

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

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

vs.) No. 17-0999 (Wood County 16-F-211)

**Jamie Lee Delane,
Defendant Below, Petitioner**

**FILED
October 12, 2018**

EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Jamie Lee Delane, by counsel D. Shane McCullough, appeals the Circuit Court of Wood County’s October 13, 2017, order denying his Rule 35(b) motion for reduction of his sentence for two counts of first-degree sexual abuse. The State, by counsel Robert L. Hogan, filed a response. On appeal, petitioner argues that the circuit court erred in denying his motion for reduction of sentence without making findings of fact or conclusions of law, without apparently considering any of the facts or accomplishments set forth in his motion, and without holding a hearing on the motion.

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, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In January of 2017, petitioner was indicted on one count of second-degree sexual assault and one count of first-degree sexual abuse. Petitioner was also charged by information with one count of first-degree sexual abuse. On April 5, 2017, petitioner and the State entered into a plea agreement whereby petitioner agreed to plead guilty to each first-degree sexual abuse charge in exchange for the State’s dismissal of the second-degree sexual assault charge. The circuit court accepted the parties’ agreement and, on June 7, 2017, sentenced petitioner to consecutive one to five-year terms of incarceration for each first-degree sexual abuse conviction.

On October 3, 2017, petitioner moved the circuit court to reduce his sentence pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure. Although petitioner raised multiple grounds in support, he primarily argued that much of his prior criminal record centered on alcohol and other substance abuse issues and that he would benefit from substance abuse treatment. Accordingly, he sought release from incarceration to complete substance abuse and sex offender treatment. On October 11, 2017, petitioner filed an amended motion for reduction of sentence highlighting that his underlying conviction involved only one victim and one “actual incident.” Otherwise, this amended motion was identical to his initial filing. Without holding a

hearing, by order entered on October 13, 2017, the circuit court denied petitioner's motion and amended motion. It is from this order that petitioner appeals.

Petitioner advances three arguments on appeal. First, the circuit court erred in denying the motion without making findings of fact or conclusions of law sufficient to enable meaningful appellate review. Second, the circuit court erred in failing to apparently consider any of the facts or accomplishments outlined in the Rule 35(b) motion. Finally, the circuit court erred in not holding a hearing on his motion.

We have previously established the following standard of review regarding orders that deny Rule 35 motions:

“In reviewing the findings of fact and conclusions of law of a circuit court concerning an order on a motion made under Rule 35 of the West Virginia Rules of Criminal Procedure, we apply a three-pronged standard of review. We review the decision on the Rule 35 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.” Syl. Pt. 1, *State v. Head*, 198 W.Va. 298, 480 S.E.2d 507 (1996).

Syl. Pt. 1, *State v. Marcum*, 238 W.Va. 26, 792 S.E.2d 37 (2016).

While petitioner argues that the state of the circuit court's order precludes meaningful appellate review and a determination that the circuit court considered any of the facts or circumstances outlined in his motion, the court's order specifically provides that the motion was denied after “review and consideration.” Thus, it is clear from the record that the court, in fact, considered petitioner's motion and the grounds given in support. Further, petitioner cites no law mandating a reduction of sentence where any of the “facts or accomplishments” he outlined in his motion exist; rather, motions for such relief are left to the circuit court's discretion, and we find no abuse of discretion in the court's denial of petitioner's Rule 35(b) motion.

We similarly find that the circuit court did not err in ruling on petitioner's motion without holding a hearing. We have previously upheld the propriety of ruling on Rule 35(b) motions without a hearing, and petitioner acknowledges that “a hearing is not necessarily guaranteed on all Rule 35 motions.” See *State v. King*, 205 W.Va. 422, 425, 518 S.E.2d 663, 666 (1999) (finding that the circuit court did not abuse its discretion by not holding a hearing on the appellant's Rule 35(b) motion). Accordingly, petitioner is not entitled to relief on this ground.

For the foregoing reasons, the circuit court's October 13, 2017, order denying petitioner's Rule 35(b) motion and amended motion is hereby affirmed.

Affirmed.

ISSUED: October 12, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Elizabeth D. Walker

Justice Paul T. Farrell sitting by temporary assignment

Justice Tim Armstead

Justice Evan H. Jenkins

Justice Allen H. Loughry II, suspended and therefore not participating