



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0024

STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

JEFFREY K. TAYLOR,

*Defendant Below, Petitioner.*

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STATE'S SUMMARY RESPONSE

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I.

FACTS

On October 25, 2009, Jeffrey K. Taylor (“Petitioner”) and two co-defendants, Alexander Calvin Bosley (“Bosley”) and Cindy V. Allman (“Allman”), drove to the home of Terry and Kim Lewis for the purpose of burglarizing Terry and Kim’s house to steal money and/or other items of value. Upon arriving there, Petitioner and Allman entered the Lewis’ house wearing bandannas; Bosley remained in the car. Once inside, Petitioner and Allman disabled the phone lines, obtained knives from the kitchen, and began pilfering through the house in search of money and/or other valuables. During this burglary, Petitioner and Allman encountered Terry Lewis, his wife Kim, and Terry and Kim’s eight-year-old grandson Kaden. During this encounter, both Petitioner and Allman stabbed and killed Terry in front of his wife and grandson.<sup>1</sup> Thereafter, Petitioner, Allman and

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<sup>1</sup> Petitioner actually stabbed Terry in the neck; Allman stabbed Terry in the chest.

Bosley fled the scene and were later arrested. *See generally* App. 24-29, 62-65, 90, 92-94.<sup>2</sup>

During its May 2010 term, the Harrison County Grand Jury returned a seven count Indictment against Petitioner, Bosley, Allman, as well as a third co-defendant, Jennie Lynn Bosley, a.k.a. Jennie Lynn Watham (“Watham”). *See generally* App. 1-4. This Indictment specifically charged Petitioner with one count of the felony murder of Terry Lewis during the commission of a burglary of the Lewis’ house (Count 3), and one count of conspiracy to burglarize the Lewis’ house (Count 4).<sup>3</sup> App. 2.

On July 7, 2010, Petitioner entered into a Plea Agreement with the prosecution. *See generally* App. 15-16, 37-39. Pursuant to this Agreement, Petitioner agreed to plead guilty to felony murder, as contained in Count 3 of the Indictment. App. 15. In exchange, the prosecution agreed to move the circuit court (“court”) to dismiss Count 4 of the Indictment, which charged Petitioner with conspiracy to commit burglary.<sup>4</sup> App. 16. The Agreement further stipulated that the prosecution and Petitioner would jointly recommend to the court that Petitioner be sentenced to a term of life in the penitentiary. *Id.* The Agreement also stipulated that the prosecution and Petitioner would jointly recommend to the court that Petitioner be granted mercy and, therefore,

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<sup>2</sup> Please note that there is no trial transcript for this case, as Petitioner pled guilty. Accordingly, these facts are a synopsis of the incident, which were actually taken from the statements of Petitioner and the prosecutor during Petitioner’s plea hearing on July 7, 2010, as well as the statements of Kim Lewis and the court during Petitioner’s sentencing hearing on October 28, 2010.

<sup>3</sup> Counts 1, 2, 5, and 6 of the Indictment levied these same exact charges against Bosley and Allman. App. 1-3. Count 7 of the Indictment charged Watham with being an accessory after the fact to the felony murder of Terry Lewis. App. 3.

<sup>4</sup> It should be noted that, during Petitioner’s sentencing hearing, the prosecution did indeed move the court to dismiss Count 4; the court, in turn, granted this motion and dismissed Count 4. App. 96. During this same hearing, the prosecution moved to have Counts 2 and 6 (conspiracy to commit burglary charges) against Bosley and Allman dismissed, which the court granted. *Id.*

eligible for parole after serving 15 years. *Id.*

On July 7, 2010, a plea hearing took place in this case. *See generally* App. 5-42. During this hearing, the court fully explained to Petitioner the nature of the charge against him, as contained in Count 3 (felony murder) of the Indictment—Petitioner acknowledged that he fully understood this charge. App. 9-10. The court also fully explained to Petitioner the statutory penalty that he was facing by pleading guilty to felony murder, which carried a sentence of life in the penitentiary—again, Petitioner acknowledged that he fully understood this penalty. App. 11-12.

Additionally, the court fully explained to Petitioner that, should he plead guilty to felony murder, it was within the discretion of the court as to whether he would be granted mercy and therefore eligible for parole after serving 15 years, but there was no guarantee that the court would do so, even though, under the terms of his Plea Agreement, he and the prosecution were jointly recommending that he be given mercy and parole eligibility. App. 13, 17, 18. The court also fully explained to Petitioner that, should it refuse to follow his and the prosecution's recommendation, he would be sentenced to a term of life in the penitentiary without the possibility of parole. App. 18-19, 35. Petitioner again acknowledged that he fully understood all of these conditions and ramifications of his guilty plea. App. 13, 17-19, 35.

The court also fully explained to Petitioner that, should the court refuse to follow his and the prosecution's recommendation and sentence him to life in the penitentiary without the possibility of parole, he would not be able to withdraw his guilty plea. App. 18-19, 35. Again, Petitioner acknowledged that he fully understood this condition and consequence of his guilty plea. *Id.* Following this lengthy and in-depth inquiry, Petitioner freely, knowingly, intelligently and

voluntarily pled guilty to felony murder, as contained in Count 3 of the Indictment.<sup>5</sup> App. 19, 24, 29, 37-39. Following his guilty plea, the court adjudged Petitioner guilty and thus convicted him of felony murder. App. 39.

On October 28, 2010, a sentencing hearing was held in this case.<sup>6</sup> *See generally* App. 44-97. At the conclusion of this hearing, the court sentenced Petitioner to a term of life in the penitentiary without the possibility of parole.<sup>7</sup> App. 94. Thereafter, Petitioner brought the current appeal.

## II.

### ARGUMENT

“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. 2, *State v. Eilola*, 226 W. Va. 698, 704 S.E.2d 698 (2010) (quoting Syl. Pt. 1, *State v. Lucas*, 201 W. Va. 271, 496 S.E.2d 221 (1997)). “[S]entences imposed by the trial court, if within statutory limits and if not based on some unpermissible factor, are not subject to appellate review.” Syl. Pt. 1, *Eilola*, *supra* (quoting Syl. Pt. 4, *State v. Goodnight*, 169 W. Va. 366, 287 S.E.2d 504 (1982)).

Pursuant to his guilty plea, Petitioner stands convicted of felony murder during the commission of a burglary. As the Court is well aware, “[m]urder . . . in the commission of . . . burglary . . . is murder of the first degree.” W. Va. Code § 61-2-1. Based on his guilty plea and

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<sup>5</sup> It should be noted that Bosley and Allman also pled guilty to felony murder, as contained in Counts 1 and 5 of the Indictment. App. 45-46. Please also note that Watham entered a conditional, *Alford/Kennedy* plea to Count 7 of the Indictment, charging her with being an accessory after-the-fact to felony murder. Beyond this plea, it is unknown to undersigned counsel as to the final disposition of Watham’s case.

<sup>6</sup> Please note that this was a joint sentencing hearing, in which not only Petitioner, but Bosley and Allman were also sentenced. *See* App. 45.

<sup>7</sup> Bosley and Allman were likewise sentenced to life without mercy. App. 94.

conviction of felony murder, the court sentenced Petitioner to a term of life in the penitentiary without the possibility of parole. The court's sentence is in absolute keeping with the penalty for felony first-degree murder, as "[m]urder of the first degree shall be punished by confinement in the penitentiary for life." W. Va. Code § 61-2-2.

Furthermore, the court fully explained and warned Petitioner of the consequences of his guilty plea. These warnings and ramifications were fully acknowledged and accepted by Petitioner. The Rules regarding the taking of guilty pleas by a defendant are found in West Virginia Rules of Criminal Procedure 11(e)(1) and (2), of which the court fully complied in this case. These Rules, in relevant part, provide the following:

The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty . . . to a charged offense . . . , the attorney for the state will . . .

....

(B) Make a recommendation . . . for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court.

W. Va. R. Crim. P. 11(e)(1)(B).

If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

W. Va. R. Crim. P. 11(e)(2).<sup>8</sup>

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<sup>8</sup> In connection with Rule 11(e)(2), this Court has held as follows:

“A trial court has two options to comply with the mandatory requirements of Rule 11(e)(2) of the West Virginia Rules of Criminal Procedure. It may initially advise the defendant at the time the guilty plea is taken that as to any recommended sentence made in connection with a plea agreement, if the court does not accept the

(continued...)

During his plea hearing, the court went to great lengths to explain and make sure that Petitioner fully understood the following aspects and consequences of his guilty plea to felony murder:

1. The nature of the charge against him, as contained in Count 3 (felony murder) of the Indictment.
2. The statutory penalty that he was facing by pleading guilty to felony murder, which carried a sentence of life in the penitentiary.
3. That, should he plead guilty to felony murder, it was within the discretion of the court as to whether he would be granted mercy and therefore eligible for parole after serving 15 years, but there was no guarantee that the court would do so, even though, under the terms of his Plea Agreement, he and the prosecution were jointly recommending that he be given mercy and parole eligibility.
4. That, should the court refuse to follow his and the prosecution's recommendation, he would be sentenced to a term of life in the penitentiary without the possibility of parole.
5. That, should the court refuse to follow his and the prosecution's recommendation and

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<sup>8</sup>(...continued)

recommended sentence, the defendant will have no right to withdraw the guilty plea. As a second option, the trial court may conditionally accept the guilty plea pending a presentence report without giving the cautionary warning required by Rule 11(e)(2). However, if it determines at the sentencing hearing not to follow the recommended sentence, it must give the defendant the right to withdraw the guilty plea.”

Syl. Pt. 3, *State v. Damron*, 213 W. Va. 8, 576 S.E.2d 253 (2002) (quoting Syl. Pt. 2, *State v. Cabell*, 176 W.Va. 272, 342 S.E.2d 240 (1986)).

sentence him to life in the penitentiary without the possibility of parole, he would not be able to withdraw his guilty plea.

*See generally* App. 9, 12-13, 17-18, 35. Petitioner acknowledged that he fully understood “each and every one of” these conditions and ramifications of his guilty plea. Thereafter, Petitioner freely, knowingly, intelligently and voluntarily pled guilty to felony murder, as contained in Count 3 of the Indictment.

Despite all of this, Petitioner asserts on appeal that the court abused its discretion in giving him a life without mercy sentence. In asserting that the court abused its discretion, Petitioner argues that the court did not consider his actions—i.e., his forthcomingness and honesty in cooperating with the police and prosecution, as well as his criminal history and proclivity towards rehabilitation—individually and apart from the actions of co-defendants Allman and Bosley. *See generally* Pet’r’s Br. 9-11. The State disagrees.

The statute, W. Va. Code § 62-3-15, setting forth the discretion of a circuit court in deciding whether to grant a defendant mercy, upon a plea of guilty to first-degree murder, states, in pertinent part, as follows:

[I]f the accused pleads guilty of murder of the first degree, the court may, in its discretion, provide that such person shall be eligible for parole . . . in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy, except that . . . such person shall not be eligible for parole until he or she has served fifteen years.

To begin with, there is nothing in this portion of the statute, or the statute as a whole for that matter, requiring the court, in exercising its sentencing discretion in this case, to consider Petitioner’s actions individually and apart from the actions of Allman and Bosley—nor has Petitioner cited any other such authority in this appeal. Furthermore, although “clumped” together with

Allman and Bosley, the court did consider Petitioner's actions and mitigating circumstances, such as his "young age," "lack of any . . . significant criminal record," "agreement to cooperate with the prosecution of the co-defendants," as well as his "acceptance of responsibility," which the court found "very questionable." App. 91- 92. The court also considered Petitioner's, as well as Allman's and Bosley's, "character, including evidence of their past, present and future." App. 91.

Along with this, the court considered, as it should have, the heinous nature of the crime, of which Petitioner played a "key" role in when he fully participated in the break-in of Terry and Kim Lewis' home and stabbing Terry, which resulted in his death. Needless to say, Petitioner's actions, as were the actions of Allman and Bosley, were cold, callous and cowardly. The court also considered the devastating impact that Petitioner's actions, as well as the actions of Allman and Bosley, have had and will continue to have on Terry's family for the rest of their lives.<sup>9</sup> Against all

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<sup>9</sup>Numerous witnesses testified at Petitioner's sentencing hearing as to the devastating impact that this senseless crime has had on Terry Lewis' immediate and extended family. These witnesses included Terry's wife, Kim Lewis; Terry's children, Terry Lewis, Melinda Lewis and Cindy Lewis; Terry's sisters, Sonnie Norman and Becky Lake; as well as Terry's ex-wife, Linda Lewis, who is the mother of his three children. *See generally* App. 62-85. A very small sampling of this testimony came from Terry's wife Kim, who stated the following:

I was awakened on the early morning of October 25th 2009 from my husband Terry's terrifying voice, "Help me Kim." Not knowing it would be the last time I heard him call my name. I thought Terry was having a heart attack. Instead when I came out of the bedroom only a couple of steps was I shockingly surprised to find two intruders in my home wearing bandanas. I still didn't know exactly what was going on. I thought Terry and Jeff Taylor was fighting, not knowing Terry had been stabbed already.

App. 62.

This was the most horrible scene anyone could ever go through, seeing a loved one bleed to death you cannot help them. I will never, ever forget this.

(continued...)

of this, the court also considered whether a jury would have granted Petitioner, or Allman or Bosley, mercy had this case gone to trial. Finally, the court correctly found that a jury would not have given any of the defendants, either individually or collectively, mercy in this case:

In this particular case, the facts of this case, a home invasion in the middle of the night to steal someone's property to satisfy one's own needs and desires, and during the course thereof the home owner is killed in front of his wife and young . . . grandchild. Those facts would cry out for a jury in hearing this case not to grant any mercy to the defendants.

The family in this particular case is going to have to live and relive those seconds of terror every day of the rest of their lives. There's no way around that.

App. 90-91.

On appeal, Petitioner also asserts that "[t]he Court made a determination without the benefit of any evidence presented upon which a trier of fact may have considered to impose sentencing." Pet'r's Br. 12. Petitioner also asserts that "[i]n the sentencing hearing on October 28, 2010, the Court held a hearing in which no evidence was presented . . . ." *Id.* Petitioner goes on to argue that

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<sup>9</sup>(...continued)  
App. 63.

Kaden [Terry's eight-year-old grandson] will be traumatized for the rest of his life from what he experienced that mourning. Your two children [Jeff Taylor] at least will be able to see you even if you are in prison. My grandchildren, and the rest of the family, will never, ever be able to see their grandfather, father, brother, uncle and husband ever again.

App. 65.

My life has been turned completely upside down since this has happened. At dark the blinds need to be pulled, doors have to be locked. I cannot stay by myself at night. I go to counseling and I'm paranoid at dark. Our family has been torn apart by all of this. Much stress and turmoil due to everything we have gone through with his death.

App. 66.

the Court took into consideration information that was not presented as evidence. In making this determination, the Court cited several factors upon which it based its opinion that were not in evidence, nor would have been considered by a trier of fact. Further, no opportunity was given to the Defendant, Jeffrey Taylor, to rebut such evidence, as this evidence was not presented in open court and no indication was given that it would be considered prior . . . [to the] imposition of sentencing.

The consideration of this evidence by the Court and the failure of the Court to disclose the consideration of this evidence prior to the imposition of sentence exceeds the authority that the Court had to act as a trier of fact under West Virginia Code Section 62-3-15.

Pet'r's Br. 13-14.

Quite honestly, the State is "at a loss" in trying to figure out what Petitioner is talking about! First of all, Petitioner pled guilty. As such, there was no evidence, in the form of trial evidence that would have been considered by a jury, for the court to take into consideration in sentencing Petitioner. Equally important, there was plenty of evidence presented to the court upon which it could base its sentencing, including, among other things, statements by Petitioner, statements from Petitioner's co-defendants, Allman and Bosley, statements by Petitioner's counsel and the prosecution, as well as the impact statements of the victims themselves. All of this evidence, and more, was presented to the court during Petitioner's plea and sentencing hearings. As to Petitioner's statement to this Court that he was not given an opportunity to rebut the evidence considered by the court in sentencing him, nothing could be further from the truth! On two separate occasions during his sentencing hearing, Petitioner was given an opportunity to present evidence and to make a mitigating statement prior to the court sentencing him—Petitioner declined these opportunities:

THE COURT: Or excuse me one second, Mr. Kupec, do you have any evidence you wish to present on behalf of your client?

MR. KUPEC: No additional evidence, Your Honor.

App. 51.

THE COURT: Mr. Jeffrey Taylor, you have the right of allocution or to speak on your own behalf in mitigation of punishment prior to this Court pronouncing sentence, and this is your opportunity to address the Court if you so desire.

DEFENDANT TAYLOR: Your Honor, at this time I have nothing to say.

App. 87-88.

Petitioner also asserts on appeal that the court, in sentencing him, abused its discretion by failing to follow the recommendation of the parties—i.e., that he be granted mercy and parole eligibility after serving 15 years—without just cause. *See generally* Pet'r's Br. 15-16. Absolutely not! "For starters," the court told Petitioner, "in no uncertain terms," during his plea hearing, that it had the discretion to choose not to follow his and the prosecution's recommendation for mercy and parole eligibility. The court further informed Petitioner, again "in no uncertain terms," that should it choose not to follow this recommendation, he would be sentenced to a term of life in the penitentiary without possibility of parole. Petitioner acknowledged that he fully understood these, "if you will," plea conditions and ramifications and then proceeded to freely, knowingly, intelligently and voluntarily plead guilty to felony murder, pursuant to which guilty plea, the court, in turn, adjudged Petitioner guilty of felony murder and sentenced him to life without mercy.

Finally, in sentencing Petitioner, the court carefully considered all of the mitigating and aggravating circumstances in this case in determining whether to deviate, as Petitioner puts it, from the sentencing recommendation of himself and the prosecution that he receive mercy and parole eligibility. The court, and understandably so, found that the aggravating factors far outweighed mitigating factors and, accordingly, gave Petitioner a life without mercy sentence.

One only need look at the violence perpetrated by Petitioner, as well as co-defendants, Allman and Bosley, to agree with the court's sentence in this case. Petitioner, along with Allman,

and with Bosley waiting in the car, burglarized the home of Terry and Kim Lewis. Inside, Petitioner and Allman disabled the phone lines, armed themselves with knives, and began searching Terry and Kim's house for something to steal. During this burglary, Petitioner and Allman encountered Terry and stabbed him to death in front of his wife and eight-year-old grandson. Now, Petitioner essentially asks this Court to allow him to withdraw his guilty plea to this vicious crime and give him a new trial. This Court should not permit such—it sure has not in the past under very similar circumstances. *See generally State v. Damron, supra* (Holding that trial court's refusal to allow the defendant to withdraw his guilty plea after court, in sentencing him, declined to follow the state's sentencing recommendation, was proper.). *See also* Syl. Pt. 4, *State v. Kohne*, 48 W. Va. 335, 37 S.E. 553 (1900) (“Confinement in the penitentiary for life is not too severe a punishment for a person who unlawfully, knowingly, and willfully invades another's premises armed, and then shoots the owner, who attempts in a lawful manner to remove him therefrom.”).

III.

CONCLUSION

Petitioner's conviction and sentence should be affirmed.

Respectfully submitted,

STATE OF WEST VIRGINIA,

Respondent,

By counsel

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CERTIFICATE OF SERVICE

The undersigned counsel for Respondent hereby certifies that a true and correct copy of the foregoing **STATE'S SUMMARY RESPONSE** was mailed to counsel for the Petitioner by depositing it in the United States mail, first-class postage prepaid, on this 31st day of May, 2012, addressed as follows:

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