

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

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

vs) No. 15-0536 (Jackson County 14-F-73)

**William White, Defendant Below,
Petitioner**

FILED

March 7, 2016

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

MEMORANDUM DECISION

Petitioner William White, by counsel Kevin B. Postalwait, appeals the Circuit Court of Jackson County's May 8, 2015, order sentencing him to a term of incarceration of one to five years following his guilty plea to one count of conspiracy to commit a felony. The State, by counsel Nic Dalton, filed a response. On appeal, petitioner alleges that the circuit court erred in imposing his sentence.

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 June of 2014, petitioner was indicted for the following crimes: one count of possession of a controlled substance, marijuana, with intent to deliver; one count of possession of a controlled substance, heroin, with intent to deliver; one count of possession of a controlled substance, oxycodone, with intent to deliver; one count of possession of a controlled substance, hydrocodone, with intent to deliver; and one count of conspiracy to commit a felony. These charges arose out of petitioner's statement to police that he and two co-defendants were living together and that one co-defendant was bringing drugs from Detroit to sell in the area.

In December of 2014, petitioner entered a guilty plea to one count of conspiracy to commit a felony, and the circuit court ultimately imposed the maximum sentence of one to five years of incarceration. Following sentencing, petitioner filed a motion for reconsideration of his sentence under Rule 35 of the West Virginia Rules of Criminal Procedure. However, the circuit court entered an order denying that motion without a hearing on August 12, 2015. It is from the sentencing order that petitioner appeals.

We have previously held 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). We note that petitioner's sentence for his crime is within the applicable statutory limitations. Specifically, West Virginia Code § 61-10-31 states that

[a]ny person who violates the provisions of this section by conspiring to commit an offense against the State which is a felony, . . . shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years

As such, it is clear that petitioner was sentenced within the applicable statutory guidelines and his sentence is not reviewable on appeal.

This is especially true in light of the fact that petitioner does not allege that the circuit court based its sentence on any impermissible factor. Instead, petitioner argues that the circuit court simply abused its discretion in denying him alternative sentencing. Petitioner bases this assertion on the fact that his co-defendant was granted probation, the State initially recommended home incarceration and later did not oppose probation, and his own efforts at attending counseling and treatment for substance abuse. The Court, however, notes that none of these issues constitute an allegation that the circuit court based petitioner's sentence on an impermissible factor. As such, we reiterate that petitioner's sentence is, therefore, not reviewable on appeal.

For the foregoing reasons, the circuit court's May 8, 2015, sentencing order is hereby affirmed.

Affirmed.

ISSUED: March 7, 2016

CONCURRED IN BY:

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