

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

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

**FILED**  
May 27, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

vs) **No. 101493** (Kanawha County Nos. 08-F-395 / 08-F-439 (I))

**William Ivan Murphy,  
Defendant Below, Petitioner**

**MEMORANDUM DECISION**

Petitioner William Ivan Murphy appeals from his convictions on two counts of sexual abuse by a parent, guardian, or custodian and two counts of first degree sexual abuse. Petitioner challenges his sentencing. A timely response has been filed by the State of West Virginia.

This Court has considered the parties' briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's Order entered in this appeal on February 23, 2011. 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 was charged in a felony indictment with four counts of sexual abuse by a parent, guardian, or custodian and four counts of first degree sexual abuse, all involving the same victim, his stepdaughter, A.N. An information was also filed charging petitioner with two additional counts of first degree sexual abuse, which were separate and distinct offenses from those charged in the indictment. Petitioner entered into a plea agreement pursuant to which he pled guilty to two counts of sexual abuse by a parent, guardian, or custodian as charged in Counts IV and VIII of the Indictment and to the two counts of sexual abuse in the first degree as contained in the information. The other counts in the indictment were dismissed.

The transcript of the plea hearing contains petitioner's proffer of the factual basis for each of his guilty pleas. He stated that the sexual activity went on for more than a year with the victim, who appears to have been between seven and eight years of age at the time. The trial court explained the potential penalties for these separate felony offenses and what it would mean if they were ordered to run consecutively versus concurrently. The trial court sentenced petitioner to an indeterminate term of not less than ten nor more than twenty years in the penitentiary for each count of sexual abuse by a parent, guardian, or custodian and to an indeterminate term of not less than five nor more than twenty-five years in the penitentiary on each count of sexual abuse in the first degree. The trial court ordered all sentences to run consecutively for a cumulative sentence of thirty to ninety years in prison. The trial court also imposed a post-release supervisory period of twenty years per West Virginia Code §62-12-26.

Petitioner states that his consecutive sentencing is essentially a life sentence, which is constitutionally impermissible because it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. The State responds that petitioner received the benefit of pleading guilty to four of the ten felony offenses for which he was charged thereby avoiding an even lengthier sentence. The State adds that cumulative sentencing for petitioner's sexual abuse of his seven to eight-year-old stepdaughter on multiple occasions over a period of at least a year is not shocking to the conscience, disproportionate to the offense, or excessive.

Petitioner also asserts that under Rule 11(c)(1) of the West Virginia Rules of Criminal Procedure, the trial court was required to advise him that it could impose a supervised release term beyond the statutory minimum of ten years under West Virginia Code §62-12-26. Because the trial court did not do so, petitioner seeks a reduction in the term of his supervised release from twenty years to ten years—the statutory minimum period—but specifically states that he does not seek to set aside his guilty pleas. The State argues that the failure of petitioner's trial counsel to object at the time the post-release supervisory period was imposed constitutes a waiver of any objection to the length of the supervised release, which is within statutory limits and is not based upon any impermissible factor.

"The Supreme Court of Appeals reviews sentencing orders . . . under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands." Syl. Pt 1, in part, *State v. Lucas*, 201 W.Va. 271, 496 S.E.2d 221 (1997). "Sentences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review." Syl. Pt. 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982). "'When a defendant has been convicted of two separate crimes . . . the trial court may, in its discretion, provide that the sentences run concurrently, and unless it does so provide, the sentences will run consecutively.'" Syllabus point 3, *Keith v. Leverette*,

163 W.Va. 98, 254 S.E.2d 700 (1979).” Syl. Pt. 3, in part, *State v. Allen*, 208 W.Va. 144, 539 S.E.2d 87 (1999). Petitioner does not contend that impermissible factors were considered in arriving at either his sentences or period of supervised release, all of which were within statutory limits.

Upon a review of the record, the parties’ arguments, the standard of review, and under the particular facts and circumstances of this case, we find that the trial court did not abuse its discretion. Accordingly, we affirm.

Affirmed.

**ISSUED:** May 27, 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