

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

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

vs.) No. 11-1324 (Berkeley County 07-F-124)

**Jason Rea,
Defendant Below, Petitioner**

FILED

January 14, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner's appeal, by counsel Christopher J. Prezioso, arises from the Circuit Court of Berkeley County, wherein he was re-sentenced by order entered on August 23, 2011. The State, by counsel Cheryl K. Saville, has filed its response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, 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 of Appellate Procedure.

This case arises from an altercation between petitioner and another man that resulted in petitioner stabbing the man. He also stabbed the man's grandmother who attempted to intervene in the altercation. Petitioner was indicted on six charges, and pled guilty to one count of attempted first degree murder pursuant to West Virginia Code §§ 61-2-1 and 61-11-8, two counts of malicious wounding pursuant to West Virginia Code § 61-2-9(a), and one count of burglary pursuant to West Virginia Code § 61-3-11(a). He also pled no contest to one count of burglary and one count of attempted first degree murder. Prior to sentencing, petitioner underwent a presentencing evaluation in which the evaluator concluded that petitioner was at low risk to reoffend. Petitioner was sentenced to terms of incarceration as follows: three to fifteen years on each of two counts of attempted first degree murder, two to ten years on each of two counts of malicious assault, and one to fifteen years on each of two counts of burglary, all to be served consecutively. Petitioner then moved for resentencing for purposes of filing this appeal, and this motion was granted.

Petitioner argues that the circuit court erred in sentencing him to the maximum sentence allowed by law because petitioner had no prior criminal convictions and he pled guilty without the assistance of a plea agreement. Further, he was found to be at low risk to reoffend, and the State actually recommended a lesser sentence. Petitioner also argues that this Court should reconsider its previous rulings regarding appellate review of sentences, as a trial court may

commit error even when a sentence is within statutory limits. The State argues in favor of the sentencing order, stating that the sentences herein do not “shock the conscience” and that the circuit court did not abuse its discretion.

“‘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).” Syl. Pt. 1, *State v. James*, 227 W.Va. 407, 710 S.E.2d 98 (2011). Moreover, “[s]entences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review.’ Syllabus Point 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982).” Syl. Pt. 6, *State v. Slater*, 222 W.Va. 499, 665 S.E.2d 674 (2008).

Upon our review, we find no abuse of discretion by the circuit court in sentencing petitioner to a total of twelve to eighty years following his guilty and no contest pleas. The sentences imposed were within statutory limits and were not based on an impermissible factor. Therefore, the Court finds no error and sees no reason under the facts of this case to overturn well-established precedent regarding the review of sentencing orders.

For the foregoing reasons, the circuit court’s sentencing order is hereby affirmed.

Affirmed.

ISSUED: January 14, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II