

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

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

vs) No. 11-0146 (Berkeley County 09-F-99)

**Megan Ryman, Defendant Below,
Petitioner**

FILED

**February 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Berkeley County, wherein the petitioner was sentenced to a determinate term of twenty years of incarceration for first degree robbery following a finding that she was unfit to continue her alternative sentence at the Anthony Correctional Center. The appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed a response brief, to which petitioner filed a reply.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix 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 appendix 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 Supreme Court of Appeals reviews sentencing orders . . . under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands.’ Syl. Pt. 1, in part, *State v. Lucas*, 201 W.Va. 271, 496 S.E.2d 221 (1997).” Syl. Pt. 1, *State v. James*, 227 W.Va. 407, 710 S.E.2d 98 (2011). Petitioner challenges the circuit court's sentencing order entered following her return to the circuit court's jurisdiction due to a finding that she was unfit to remain at the Anthony Correctional Center. Petitioner pled guilty to first degree robbery in 2009 and agreed to a determinate twenty year sentence for that crime, though the plea agreement allowed her to argue for alternative sentencing and placement at the Anthony Correctional Center. Petitioner successfully obtained this alternative sentencing, though she was unable to successfully complete the program due to multiple rule infractions. Upon being returned to the circuit court as unfit to remain at the Anthony Center, petitioner was given a hearing to determine if the warden had abused her discretion in making this determination, as allowed by West Virginia Code § 25-4-6.

Following the hearing, the circuit court found that the Anthony Correctional Center Warden was correct in returning petitioner, and sentenced her to the determinate twenty year sentence of incarceration per the terms of her original plea agreement. Petitioner now argues that the circuit court erred in imposing this sentence because the Anthony Correctional Center Warden abused her discretion in finding petitioner unfit to remain at the facility.

West Virginia Code § 25-4-6 states that if the Anthony Correctional Center Warden believes that a young adult offender is unfit to remain at the facility, “the offender shall be returned to the committing court to be dealt with further according to law.” The offender is further entitled to a hearing to review the warden’s determination, and § 25-4-6 states that “[t]he standard for review is whether the warden, considering the offender's overall record at the center and the offender's compliance with the center's rules, policies, procedures, programs and services, abused his or her discretion in determining that the offender is an unfit person to remain in the center.” Petitioner argues that the circuit court erred in sentencing her because the warden’s determination that she was unfit was an abuse of discretion. In support, petitioner argues that she was making progress at the facility and had completed a majority of the goals required of her. In fact, petitioner cites testimony from multiple Anthony Correctional Center employees to show that she completed several important programs and was considered a “great student.” Petitioner further argues that the physical altercation that led to her removal was the result of severe threats and harassment from other inmates due to her compliance with the Anthony Correctional Center’s policies.

However, a review of the record indicates that petitioner committed many other infractions while in the Anthony Correctional Center, and that the alleged harassment, if it did occur, did not warrant physical violence on petitioner’s part. In fact, evidence was presented that petitioner had an ongoing sexual relationship with the victim of her physical violence in violation of the facility’s rules. Associate Warden Jason Walton testified at petitioner’s hearing prior to sentencing and provided the circuit court with ample evidence upon which it could find that the warden had not abused her discretion in returning petitioner as unfit. The evidence established that petitioner was cited several times for unauthorized communication with male inmates, creating a disturbance, and refusing an order. Petitioner was also cited for sexual acts, insubordination/insolence, fighting, and contraband. The evidence shows that several of these citations were the result of arguments with other inmates, and that petitioner was cited for fighting in June of 2010, well before the physical altercation that led to her removal. Lastly, the decision to remove petitioner was made after she was seen hitting a male inmate with closed fists in the open yard of the facility in front of approximately 100 inmates on October 6, 2010. For this act, petitioner was charged with assault and battery. Twelve days later, while petitioner’s removal was pending, she was written up for engaging in sexual acts with the same male prisoner, and admitted to engaging in such acts with this prisoner at least seven times while in the facility.

Based upon this evidence, it is clear that petitioner was unable to follow the rules imposed by the Anthony Correctional Center and that the warden did not abuse her discretion in returning petitioner to the circuit court as unfit. Further, the circuit court did not err in upholding this determination, or in sentencing petitioner to the determinate twenty year sentence. Per West Virginia Code § 25-4-6, “[i]f the court upholds the warden's determination, the court may sentence the offender for the crime for which the offender was convicted.” Therefore, the circuit court did not abuse its discretion in sentencing petitioner.

For the foregoing reasons, we find no error in the decision of the circuit court and the circuit court’s sentencing order is hereby affirmed.

Affirmed.

ISSUED: February 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh