

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

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

**vs) No. 11-0134 (Braxton County 06-F-87)**

**Lee Ann Snyder,  
Defendant Below, Petitioner**

**FILED**  
November 15, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Lee Ann Snyder appeals the circuit court order revoking her probation and reinstating her sentence of two to ten years, with credit for time served. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed its response.

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.

Petitioner pled guilty to transporting a controlled substance on the grounds of a jail, and was sentenced to two to ten years, which was suspended while petitioner was placed in a youthful offender program in August 2007. Petitioner moved for reconsideration of her sentence in October 2007, which was granted, and petitioner was then placed on five years of probation. In February 2009, the State filed a petition for revocation of probation, alleging that petitioner had failed a drug test and had committed other criminal offenses. The probation revocation hearing was continued so that petitioner could complete a drug rehabilitation program. In October 2009, the petition for revocation of probation was dismissed.

In August 2010, another petition for revocation of probation was filed, with three amended petitions filed in September and October 2010. The first was based upon a drug test which was positive for cocaine, opiates, and oxycodone. The second was based upon petitioner's guilty plea to possession of a controlled substance after drugs were found in the

vehicle she was driving when she was pulled over for reckless driving. The third added allegations that petitioner failed to report to her probation officer and failed to report for drug screens. The last petition omitted allegations of drug use, as these allegations were abandoned by the State due to petitioner having proper prescriptions. Petitioner's probation was again revoked in October 2010, and in November 2010, petitioner moved for reconsideration of her probation revocation. In December 2010, an amended revocation order was filed. The circuit court found that petitioner had pled guilty to possession of a controlled substance in Cabell County, in violation of her probation, but found that the allegations of reckless driving were unsubstantiated. Further, the court found that Petitioner had failed to report to her probation officer. The court noted that Petitioner has a serious drug problem and that she failed to benefit from probation. She was to be given drug rehabilitation and Narcotics Anonymous while incarcerated and credit for time served. Her two to ten year sentence was reinstated.

This Court has stated:

“When reviewing the findings of fact and conclusions of law of a circuit court sentencing a defendant following a revocation of probation, we apply a three-pronged standard of review. We review the decision on the probation revocation motion under an abuse of discretion standard; the underlying facts are reviewed under a clearly erroneous standard; and questions of law and interpretations of statutes and rules are subject to a *de novo* review.” Syllabus Point 1, *State v. Duke*, 200 W.Va. 356, 489 S.E.2d 738 (1997).

Syl. Pt. 1, *State v. Inscore*, 219 W.Va. 443, 634 S.E.2d 389 (2006). On appeal, petitioner makes several arguments. First, she argues that she was denied a fair and unbiased hearing because the State filed multiple unfounded petitions to revoke her probation. However, a review of the record indicates that the circuit court carefully reviewed each allegation in the multiple petitions for revocation, and properly dismissed several of the allegations which it determined were unfounded. Therefore, this Court finds that petitioner did receive a fair and unbiased hearing.

Second, petitioner argues that she was denied due process of law because she was not allowed to challenge the Cabell County conviction in the instant probation revocation proceeding. Petitioner argues that she was advised by counsel in the Cabell County proceeding to plead guilty, and was not advised by said counsel that a guilty plea would affect her probation. This Court finds that the circuit court did not err in not allowing petitioner to attack the Cabell County conviction in the probation revocation hearing, as the revocation proceeding was not the proper forum to argue that her Cabell County counsel was ineffective.

Third, petitioner argues that the circuit court's findings of fact did not correspond with the evidence adduced during the hearing, and that the lower court applied the incorrect standard of proof when addressing the petition for probation revocation. Petitioner argues that the circuit court failed to consider the positive advances she had made. However, upon a review of the record, it appears that the circuit court did not abuse its discretion and that the factual findings were not clearly erroneous given the circumstances of this case.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** November 15, 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