

13-0982

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED  
2013 AUG 21  
AM 11:55  
KAWAHA COUNTY CLERK  
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA

v.

CASE NO. 13-F-85(I)  
Judge Paul Zakaib, Jr.

MARTY ATWELL

**ORDER DENYING MOTION FOR RECONSIDERATION OF SENTENCE**

This case is currently before the Court upon the Motion For Reconsideration Of Sentence filed by the defendant, by counsel, Charles R. Hamilton, Esq., on August 8, 2013.

The defendant pleaded guilty to the felony offenses of Nighttime Burglary by Way of Entering Without Breaking and Grand Larceny as contained in Counts One and Two of Felony Information Number 13-F-85(I) on May 30, 2013. By Order of this Court entered on July 23, 2013, the defendant was sentenced to not less than one (1) nor more than fifteen (15) years in the penitentiary on Count One, and one (1) to ten (10) years in the penitentiary on Count Two, said Count Two to run consecutively to the sentence imposed in Count One of Felony Information Number 13-F-85(I) and consecutively to the defendant's twenty-four (24) month federal sentence imposed in United States District Court Case 2:12-cr-00234. The defendant was further ordered by the Court to pay restitution in the amount of fifty thousand and thirteen dollars (\$50,013.00).

The defendant requests that this Court reconsider his sentence in this matter and resentence him to concurrent state sentences, said state sentences to be served concurrently with his federal sentence. He further requests that the Court reduce the amount of his restitution.

Rule 35(b) of the West Virginia Rules of Criminal Procedure provides that a motion to reduce a sentence may be made, or the Court may reduce a sentence without motion, within 120

days after the sentence is imposed or probation is revoked, or within 120 days after the entry of a mandate by the supreme court of appeals upon affirmance of a judgment of a conviction or probation revocation or the entry of an order by the supreme court of appeals dismissing or rejecting a petition for appeal of a judgment of a conviction or probation revocation.

After reviewing the Court file in this matter, as well as the defendant's motion and the presentence investigation report, this Court is of the opinion the defendant's motion should be denied as without merit. **No further motions to reconsider or reduce sentence will be entertained by the Court.**

Accordingly, it is hereby **ORDERED** that the defendant's motion for reconsideration of sentence is denied. An objection and exception is saved to the defendant to this ruling.

It is **FURTHER ORDERED** that a certified copy of this Order be sent to: (1) Charles R. Hamilton, Esq., Hamilton Law Office, 5130 MacCorkle Avenue, S.E., Charleston, WV 25304-2149; and (2) Jennifer Gordon, Esq. and Erica N. Lord, Esq., Assistant Prosecuting Attorneys in and for Kanawha County, West Virginia, 301 Virginia Street, East, Charleston, WV 25301.

Enter this 21<sup>st</sup> day of August, 2013.

  
PAUL ZAKAIB, JR., CIRCUIT JUDGE

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 22  
DAY OF August 2013  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA