

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

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

vs) No. 101512 (Berkeley County 09-F-44 & 09-F-91)

**Darren Butler,
Defendant below, Petitioner**

FILED

April 18, 2011

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

MEMORANDUM DECISION

Petitioner Darren Butler appeals the circuit court's order sentencing him to serve concurrent terms of fifteen years for arson and one to ten years for embezzlement, to run consecutively with five separate one to five year sentences for child neglect, arguing that this Court should reconsider its prior case law which holds that in the absence of an impermissible factor, a criminal sentence imposed within a statutory limit is not subject to appellate review. He argues that the circuit court in this matter erred in the duration of the sentence imposed, and argues for either concurrent sentences or an alternative sentence. The State has filed its response to this petition for appeal.

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.

Petitioner was convicted of embezzlement by a plea of no contest, and pled guilty to first degree arson and five counts of child neglect creating a risk of serious bodily injury. He was sentenced within the statutory limits of all the applicable statutes. This Court has held that criminal sentences within the statutory limits of a crime are not subject to appellate review unless the sentence is based on some impermissible factor. *Syl. Pt. 4, State ex. rel. Hatcher v. McBride*, 221 W.Va. 760, 656 S.E.2d 789 (2007). Petitioner argues that this Court should revisit *McBride*, as circuit courts may commit error even if the sentence is within statutory limits, when the sentence does not benefit society or promote rehabilitation. He argues that a lesser sentence should be imposed to promote rehabilitation, and so that he

can begin paying restitution to the victims more quickly. Moreover, petitioner argues for leniency because he is a veteran with no criminal history prior to December 2007. The State argues that the sentencing court is given broad discretion in sentencing as long as the sentence is within the statutory limits and is not based on an impermissible factor. Further, the State argues that the sentence is not disproportionate, as the offenses were serious, there was a risk of serious injury or death to petitioner's own children, and the plea agreement contemplated the exact manner in which the sentence was imposed. Under the facts of this case, this Court declines to overturn prior precedent.

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