

**State of West Virginia  
Supreme Court of Appeals**

**FILED**

**STATE of WEST VIRGINIA,  
Respondent**

February 14, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS

**vs) No. 101465 (Wirt County 09-M-182; 09-MAP-03)**

**Thomas Junior Bain,  
Petitioner**

**MEMORANDUM DECISION**

This appeal arises from the Circuit Court of Wirt County, wherein the Petitioner, who had been convicted of Obstruction of a Police Officer in Magistrate Court and sentenced to thirty days, appealed that conviction to the circuit court, entered a plea of not guilty by reason of mental illness and was sentenced by the circuit court to one year in William Sharpe Hospital. This appeal was timely perfected by counsel and the State of West Virginia has filed a response.

This Court has considered the parties' briefs and attached documents on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the attached documents, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record documents as presented by the parties, 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.

The Petitioner was initially convicted of Obstruction of a Police Officer in Magistrate Court and sentenced to thirty days in jail. He appealed to the circuit court. While the case was pending on appeal before the circuit court, Petitioner entered a not guilty by reason of mental illness plea. As required by West Virginia Code § 27-6A-4, the circuit court sentenced the Petitioner to the maximum sentence for Obstruction, which is one year, to be served in William Sharpe Hospital. Citing *State v. Bonham*, 173 W.Va. 416, 317 S.E. 2d 501 (1984), Petitioner challenges the one year sentence, arguing that it violates his due process rights by giving him more time on appeal than the thirty day sentence originally imposed by the magistrate court. The Court concludes that the facts in this case are distinguishable from those presented in *Bonham, supra*, as the Petitioner was not given a longer sentence as a result of his appeal, but rather because of his not guilty by reason of mental illness plea. As such, there was no violation of his due process rights.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** February 14, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum, II  
Justice Thomas E. McHugh