

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

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

vs) No. 11-0409 (Ohio County 10-F-108)

**Chad Golein,
Defendant Below, Petitioner**

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

MEMORANDUM DECISION

Petitioner Chad Golein appeals the circuit court order sentencing him to serve one to ten years after he pled guilty to entering without breaking. 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 broke into an elderly lady's home and a vehicle, and was later indicted on charges relating to both incidents. Petitioner pled guilty to entering without breaking, and argued for an alternative sentence at the sentencing hearing. Petitioner asserts that he has a problem with alcohol, and that if his sentence is suspended he intends to get his General Equivalency Diploma and get a job. Further, he argues that his youth (petitioner was twenty years old at the time of sentencing) supports leniency in this action. The circuit court found that the plea agreement represented leniency in this matter, and found that although the petitioner was young, he has an extensive criminal history for his age. Therefore, the circuit court found that an alternative sentence was not appropriate in this matter, and sentenced him to one to ten years.

On appeal, petitioner argues that his sentence shocks the conscience and is contrary to public policy. This Court has held that criminal sentences within the statutory limits of a crime are not subject to appellate review unless the sentence is based on some impermissible factor. Syl. Pt. 4, *State ex. rel. Hatcher v. McBride*, 221 W.Va. 760, 656

S.E.2d 789 (2007) (quoting Syl. Pt. 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982)). Although the sentence in this matter is within the statutory limits, petitioner argues that his sentence violates the proportionality principle in the West Virginia Constitution. In *State v. Cooper*, 172 W.Va. 266, 304 S.E.2d 851 (1983), this Court recognized two tests to determine if a sentence violates the proportionality principle set forth in Article III, Section 5 of the West Virginia Constitution. The first is whether the sentence shocks the conscience, and if not, then the Court should proceed to the second test found in *Wanstreet v. Bordenkircher*, 166 W.Va. 523, 276 S.E.2d 205 (1981), which considers the nature of the offense, the legislative purpose behind the punishment, and a comparison with other offenses within the same jurisdiction. This Court has noted that “[w]hile our constitutional proportionality standards theoretically can apply to any criminal sentence, they are basically applicable to those sentences where there is either no fixed maximum set by statute or where there is a life recidivist sentence.” Syllabus point 4, *Wanstreet v. Bordenkircher*, 166 W.Va. 523, 276 S.E.2d 205 (1981).” Syl Pt. 3, *State v. Booth*, 224 W.Va. 307, 685 S.E.2d 701 (2009) (per curiam). Upon a review of the entire record in this matter, this Court finds that petitioner’s sentence does not violate the West Virginia Constitution, and thus we affirm the circuit court’s order.

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