

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

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

vs) No. 101296 (Logan County 09-F-46-O, 09-F-89-O)

**Ricky Von Raines, II.,
Defendant Below, Petitioner**

FILED

April 18, 2011

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

MEMORANDUM DECISION

Petitioner Ricky Von Raines appeals his convictions pursuant to guilty pleas to a recidivist charge and to perjury. The State has filed a summary response.

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.

At a May 2009 jury trial, petitioner was found guilty of three felonies – Robbery in the First Degree, Nighttime Burglary, and Conspiracy – for acts committed on the late night of August 6, 2008.

Thereafter, the State filed a recidivist information pursuant to West Virginia Code § 61-11-18 asserting that in addition to these felonies, petitioner was convicted of Attempted Burglary in 2008 for an offense committed in 2006, and petitioner was convicted of Forgery and Burglary in 2003 for offenses committed in 2002. The State offered a plea bargain in exchange for petitioner pleading guilty to the recidivist information and to a separate information charging that he committed Perjury during his May 2009 trial. Initially the petitioner rejected the plea offer, but after a hearing and a clarification of the law provided by the trial court, petitioner accepted the plea offer.

Petitioner pled guilty to both the recidivist information and the perjury information. The State agreed to seek a recidivist enhancement on the instant Burglary conviction as if petitioner were convicted of his second felony instead of his third, i.e., double the minimum term of the indeterminate sentence instead of seeking life in prison. The State also agreed not to seek a sentence higher than thirty years for the Aggravated Robbery conviction.

The circuit court accepted the pleas and sentenced petitioner as follows: two to fifteen years in prison for Burglary [which includes the recidivism enhancement to the statutory sentence of one to fifteen years]; thirty years in prison for Aggravated Robbery to run consecutively with the Burglary sentence; one to five years in prison for Conspiracy to run consecutively with the Burglary and Robbery sentences; and one to ten years in prison for Perjury to run consecutively with the Burglary and Robbery sentences but concurrently with the Conspiracy sentence. Petitioner was twice re-sentenced for purposes of pursuing this appeal.

In his petition for appeal, petitioner argues that his guilty pleas should be set aside as involuntary because the circuit court provided incorrect legal information regarding the recidivist statute during the aforementioned hearing. The circuit court had informed petitioner and his counsel that pursuant to the recidivist statute, the State could seek to impose the recidivist enhancement on one of petitioner's three convictions in the instant case (the State chose Burglary), and could also seek to have the court impose the statutory sentences for each of the other two convictions (Aggravated Robbery and Conspiracy). Petitioner's counsel interprets the recidivist statute and case law as meaning that the enhanced sentence would be the sole sentence for all three counts. The State asserts that petitioner's legal interpretation is incorrect.

This Court applies a *de novo* standard of review to questions of law. Syl. Pt. 3, *State v. Vance*, 207 W.Va. 640, 535 S.E.2d 484 (2000). Upon a careful review of the parties' arguments and pertinent law, we conclude that the circuit court correctly advised petitioner of the law and thus petitioner's argument fails. This Court said in *Turner v. Holland*, 175 W.Va. 202, 332 S.E.2d 164 (1985), that an "enhancement based on the prior felony conviction should only be imposed on one of the present sentences." Petitioner has received the benefit of this law; only his Burglary sentence was enhanced, not his sentences for Aggravated Robbery and Conspiracy. Nothing in the recidivist statute or our case law would excuse petitioner from being sentenced for the separate crimes which he also committed. Indeed, such a holding would be contrary to the policy behind the recidivist statute.

Petitioner argues that under our case law, felony convictions obtained on the same day should be treated as one conviction. *E.g.*, *State v. Wyne*, 194 W.Va. 315, 460 S.E.2d 450 (1995). Petitioner has misconstrued and taken those cases out of context. Those cases mean

that if two or more felony convictions are obtained on the same day, then a defendant has only one previous conviction for purposes of the enhancement statute – not two convictions. *Turner*, 175 W.Va. at 203, 332 S.E.2d at 166. Those cases also prohibit one conviction from being used to enhance another conviction that was obtained on the same day. *Id.*

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 18, 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