

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

Plaintiff,

Case No. 25-M-30

v.

JAN HITE KING,

Defendant.

**MOTION TO DISMISS THE INDICTMENT PURSUANT TO THE ONE YEAR
STATUTE OF LIMITATION OUTLINED IN W. VA. CODE § 61-11-9**

COMES NOW the Defendant Jan Hite King, by and through counsel Tyler C. Haslam and Haslam Law Firm LLC, and hereby moves 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 because the indictment for the three misdemeanor offenses was presented and returned in violation of the one-year statute of limitation contained within W. Va. Code § 61-11-9.

I. INTRODUCTION

The indictment in this matter is fundamentally flawed because it charges Mrs. King with three separate misdemeanor charges that are alleged to have occurred on February 3, 2022. W. Va. Code § 61-11-9 is clear that there is a one-year statute of limitation for the prosecution of alleged misdemeanor offenses in West Virginia. *See* W. Va. Code § 61-11-9 (“ . . . A prosecution for a misdemeanor shall be commenced within one year after the offense was committed[.]”). As such, any criminal charges should have been filed in Cabell County Magistrate Court (as is the normal procedure

for misdemeanor offenses) or presented to a grand jury (a rarity for misdemeanor offenses) no later than February 3, 2023.

II. LIMITED FACTUAL HISTORY

This indictment in this matter (as well as the companion case 25-M-31) raises serious questions about the institution of these proceedings now.

As this Court, and many members of the Cabell County public are aware, the saga related to Mrs. King's attempt to run for Cabell County Commission in 2022 have played out very publicly over the last three years in both civil litigation and media coverage. In fact, in news articles from *last year*, it was reported that civil litigation counsel for Cabell County threatened criminal charges against Mrs. King and Ms. Maynard on February 11, 2022. See "Cabell County paid more than \$38k defending lawsuits from two disgruntled '22 candidates," WEST VIRGINIA RECORD, Apr. 12, 2024 (available at <https://wvrecord.com/stories/657670886-cabell-county-paid-more-than-38k-defending-lawsuits-from-two-disgruntled-22-candidates>) (last accessed Apr. 8, 2024).

Specifically, that counsel is reported as having set forth in a February 11, 2022 letter, "If these candidates do not withdraw their knowingly fraudulent certificates of candidacy by the statutory deadline, I will refer the matter to the Office of the Prosecuting Attorney of Cabell County for a criminal investigation, and file a formal complaint with the Office of the Secretary of State." *Id.* The article goes on to state that, "The Secretary of State's office investigated the matter and filed a report with the prosecuting attorney's office. A Cabell Circuit Judge approved the matter to be

presented to a grand jury. Because of a conflict of interest, the Cabell County Prosecuting Attorney referred the matter to Wayne County Prosecuting Attorney Matthew Deerfield to handle as a special prosecutor.” *Id.* Again, all media reports related to these allegations were made almost exactly one year ago.

The salient question is this: Why after more than three years since the alleged act occurred and more than two years after charges could have been brought under West Virginia law, has the Mason County Prosecuting Attorney decided to pursue charges now given that no criminal charges were filed by the Wayne County Prosecuting Attorney while he was in charge of the case?

III. LAW & ARGUMENT

West Virginia law is clear that misdemeanor criminal charges have to be commenced within one year of the alleged offense. *See* W. Va. Code § 61-11-9 (“... A prosecution for a misdemeanor shall be commenced within one year after the offense was committed[.]”); *State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (2000). As the Supreme Court of appeals stated, “We have applied W. Va. Code § 61-11-9 strictly, and held that an individual cannot be convicted of a misdemeanor where the prosecution commenced after the expiration of the statute of limitations.” *Id.* “The date of the finding of the indictment was the commencement of the prosecution[.]”. *State v. Bfasley*, 21 W. Va. 777, 781 (1883) (citation omitted).

Not only should the issue of the statute of limitation be glaringly obvious to the prosecuting attorney in this matter, but even the Secretary of State’s own election manual outlines the one-year statute of limitation for misdemeanor offenses and cites

to the relevant statutory section for the one-year statute- “Misdemeanor offenses must be charged within one (1) year of the offense.” 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. 8, 2025).

That makes the decision of Secretary of State Kris Warner to publicly crow about this case by issuing a press release and stating, in part, “This indictment, hopefully, sends the message that this alleged conduct will not be tolerated,” all the more baffling. See “Two Cabell County candidates indicted for election fraud,” W. Va. Secretary of State (available at <https://sos.wv.gov/news/Pages/04-07-25-A.aspx>) (last accessed Apr. 8, 2025). **As Secretary of State Warner’s own election manual sets forth, the indictment is, at best, stale.**

“The time periods set by statutes of limitation represent a balance between the prosecution of stale cases and the granting to law enforcement officials sufficient time to bring a suspect to justice.” *State v. Leonard*, 209 W. Va. at 100, 543 S.E.2d at 657. Not only did the Cabell County Commission, through civil counsel, threaten criminal prosecution in 2022, but it appears that the Mason County Prosecutor has now presented an indictment that is time-barred on its face after no action was taken by the Wayne County Prosecutor for more than three years. Clearly there was sufficient time to investigate and prosecute this matter if charges were warranted.

Mrs. King is charged with one misdemeanor count of false swearing in violation of W. Va. Code § 3-9-3(b), one misdemeanor count of aiding and abetting false swearing in violation of W. Va. Code § 3-9-3(b), and one misdemeanor count of conspiracy in violation of W. Va. Code § 61-10-31. If there was an offense upon which a conviction could have been obtained, then criminal charges should have been filed no later than February 3, 2023; not presented to a grand jury more than two years late on April 4, 2025.

Because the indictment is flagrantly time-barred on its face, the only remedy available to Mrs. King at this juncture is to request relief from this Court through application of the West Virginia Rules of Criminal Procedure. As such, Mrs. King respectfully requests that this Court dismiss the indictment pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the West Virginia Rules of Criminal Procedure.

IV. 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, and for any and all other relief that the Court deems necessary and proper.



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Plaintiff,

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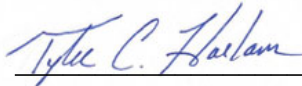
v.

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Defendant.

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 8th day of April, 2025.



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