

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

vs) **No. 11-0179** (Ohio County 10-F-74)

**Sara Heil,
Defendant Below, Petitioner**

FILED
June 24, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Sara Heil appeals the sentence she received for her convictions upon guilty pleas to one count of Fraud in Connection with an Access Device and one count of Petit Larceny. The State filed a summary response.

This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on March 24, 2011. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On or about August 29, 2009, petitioner took the victim's wallet and used the victim's credit card without permission. She was indicted for four counts of Fraud in Connection with an Access Device, a felony set forth in West Virginia Code § 61-3C-13(c), and one count of Petit Larceny, a misdemeanor set forth in West Virginia Code § 61-3-13(b). Pursuant to a plea agreement, petitioner pled guilty to one count of Fraud in Connection with an Access Device and to the single count of Petit Larceny. The State agreed to dismiss the remaining counts and to stand silent on the issue of sentencing. Petitioner waived her right to a pre-sentence investigation and asked the court to impose alternative sentencing.

The circuit court accepted the guilty pleas, but rejected petitioner's sentencing request. The court sentenced petitioner to six years prison on the felony and one year in jail on the misdemeanor, said sentences to run concurrently. Petitioner appeals asserting that the circuit

court abused its discretion and imposed a constitutionally disproportionate sentence when imposing a prison sentence rather than probation. She argues that she has no prior felony convictions, she paid restitution, her crimes were non-violent, and she was taking steps to change her life.

The State responds that petitioner has a prior criminal history and was on probation when she committed the instant crimes. Moreover, petitioner benefitted from the dismissal of three felony counts. Pursuant to West Virginia Code § 61-3C-13(c), the circuit court could have imposed up to ten years in prison or a ten thousand dollar fine, or both, for the felony conviction. The court imposed less than this, and ran the sentence for the misdemeanor conviction concurrently.

“The Supreme Court of Appeals reviews sentencing orders . . . under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands.” Syl. Pt 1, in part, *State v. Lucas*, 201 W.Va. 271, 496 S.E.2d 221 (1997). “Sentences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review.” Syl. Pt. 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982). Upon a review of the record and argument of the parties, we find that the circuit court did not abuse its discretion or rely on an impermissible factor when imposing sentence.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 24, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh