

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

**Donald Charles Criss,
Plaintiff Below, Petitioner**

vs.) **No. 12-0286** (Harrison County 10-C-235)

**George Trent, Warden, North Central Regional Jail,
Defendant Below, Respondent**

FILED

March 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Donald C. Criss, by counsel Thomas G. Dyer, appeals from the “Order Denying Petitions for a Writ of Habeas Corpus” entered by the Circuit Court of Harrison County on January 26, 2012. Respondent George Trent, Warden of North Central Regional Jail, appears by counsel Thomas Rodd.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, 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 Rules of Appellate Procedure.

Petitioner was convicted on six counts¹ of criminal contempt for violating a permanent injunction preventing him from contacting another individual or any member of her family and sentenced to six months on each count to run consecutively. Petitioner filed a petition for habeas corpus relief with this Court, which was refused. Petitioner filed an amended petition for habeas relief alleging the sentence was excessive and more severe than expected, the sentence deprived him of his right to rehabilitation, and the circuit court abused its discretion in ordering consecutive sentences for the same transaction, which constitutes cruel and unusual punishment in violation of the United States Constitution and West Virginia Constitution.

This Court reviews appeals of circuit court orders denying habeas corpus relief under the following standard:

In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions

¹ Petitioner was charged with six separate and distinct violations. Petitioner was incarcerated for previous violations when he committed these particular acts.

of law are subject to a *de novo* review.

Syl. Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).

Petitioner argues the sentences imposed were excessive and more severe than expected and constitute cruel and unusual punishment in violation of the United States and West Virginia Constitutions. The State argues that petitioner's sentences were within statutory limits and there is no allegation that they were based on any impermissible factor. The State argues the sentences are entitled to be presumed correct because the petitioner has not pointed to any lack of support for the sentences in the prior sentencing record. With regard to the argument that petitioner's sentence violated the Eighth Amendment of the United States Constitution and Article III of the West Virginia Constitution, this Court has held that "[s]entences 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 admits that he could have received a one-year sentence for each charge under the relative statute, and this Court finds that petitioner has failed to show that the sentence was based on some impermissible factor.

Finally, petitioner argues he was denied the right to rehabilitation because there are no inmates or jail personnel that use sign language, he is unable to attend classes, and he cannot get a job that requires hearing. Petitioner admits to not asking for any rehabilitative type of services in jail. The State argues petitioner has failed to prove what rehabilitative services he was denied to support this claim. We have held "[a] skeletal 'argument', really nothing more than an assertion, does not preserve a claim . . ." *State, Dep't of Health & Human Res. v. Robert Morris N.*, 195 W.Va. 759, 765, 466 S.E.2d 827, 833 (1995).

For the foregoing reasons, we affirm the circuit court's order denying habeas corpus relief.

Affirmed.

ISSUED: March 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II