

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

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

vs) No. 101474 (Upshur County No. 10-F-11)

**Clifford Guy Moore,
Defendant Below, Petitioner**

FILED

**April 1, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioner Clifford Guy Moore files this timely appeal from his sentence of three consecutive one to five year prison terms based upon his guilty plea to three counts of third degree sexual assault. Petitioner asserts that the circuit court erred in denying alternative sentencing. Petitioner seeks a reversal of his sentence and a remand for imposition of an alternative sentence. Respondent State of West Virginia has filed a timely 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.

The petitioner argues that the circuit court abused its discretion in denying his request for probation or home confinement because: (1) the petitioner has a very limited criminal background, which consists of one ticket for defective equipment and failure to have a "slow moving vehicle emblem"; (2) Petitioner had a history of maintaining employment throughout his life; (3) Petitioner lived with his mother who relied upon him and who did not live with or near any children; and (4) Petitioner advised the circuit court that he was willing to abide by all rules and conditions imposed by the circuit court. The State responded that the circuit court "was perfectly justified to weigh the factors argued by the petitioner against the ruined lives of three child victims, and to conclude that the interests of justice required incarceration." Further, the State notes that the petitioner's plea agreement contained a

provision waiving the right to appeal except on two grounds: (1) if the sentence exceeded lawful limits; or (2) if the circuit court lacked jurisdiction. As the Court finds no error in the circuit court's sentencing decision, it is not necessary to consider this additional ground raised by the State.

In reviewing a sentencing order, the Court utilizes a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands. *State v. Lucas*, 201 W. Va. 271, 276, 496 S.E. 2d 221, 226 (1997). The Court has reviewed the record and considered the arguments of counsel and concludes that the circuit court did not abuse its discretion in sentencing petitioner. Accordingly, we affirm.

Affirmed.

ISSUED: April 1, 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