

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

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

vs) **No. 11-0178** (Ohio County 10-F-88)

**Dorena VanCamp,
Defendant Below, Petitioner**

FILED

June 24, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Dorena VanCamp appeals the sentence she received for her conviction upon guilty plea to one count of Grand Larceny. The State filed a summary response.

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 March 24, 2011. This Court has considered the parties' briefs and the record on appeal. 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.

In early 2010, petitioner took money and jewelry from a couple with whom she was residing. Pursuant to a plea agreement, petitioner pled guilty to an information charging her with one count of grand larceny, a felony pursuant to West Virginia Code § 61-3-13(a). Petitioner waived her right to a pre-sentence investigation and to allocution. Both petitioner's counsel and the prosecutor recommended probation. However, the circuit court imposed the statutory sentence of one to ten years in prison. The circuit court also ordered petitioner to pay \$3,357 in restitution to the victims.

Petitioner appeals asserting that the circuit court abused its discretion and imposed a constitutionally disproportionate sentence when imposing a prison sentence rather than probation. She argues that she has no prior criminal history, the crime was non-violent, and she was gainfully employed at the time she entered the plea and, therefore, would have been able to make a monthly restitution payment. The State responds that the plea agreement

expressly provided that sentencing was within the exclusive jurisdiction of the circuit court, which petitioner acknowledged during the plea hearing. During sentencing, the circuit court noted the impact of the crime upon the victims. The court found that petitioner “repaid” the kindness of people who had provided her with a home by systematically stealing their possessions, including a wedding ring that petitioner sold and is now lost forever.

“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). Upon a review of the record and argument of the parties, we find that the circuit court did not abuse its discretion or rely on an impermissible factor when imposing sentence.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 24, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum