

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

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

vs) **No. 11-0264** (Wood County 09-F-164)

**Kami Hinzman  
Defendant Below, Petitioner**

**FILED**

June 17, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Kami Hinzman, convicted of grand larceny by guilty plea, appeals the circuit court order sentencing her to serve one to ten years in prison. Petitioner argues that she should have been sentenced to home incarceration, probation or regional jail.

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 indicted on a charge of grand larceny. A plea agreement was reached whereby petitioner would plead guilty to grand larceny and pay restitution. The State agreed that if petitioner was accepted into and completed the drug court program, then it would recommend probation as the proper sentence. However, if petitioner was not accepted into the drug court program, or failed to complete the program, then the State would make a non-binding recommendation of home incarceration. The plea agreement was entered by the circuit court in December 2009; on February 18, 2010, petitioner failed to appear for sentencing. A *capias* was issued and her bond was revoked. Petitioner had been given a six hour release from the drug court program in order to spend time with her child, but rather than visiting her child, she fled to Florida. She later returned to West Virginia, and was found intoxicated by police, at which time she was arrested. Petitioner was then sentenced to one to ten years in prison, with credit for time served. The circuit court's sentencing order noted that it considered alternative sentencing, but found that "the character of the Defendant and the circumstances of the case indicate that she is likely to again commit crime and that

the public good does require that she be imprisoned.” Further, the State noted during the sentencing hearing that petitioner was charged with and convicted of several other crimes since the grand larceny charges in this matter were filed.

On appeal, petitioner argues that the circuit court abused its discretion in refusing to grant an alternative sentence due to her substance abuse issues and her lack of familial support. “Sentences imposed by the trial court, if within statutory limits and if not based on some unpermissible factor, are not subject to appellate review.” Syl. Pt. 4, *State of West Virginia v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982). Petitioner argues that the “impermissible factor” in this case was the circuit court’s lack of consideration of petitioner’s substance abuse issues. In reviewing the record, this Court finds that the circuit court did consider the petitioner’s substance abuse issues initially in allowing her to attend the drug court program rather than sentencing her. Thus, there is no unpermissible factor in the sentence imposed by the circuit court, and this Court finds no error in the circuit court’s sentencing order.

For the foregoing reasons, we affirm.

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