

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

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

vs.) **No. 101603** (Hampshire County 09-F-24)

**George Albert Slonaker, II  
Defendant Below, Petitioner**

**FILED**

**June 17, 2011**

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner, sentenced to two to ten years for driving under the influence causing death and one year for driving under the influence (DUI) causing bodily injury, to run consecutively, appeals the Circuit Court of Hampshire County's denial of his motion for reduction of sentence. Petitioner alleges that, *inter alia*, the circuit court erred in denying his motion for probation, and further that his consecutive sentences constitute a violation of the proportionality principle found in Article III, Section 5 of the West Virginia Constitution. The instant appeal was timely filed by petitioner's counsel with a portion of the record being designated on appeal.

This Court has considered the petition and the record 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 petition and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review 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.

The underlying criminal prosecution resulted when petitioner struck a vehicle while attempting to pass it, overturning both vehicles. The accident caused the death of the driver of the other vehicle, William L. Windle, and also injured the passenger, Linda Windle; the two were husband and wife. At the time of the accident, petitioner's blood alcohol content was 0.2, more than twice the legal limit. Additionally, petitioner's criminal history includes a felony conviction for breaking and entering, and a DUI prior to the instant matter. "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).

First, petitioner alleges that it was error for the circuit court to deny his motion for probation. Although one person was killed and another injured during this offense, which was his second DUI, petitioner contends that he is a “good and proper” candidate for probation because of his age, cooperation with law enforcement, and acceptance of responsibility for his actions. Declining to grant probation, the circuit court sentenced petitioner to two to ten years for driving under the influence causing death and one year for driving under the influence causing bodily injury, to run consecutively. The State recommended this sentence, due to the petitioner’s conduct resulting in a death. Additionally, the circuit court cited the petitioner’s prior criminal record, including “a history of... driving under the influence,” in denying probation and imposing the current sentence. In denying the petitioner’s Rule 35(b) Motion, the circuit court stated that there had been no significant change in the petitioner’s circumstances that would justify modification of his sentence. For these reasons, the circuit court did not abuse its discretion in denying petitioner’s motion for sentence reduction.

Petitioner also argues that his sentence “shocks the conscience” and is disproportionate to his offenses in violation of the proportionality principle of the West Virginia Constitution. Arguing that he is a life-long Hampshire County resident with no propensity for violence or aggression, petitioner contends he should not be subjected to this prison sentence. He further argues that he has three children and a step-child for whom he must provide, as his wife is a home-maker. Lastly, he notes that he has begun treatment for his alcoholism and expressed a desire to be reformed. This Court has held 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.” Syl. Pt. 4, *Wanstreet v. Bordenkircher*, 166 W.Va. 523, 276 S.E.2d 205 (1981). As both the offenses for which petitioner was convicted have clearly fixed maximums set by statute, the proportionality principle is neither applicable to, nor is it violated by, the sentence in this case. For these reasons, the circuit court did not abuse its discretion in denying petitioner’s motion for sentence reduction.

For the foregoing reasons, we find no error in the decision of the circuit court and the denial of petitioner's Rule 35(b) motion is affirmed.

Affirmed.

**ISSUED:** June 17, 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