

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

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

vs) **No. 11-0059** (Wood County 09-F-13)

**Dwayne Brooks
Defendant below, Petitioner**

FILED

May 16, 2011

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

MEMORANDUM DECISION

Petitioner Dwayne Brooks entered into a conditional guilty plea to felony possession of a controlled substance, reserving the right to appeal the circuit court's denial of his motion to dismiss the indictment. He now appeals that order, arguing that testimony showed no articulable suspicion that petitioner was committing a crime or about to commit a crime at the time of the traffic stop in question. Petitioner also appeals the denial of his motion for reconsideration based upon this Court's decision in *Clower v. West Virginia Department of Motor Vehicles*, 223 W.Va. 535, 678 S.E.2d 41 (2009).

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 subjected to a traffic stop pursuant to the police officer's testimony that he failed to use a turn signal and had a defective tail lamp. Petitioner denies both allegations. Upon being stopped, the police officer asked petitioner if he had anything illegal in his vehicle, at which time petitioner handed him a plastic bag containing marijuana. Petitioner was arrested for possession of a controlled substance with intent to deliver, and was later indicted on the same charge. Petitioner moved to dismiss the indictment, arguing that there was no articulable suspicion that petitioner was committing a crime or about to commit a crime. The circuit court denied the motion to dismiss after a hearing, finding the stop was legitimate. After this denial, petitioner filed a motion to reconsider the circuit court's ruling pursuant to *Clower v. West Virginia Department of Motor Vehicles*, 223 W.Va. 535, 678

S.E.2d 41 (2009). The circuit court denied the motion, finding that the traffic stop in this case was permissible under *Clower* because the police officer had a clearly permissible “first reason” for stopping Defendant, based upon the defective tail light, and a “questionable” second reason, which was the lack of use of a turn signal. Petitioner entered into a plea agreement, agreeing to conditionally plead guilty to possession of a controlled substance with intent to deliver, while reserving his right to appeal the circuit court’s ruling regarding the denial of the motion to dismiss.

Petitioner argues the circuit court erred in denying petitioner’s motion to dismiss after testimony was given regarding the reason for the traffic stop. “This Court’s standard of review concerning a motion to dismiss an indictment is, generally, *de novo*. However, in addition to the *de novo* standard, where the circuit court conducts an evidentiary hearing upon the motion, this Court’s ‘clearly erroneous’ standard of review is invoked concerning the circuit court’s findings of fact.” Syl. Pt. 1, *State v. Grimes*, 226 W.Va. 411, 701 S.E.2d 449 (2009). After a review of the record, this Court has found no error in the circuit court’s denial of the motion to dismiss the indictment

Petitioner also argues that the circuit court erred in denying petitioner’s motion for reconsideration of this Court’s ruling based upon *Clower v. West Virginia Department of Motor Vehicles*, 223 W.Va. 535, 678 S.E.2d 41 (2009). This Court reviews the circuit court’s final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*. Syl. Pt. 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996). After a review of the record, and under the specific facts of this case, this Court has found no error in the circuit court’s ruling.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: May 16, 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