

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

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

vs) **No. 101626** (Berkeley County 10-F-27)

**David A. Light,
Defendant below, Petitioner**

FILED

April 18, 2011

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

MEMORANDUM DECISION

Petitioner David A. Light appeals the circuit court's order sentencing him to serve consecutive terms of one to fifteen years for burglary, and one to ten years for grand larceny, arguing that this Court should reconsider its prior case law which holds that in the absence of an impermissible factor, a criminal sentence imposed within a statutory limit is not subject to appellate review. He argues that the circuit court in this matter erred in the duration of the sentence imposed, and argues for either concurrent sentences or an alternative sentence. The State has filed its response to this petition for appeal.

This Court has considered the parties' briefs 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 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 convicted of grand larceny and burglary by a no contest plea. He was sentenced within the statutory limits of both of the applicable statutes. 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). Petitioner argues that this Court should revisit *McBride*, as circuit courts may commit error even if the sentence is within statutory limits, when the sentence does not benefit society or promote rehabilitation. He argues that concurrent or alternative sentences would allow him to pay restitution more quickly, and thus would be more beneficial to society. The State argues that sentencing court is given broad discretion in sentencing as long as the sentence is within the statutory limits

and is not based on an impermissible factor. Further, the State argues that petitioner was aware of the possibility that he would receive his present sentences when he entered the no contest plea, and that the sentencing court did not abuse its discretion. Under the facts of this case, this Court declines to overturn prior precedent.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 18, 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