

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

**Deborah A. Phipps,
Petitioner Below, Petitioner**

vs) **No. 16-0126** (Berkeley County 15-C-54)

**Lori Nohe, Warden,
Mt. Olive Correctional Complex,
Respondent Below, Respondent**

**FILED
January 9, 2017**

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

CORRECTED MEMORANDUM DECISION

Petitioner Deborah A. Phipps, by counsel Kimberley T. Crockett, appeals the Circuit Court of Berkeley County's January 6, 2016, order denying her amended petition for writ of habeas corpus. Respondent Lori Nohe, Warden, by counsel Benjamin M. Hiller, filed a response. Petitioner filed a reply. On appeal, petitioner argues that the circuit court erred in denying her amended habeas petition on the grounds of ineffective assistance of counsel and cruel and unusual punishment.

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 affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In February of 2004, a grand jury indicted petitioner on thirteen counts of uttering; thirteen counts of forgery; and one count of petit larceny. In May of 2004, the State extended a binding plea offer to petitioner whereby she would plead guilty to counts one and three charging forgery and counts two and four charging uttering. Petitioner would be sentenced to not less than one nor more than ten years of incarceration for each count, with the sentences to run consecutively for a total sentence of four to forty years of incarceration. Additionally, petitioner would plead, by information, to three counts of uttering and one count of conspiracy to commit uttering. For these crimes, petitioner would be sentenced to one to ten years of incarceration for each uttering charge and one to five years of incarceration for the charge of conspiracy to commit uttering, said sentences to run consecutively for a total sentence of four to thirty-five years of incarceration. Moreover, the two sets of sentences would run consecutively for a total aggregate sentence of eight to seventy-five years of incarceration. However, the State agreed to suspend the four to thirty-five year sentence in favor of five years of supervised probation to commence upon petitioner's release. Further, petitioner would agree to pay restitution to all victims, even if the charges related to a specific individual victim were dismissed. In exchange, the State offered to dismiss twenty-three counts from the indictment and forgo the prosecution of

any further offenses arising from these crimes. That same month, petitioner and her trial counsel, Steven Greenbaum, accepted the State's offer.

Pursuant to the plea agreement, petitioner pled guilty in May of 2004 to two counts of forgery and two counts of uttering, as charged in the indictment. Petitioner additionally pled guilty, by information, to three counts of uttering and one count of conspiracy to commit uttering. In June of 2004, the circuit court sentenced petitioner in accordance with the plea agreement. Petitioner did not appeal her conviction or sentence. In August of 2007, petitioner was released from incarceration to a detainer from the Commonwealth of Virginia, where she remained incarcerated for ten months. Upon her release from incarceration in Virginia in 2008, petitioner began her five year probation in West Virginia.

In May of 2009, the parole board found that petitioner violated the terms and conditions of her probation by using cocaine, no longer living at her listed address, and making a false written report to her parole officer, among other issues. As such, her parole was revoked. Petitioner then filed a petition for writ of habeas corpus in the circuit court challenging the revocation of her parole. That petition was denied.

In September of 2010, petitioner's probation was reinstated. However, in July of 2012, petitioner was convicted of attempted second-degree robbery and sentenced to a term of incarceration of five to eighteen years. Thereafter, in March of 2013, the State filed a second amended petition to revoke petitioner's probation upon the robbery conviction as well as a detainer filed by Virginia that charged petitioner with a separate count of robbery, among other probation violations. Petitioner admitted to the violations, and the circuit court revoked her probation before imposing her underlying sentence of four to thirty-five years of incarceration, less time served. The circuit court ordered this sentence to run consecutively to her other outstanding sentences.

Thereafter, petitioner filed a petition for writ of habeas corpus in the circuit court. The circuit court appointed counsel to assist in filing an amended petition, which petitioner filed in August of 2015. According to the amended petition, petitioner alleged ineffective assistance of trial counsel and cruel and unusual punishment in the form of an excessive sentence. Respondent filed a brief in December of 2015, and petitioner replied in January of 2016. Without holding a hearing, the circuit court denied petitioner's amended petition by order entered on January 6, 2016. It is from this order that petitioner appeals.

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 of law are subject to a *de novo* review.” Syllabus point 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).

Syl. Pt. 1, *State ex rel. Franklin v. McBride*, 226 W.Va. 375, 701 S.E.2d 97 (2009).

On appeal to this Court, petitioner alleges that she was entitled to habeas relief because her trial counsel was ineffective and because her sentence was unconstitutionally excessive. The Court, however, does not agree. Upon our review and consideration of the circuit court's order, the parties' arguments, and the record submitted on appeal, we find no error or abuse of discretion by the circuit court. Our review of the record supports the circuit court's decision to deny petitioner post-conviction habeas corpus relief based on these alleged errors, which were also argued below. Indeed, the circuit court's order includes well-reasoned findings and conclusions as to the assignments of error raised on appeal.¹ Given our conclusion that the circuit court's order and the record before us reflect no clear error or abuse of discretion, we hereby adopt and incorporate the circuit court's findings and conclusions as they relate to petitioner's assignments of error raised herein and direct the Clerk to attach a copy of the circuit court's January 6, 2016, "Order Denying Habeas Petition" to this memorandum decision.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: January 9, 2017

CONCURRED IN BY:

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

¹On appeal to this Court, petitioner presents only one argument not presented to the circuit court. Specifically, petitioner asks this Court to apply a plain error analysis to the imposition of her sentence, which we decline to do. Petitioner admits that her sentences conform to those set forth in the applicable statutes and does not allege that the circuit court considered any impermissible factors in imposing sentence. Accordingly, we note that "[s]entences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review." Syllabus Point 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982)." Syl. Pt. 3, *State v. Georgius*, 225 W.Va. 716, 696 S.E.2d 18 (2010). For these reasons, we decline to address the circuit court's imposition of petitioner's sentence on appeal.

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel
DEBORAH A. PHIPPS,

Petitioner,

v.

CIVIL CASE NO. 15-C-54
Underlying Criminal Case No.: 04-F-6
12-F-15

JUDGE LORENSEN

LORINOHE, Warden,
Lakin Correctional Center,

Respondent.

ORDER DENYING HABEAS PETITION

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On August 10, 2015, Deborah Phipps, by counsel, Kimberly Crockett, filed her Amended Petition for a Writ of Habeas Corpus seeking relief from her confinement due to 1) ineffective assistance of counsel, and 2) an excessive or cruel sentence. Ms. Phipps signed a *Losh* list waiving all other potential claims for habeas relief. On September 3, 2015, the Court ordered a response from the Respondent, and set a briefing schedule for a response and a reply brief. On December 2, 2015, the Respondent, by counsel Benjamin Hiller, filed a Motion to Dismiss the Petition and a Memorandum in support. On January 4, 2016, Ms. Phipps replied in support of the Petition.

An evidentiary hearing on this matter would not assist the Court in this matter as all pertinent facts and arguments are available in the parties' briefs and the record. After reviewing all briefs, exhibits, the underlying criminal case, and relevant legal authority the Court denies the Petition for a Writ of Habeas Corpus.

Facts

1. In February 2004, a Berkeley County Grand Jury returned a 27 count indictment against Ms. Phipps charging 13 counts of Uttering, 13 counts of Forgery, and one count of Petit Larceny.

2. On May 6, 2004, the State extended a binding plea offer to Ms. Phipps. The State offered the Petitioner to plead guilty to counts one and three charging Forgery and counts two and four charging Uttering. Ms. Phipps would be sentenced to not less than 1 nor more than 10 years for each count, with the sentences to run consecutively for an aggregate sentence of 4 to 40 years in the penitentiary on counts one through four. Ms. Phipps also would plead guilty by information to three counts of Uttering and one count of Conspiracy to Commit Uttering. Ms. Phipps would be sentenced to not less than 1 nor more than 10 years for each of the Uttering charges and not less than 1 year nor more than 5 years for the Conspiracy to Commit Uttering charge, the sentences to run consecutively for an aggregate sentence of 4 to 35 years in the penitentiary. All sentences imposed were to run consecutive to each other for a total aggregate sentence of not less than 8 nor more than 75 years. However, the 4 to 35 year sentence would be suspended in favor of 5 years of supervised probation, to commence upon her release from prison on the 4 to 40 year sentence or any other sentence being served from another jurisdiction. Further, Ms. Phipps would pay restitution to all victims, even if their particular count in the indictment was dismissed.

In exchange for Ms. Phipps's plea, cooperation, and sentence, the State would dismiss 23 counts of the indictment, forgo prosecution of any other offense arising from the burglary of Ms.

Shade's residence and subsequent forgery and uttering of her checks, and not prosecute a misdemeanor count of Making an Obscene Telephone Call.

3. Ms. Phipps and her counsel, Steven Greenbaum, signed and accepted the State's plea offer on May 21, 2004.

4. On May 28, 2004, pursuant to the plea agreement, Ms. Phipps plead guilty to two counts of Forgery and two counts of Uttering as those counts were charged in the February 2004 indictment, and Ms. Phipps plead guilty by information to three counts of Uttering and one count of Conspiracy to Commit Uttering.

5. On June 18, 2004, the Court sentenced Ms. Phipps according to the terms of the binding plea agreement.

6. Ms. Phipps did not appeal her conviction or sentence.

7. On August 6, 2007, Ms. Phipps was granted parole and released from Lakin Correctional Center to a detainer from the Commonwealth of Virginia, where she remained incarcerated for 10 more months.

8. Upon release from incarceration in Virginia in July 2008, Ms. Phipps began her five year supervised probationary period.

9. In August 2008, a month after being released on parole and beginning her probationary period. Her parole was revoked and she was taken into custody. Her probation, however, was not revoked; it was suspended with one month's credit.

10. On May 18, 2009, the Parole Board found that Ms. Phipps violated the conditions of her parole by 1) using Cocaine, 2) maintaining behavior that threatened the safety of herself and other, 3) no longer living at her listed residence, and 4) making a false written report to the parole officer.

11. Ms. Phipps petitioned for a writ of habeas corpus in Berkeley County Case Number 09-C-498 challenging her parole revocation claiming she was prevented from presenting witnesses on her behalf at the parole revocation hearing. The Court denied the petition.

12. On September 28, 2010, Ms. Phipps was reinstated to probation to run concurrently with her parole supervision.

13. On September 19, 2011, the Petitioner was arrested for Robbery and was convicted of attempted second degree robbery on July 21, 2012, in Berkeley County Case Number 12-F-15. The Court sentenced Ms. Phipps to 5 to eighteen 18 years in the penitentiary.

14. The Probation Department filed its Second Amended Petition for Probation Revocation on March 28, 2013 for the robbery arrest and conviction as well as a detainer filed by Spotsylvania County, Virginia against Ms. Phipps charging her with Robbery, and other probation violations.

15. Ms. Phipps admitted to the probation violations and the Court revoked Ms. Phipps's probation and imposed the underlying sentence of 4 to 35 years, less time served, to run consecutively to the sentence for Attempted Robbery, 5-18 years, and consecutively to the parole violation of 8-75 years.

16. According to the West Virginia Division of Corrections website, Ms. Phipps's next parole hearing is tentatively scheduled for October 9, 2021, and her projected release date is January 18, 2051.

17. Ms. Phipps filed a *pro se* habeas petition. The Court appointed counsel, and Ms. Phipps's counsel filed a verified omnibus Amended Petition for Writ of Habeas Corpus alleging cruel and unusual punishment and ineffective assistance of counsel.

18. The Court directed the Respondent to file a response for the Court's consideration.

19. The Respondent asserts that Ms. Phipps fails to prove that trial counsel provided ineffective assistance of counsel, and fails to prove that the sentence imposed violates the Eighth Amendment.

Standard of Judgment

Petitions for writs of habeas corpus are "evil in character and shall under no circumstances be regarded as criminal proceedings or a criminal case." W. Va. Code § 53-4A-1(a); *State ex rel. Harrison v. Coiner*, 154 W. Va. 467 (1970). Persons convicted of crimes and currently incarcerated, may file a petition for writ of habeas corpus contending one or more of the following: 1.) a denial or infringement of the petitioner's constitutional rights rendering a conviction or sentence void, 2.) lack of jurisdiction, 3.) the sentence is beyond the authorized maximum, and 4.) "the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under the common law or any statutory provision of this state." W. Va. Code § 53-4A-1(a). Claims that have been "previously and finally adjudicated," either on direct appeal or in a previous post-conviction habeas proceeding, may not form the basis for habeas relief. W. Va. Code §53-4A-1(b); *Bowman v. Leverette*, 169 W. Va. 589, 289 S.E.2d 435 (1982).

A claim adjudicated or waived in a previous post-conviction proceeding is precluded when the petitioner was either represented by counsel or knowingly waived his right to be represented by counsel and the proceeding was a complete omnibus habeas corpus proceeding. *Losh v. McKenzie*, 166 W. Va. 762, 277 S.E.2d 606 (1981); *Gibson v. Dale*, 173 W. Va. 681, 319 S.E.2d 91 (1972). A claim "shall be deemed to have been previously and finally adjudicated only when at some point in the proceedings which resulted in the conviction and sentence . . . , or in any other proceeding or proceedings instituted by the petitioner to secure relief from his

conviction or sentence, there was a decision on the merits thereof after a full and fair hearing thereon . . . unless said decision upon the merits is clearly wrong." W. Va. Code § 53-4A-1(b) Nonetheless, "W. Va. Code, 53-4A-1(d) allows a petition for post-conviction habeas corpus relief to advance contentions or grounds which have been previously adjudicated only if those contentions or grounds are based upon subsequent court decisions which impose new substantive or procedural standards in criminal proceedings that are intended to be applied retroactively." *Bowman v. Leverette*, 169 W. Va. 589, 589, 289 S.E.2d 435, 436 (1982). A claim waived is any ground for habeas relief that could have been advanced on direct appeal or in a previous post-conviction proceeding but was not advanced. W. Va. Code § 53-4A-1(c). Should a petitioner wish to raise a ground waived in a subsequent proceeding, it is the petitioner that bears the burden of demonstrating that such waiver was less than knowing and intelligent. *Ford v. Coiner*, 156 W. Va. 362, 196 S.E.2d 91 (1972).

A habeas corpus proceeding is markedly different from a direct appeal or writ of error in that only errors involving constitutional violations shall be reviewed. Syl. Pt. 2., *Edwards v. Leverette*, 163 W. Va. 571 (1979). Petitions for writ of habeas corpus are governed in part by West Virginia Code §53-4A-1. The habeas corpus statute "contemplates the exercise of discretion by the court." *Perdue v. Coiner*, 156 W. Va. 467 (1973). The circuit court denying or granting relief in a habeas corpus proceeding must make specific findings of fact and conclusions of law relating to each contention raised by the petitioner. *State ex rel. Watson v. Hill*, 200 W. Va. 201 (1997). To sustain his Petition, Petitioner must prove his claims by a preponderance of the evidence.

"The court shall prepare and enter an order for summary dismissal [with prejudice] of the petition if the contentions in fact or law relied upon in the petition have been previously and

finally adjudicated or waived," W. Va. R. Habeas 4(c). What's more, if "the petition contains a mere recitation of grounds without adequate factual support, the court may enter an order dismissing the petition, without prejudice, with directions that the petition be refiled containing adequate factual support." *Id.* Finally, for "all petitions not dismissed summarily as provided in Rule 4(c), the court shall order the respondent to file an answer. . ." W. Va. R. Habeas 4(d).

If the court upon review of the petition, exhibits, affidavits, or other documentary evidence is satisfied that petitioner is not entitled to relief, the court may deny a petition for writ of habeas corpus without an evidentiary hearing. Syl. Pt. 1, *Perdue v. Coiner*, 156 W. Va. 467 (1973); *State ex rel. Waldron v. Scott*, 222 W. Va. 122 (2008). Upon denying a petition for writ of habeas corpus the court must make specific findings of fact and conclusions of law as to each contention raised by the petitioner, and must also provide specific findings as to why an evidentiary hearing was unnecessary. Syl. Pt. 1, *State ex rel. Watson v. Hill*, 200 W. Va. 201 (1997); Syl. Pt. 4, *Markley v. Coleman*, 215 W. Va. 729 (2004); R. Hab. Corp. 9(a).

A guilty plea is a surrender of most constitutional rights commonly the subject of habeas petitions. Nonetheless, "[then West Virginia Supreme] Court has implicitly suggested that post-conviction habeas corpus relief is still available despite a guilty plea if the claim (1) affects the validity of plea or (2) the legality of the sentence." Franklin D. Cleckley, *Handbook on West Virginia Criminal Procedure*, Vol 2., 572 (2nd ed. 1993).

Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands . . . The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law. . .

W. Va. R. Crim. P. 11.

I. Petitioner Fails to Prove Ineffective Assistance of Counsel.

This Court reviews claims of ineffective assistance of counsel under the following two-part test, whether

- (1) Counsel's performance was deficient under an objective standard of reasonableness; and
- (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed2d 74 (1984); *State v. Miller*, 459 S.E.2d 114 (W.Va. 1995). Then, to determine whether performance was deficient,

courts must apply an objective standard and determine whether, in light of all the circumstances, the identified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel's strategic decisions.

Syl. Pt. 6, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995). Thus, Petitioner has a heavy burden to prove previous counsel's ineffectiveness. "Where a counsel's performance, attacked as ineffective, arises from occurrences involving strategy, tactics and arguable courses of action, his conduct will be deemed effectively assistive of his client's interests, unless no reasonably qualified defense attorney would have so acted in the defense of an accused." Syl. Pt. 21, *State v. Thomas*, 157 W.Va. 640, 203 S.E.2d 445 (1974). "In cases involving a criminal conviction based upon a guilty plea, the prejudice requirement of the two-part test established by *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and *State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995), demands that a habeas petitioner show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Syl. Pt. 2, *State ex rel. Vernatter v. Warden, W. Virginia Penitentiary*, 207 W. Va. 11, 14, 528 S.E.2d 207, 210 (1999).

First, Ms. Phipps makes a blanket assertion that she was ill-informed at the time of her guilty plea because counsel failed to review discovery with her. Ms. Phipps does not state what discovery was not reviewed or how that discovery would have changed her guilty plea. What's more, the Court entered into a lengthy plea colloquy with the Ms. Phipps while she was under oath. Ms. Phipps testified that she had reviewed all of the charges with counsel, and that she and her counsel fully discussed issues about her case. Furthermore, Ms. Phipps said that she was satisfied with her counsel's representation. Finally, Ms. Phipps testified to the facts of each of the offenses to which she was convicted.

Ms. Phipps asserts that the Eastern Regional Jail visitor log allegedly shows no entry for an attorney visit from the Public Defender Corporation between the dates of April 22, 2004, and June 18, 2004. Additionally, Ms. Phipps acknowledges not having the phone logs for the jail during this period. Ms. Phipps fails to explain how a jail visit log demonstrates the ineffective assistance of counsel thus fails to meet the first prong of *Strickland*.

Furthermore, Ms. Phipps fails to present any evidence or make any allegation that would support the second prong of the *Strickland*. Thus, Ms. Phipps fails to prove that the result of the proceedings would have been different, but for counsel's deficient performance.

Second, Ms. Phipps argues that counsel's assistance was ineffective by failing to negotiate a more favorable plea. The parties negotiated a plea wherein 23 felony charges were dismissed and imposed a probationary sentence for four of the eight felony convictions. The only reason Ms. Phipps is incarcerated now is because she continued to commit crimes while on probation.

Ms. Phipps had an extensive criminal history prior to pleading guilty to the instant offenses. The Petitioner was facing a twenty-seven (27) count indictment with additional charges

pending. At the time of her binding guilty plea, Ms. Phipps was on probation in Pennsylvania and Virginia lodged a detainer against her for charges pending against her in its jurisdiction.

Due to the binding nature of the plea, Ms. Phipps had the benefit of knowing what her sentence would be at the time of entering her guilty plea. Ms. Phipps fails to prove that trial counsel did not work to get a more favorable plea deal. What's more, Ms. Phipps presents no evidence that but for counsel's performance, the results of her case would have been different, or that she would not have pleaded guilty.

As to both counsel's review of discovery, and counsel's negotiation of the plea deal, Ms. Phipps failed to prove ineffective assistance of counsel. Accordingly, this claim for habeas relief is DENIED.

II. Petitioner Waived Her Claim that the Sentence is Unconstitutionally Excessive.

Any ground that a habeas petitioner could have raised on direct appeal, but did not, is presumed waived. W. Va. Code § 53-4A-1. "[T]here is a rebuttable presumption that petitioner intelligently and knowingly waived any contention or ground in fact or law relied on in support of [her] petition for habeas corpus which [s]he could have advanced on direct appeal but which [s]he failed to so advance." Syl. Pts. 1, *Ford v. Coiner*, 156 W. Va. 362 (1972). Furthermore, "the burden of proof rests on petitioner to rebut the presumption that [s]he intelligently and knowingly waived any contention or ground for relief which theretofore [s]he could have advanced on direct appeal." *Id.* at Syl. Pt. 2.

Ms. Phipps did not object to her sentence when it was imposed, and agrees that it is a sentence within the statutory limits. Further, Ms. Phipps did not directly appeal her sentence,

presumably because she agreed to the sentence through a binding plea agreement. The sentencing Court had no discretion to impose a more lenient sentence.¹

Finally, Ms. Phipps offered no evidence to overcome the presumption that she knowingly and voluntarily waived her claim of an excessive sentence on appeal. Therefore, Ms. Phipps is barred from raising the issue of an unconstitutionally excessive sentence in this Petition. Accordingly, Ms. Phipps's claim of improper or excessive sentence is DENIED.

Conclusion

After a full review of the petition, exhibits, and all documentary evidence, this Court is satisfied that the record would not be aided by taking additional evidence and hearing oral argument. Ms. Phipps failed to carry her burden and is not entitled to habeas relief. Therefore, Petitioner's Petition for a Writ of Habeas Corpus is DENIED. These issues will not be further addressed by this Court in any proceedings. The Court notes the timely objections of all parties to any adverse rulings herein.

This is a Final Order, and the Clerk is directed retire it from the active docket.

The Clerk shall enter this Order as of the date written below and shall transmit attested copies to all counsel and parties of record, including the Prosecuting Attorney for Berkeley County and Kimberly Crockett, Esq., counsel for the Petitioner.

A TRUE COPY
ATTEST

ENTER this 6 day of January, 2016.

Virginia M. Sine
Clerk Circuit Court
By: *Martha M. Sine*
Deputy Clerk

[Signature]
MICHAEL D. LORENSEN, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

¹ Had Ms. Phipps not waived her right to contest this sentence at this stage, the Court's analysis would not simply be whether the Court abused its discretion in imposing the sentence, but whether the Court abused its discretion in accepting a binding plea with this sentence.