted within three (3) years of the offense.[475]

[471] W. Va. Code §3-8-13
[472] W. Va. Code §3-9-24
[473] W. Va. Code §61-11-9
[474] W. Va. Code §3-8-5d(b) and §3-9-24
[475] W. Va. Code §61-11-9

105

See "Manual for Election Officials of West Virginia (rev. January 2024)," at p. 105, WEST VIRGINIA SECRETARY OF STATE'S OFFICE ELECTIONS DIVISION (available at https://sos.wv.gov/FormSearch/Elections/Informational/Manual%20for%20Election%20Officials.pdf) (last accessed Apr. 10, 2025). Why the Secretary of State's Investigations Unit, *vis-à-vis* the Special Prosecutor, is advancing the current argument is, at best, baffling and, at worst, extremely troubling.

The Supreme Court of Appeals has repeatedly held that specific statutes are given precedence over general statutes relating to the same subject matter and that specific statutory language takes precedence over more general statutory provisions. *See Stepp v. Cottrell*, 246 W. Va. 588, 594, 874 S.E.2d 700, 706 (2022). As the Supreme Court reiterated in *Stepp*:

> This Court, in the context of statutory interpretation, has recognized that specific statutes control over general statutes:
>
> > This Court has previously held, "The general rule of statutory construction requires that a specific statute be

> given precedence over a general statute relating to the same subject matter[.]" Syllabus Point 1, in part, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984). *Accord Tillis v. Wright*, 217 W. Va. 722, 728, 619 S.E.2d 235, 241 (2005) ("[S]pecific statutory language generally takes precedence over more general statutory provisions."); *Bowers v. Wurzburg*, 205 W. Va. 450, 462, 519 S.E.2d 148, 160 (1999) ("Typically, when two statutes govern a particular scenario, one being specific and one being general, the specific provision prevails." (Citations omitted)); *Daily Gazette Co., Inc. v. Caryl*, 181 W. Va. 42, 45, 380 S.E.2d 209, 212 (1989) ("The rules of statutory construction require that a specific statute will control over a general statute[.]" (Citations omitted)).
>
> *Robinson v. City of Bluefield*, 234 W. Va. 209, 214, 764 S.E.2d 740, 745 (2014)

Id.

25 years ago, the Supreme Court of Appeals established that § 61-11-9 is a **specific** statute of limitation for all misdemeanors. *State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (2000). W. Va. Code § 3-9-24 does not make a distinction between alleged felony and misdemeanor crimes under Chapter 3. As such, W. Va. Code § 61-11-9 is the specific statute of limitation that must be applied in this matter. Accordingly, the indictment should be dismissed.

c. If the Court Were to Determine that § 61-11-9 and § 3-9-24 are in Conflict, then § 61-11-9 as the Statute Enacted Latest in Time Controls.

Leges posteriores priores contrarias abrogant - "later laws abrogate earlier, contrary ones." West Virginia follows the well-established principle of statutory construction that the last enacted statute controls.

"As a general rule of statutory construction, if several statutory provisions cannot be harmonized, controlling effect must be given to the last enactment of the

Legislature." Syl. Pt. 2, *Stamper by Stamper v. Kanawha Cty. Bd. of Educ.*, 191 W. Va. 297, 298, 445 S.E.2d 238, 239 (1994) (quoting Syl. Pt. 2, *State ex rel. Department of Health and Human Resources, etc. v. West Virginia Public Employees Retirement System*, 183 W. Va. 39, 393 S.E.2d 677 (1990)); *State ex rel. Pinson v. Varney*, 142 W. Va. 105, 109, 96 S.E.2d 72, 74 (1956). "When faced with two conflicting enactments, this Court and courts generally follow the black-letter principle that 'effect should always be given to the latest . . . expression of the legislative will . . . .'" *Wiley v. Toppings*, 210 W. Va. 173, 175, 556 S.E.2d 818, 820 (2001) (citing and quoting *Joseph Speidel Grocery Co. v. Warder*, 56 W.Va. 602, 608, 49 S.E. 534, 536 (1904)).

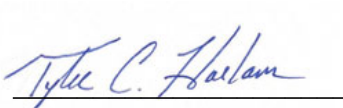
Here, § 61-11-9, was signed into law 24 years after § 3-9-24, and therefore carries the weight of being the legislature's latest word on the statute of limitations for alleged misdemeanors brought under Chapter 3. As set forth above, § 61-11-9 was last amended and enacted in 2002.

In comparison, § 3-9-24 was enacted pursuant to H.B. 396 during the 1978 legislative session. There has been no further legislative action on § 3-9-24 since 1978 and there appears to be only one case, *In re Mendez*, 192 W. Va. 57, 450 S.E.2d 646 (1994), that makes mention of § 3-9-24. Even then, *Mendez* relegated § 3-9-24 to a footnote. *See In re Mendez*, 192 W. Va. 57 n.2, 450 S.E.2d 646 (1994) ("Notwithstanding the provision of section twenty-four [§ 3-9-24], article nine of this chapter, a criminal prosecution or civil action for violation of this article shall be commenced within five years after the violation occurred.").

Again, § 61-11-9 controls this case and the indictment must therefore be dismissed as being well beyond the statute of limitation.

III. CONCLUSION

WHEREFORE, for the aforementioned reasons, Defendant Jan Hite King respectfully requests that this Court dismiss the indictment as being contrary to the one-year statute of limitation contained within W. Va. Code § 61-11-9, for her costs and fees in defending this action, and for any and all other relief that the Court deems necessary and proper.



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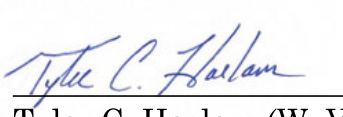
CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was served upon the Cabell County Special Prosecutor Seth S. Gaskins via the Court's electronic filing system this 10th day of April, 2025.



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