

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

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

vs) No. 101630 (Berkeley County 09-F-175)

**Michael A. Chipley,
Defendant Below, Petitioner**

FILED
May 27, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Michael A. Chipley appeals the sentences he received for his convictions upon guilty pleas to four counts of sexual abuse in the first degree, West Virginia Code § 61-8B-7(a). He was sentenced to the statutory sentence of one to five years in prison on each count, to run consecutively, for a total effective sentence of four to twenty years in prison. The circuit court also imposed fifteen years of post-release sexual offender supervision, although petitioner does not assert error regarding the post-release supervision. The State has filed a timely response brief.

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 argues that the circuit court abused its discretion by denying his motion for alternative sentencing, such as probation with sex offender treatment, a shorter term of incarceration, or, at a maximum, some combination of consecutive and concurrent sentencing. He argues that the circuit court failed to consider his mitigating factors including a very limited criminal record, long-time employment, military service, history of acting as a foster parent and supporting his family, willingness to obtain treatment, and the favorable aspects of his sex offender evaluation. The State responds that petitioner pled guilty to four counts of sexually abusing his two adopted daughters and, in exchange, the State dismissed

eight other counts relating to these same victims. When imposing sentence, the circuit court cited the impact of the crimes upon the daughters, who had previously been abused by others before being placed in petitioner's trust. The circuit court also noted that the evaluator found petitioner to have a moderate risk of re-offending.

"Sentences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review." Syl. Pt. 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982). The circuit court imposed the sentences set forth West Virginia Code § 61-8B-7(b) for these crimes, and the circuit court had discretion on how the sentences were to run and whether to grant alternative sentencing. Petitioner does not allege that the court relied upon any impermissible factor. Upon a review of the record, we find no abuse of discretion and affirm.

Affirmed.

ISSUED: May 27, 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