

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

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

vs) **No. 11-0496** (Roane County 09-F-49 & 09-M-04)

**Rick W. Snodgrass,
Defendant Below, Petitioner**

FILED
October 21, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Rick W. Snodgrass appeals from the circuit court's order denying his motion for correction of sentence. Respondent State of West Virginia has filed a timely response.

This Court has considered the parties' briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on May 31, 2011. 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.

In May of 2009, petitioner was indicted on one count of possession of a controlled substance with intent to deliver, one count of delivery of a controlled substance, and one count of murder (Case No. 09-F-49). On December 11, 2009, pursuant to a plea agreement with the State, petitioner entered a no contest plea to one count of delivery of a controlled substance. As a condition of the plea, the State dismissed the other two counts of the indictment. That same day, the State, with the consent of petitioner and his counsel, filed an Information charging petitioner with one misdemeanor count of involuntary manslaughter (Case No. 09-M-04). Petitioner pled no contest to the involuntary manslaughter charge, also as a part of the plea agreement. Thereafter, the cases were consolidated for further proceedings and sentencing.

Following his convictions, the circuit court sentenced petitioner to one year in jail for his misdemeanor conviction for involuntary manslaughter and a consecutive one to fifteen years in prison for his felony conviction for delivery of a controlled substance. The circuit

court's sentencing order directed that the one-year jail sentence be served first and, upon completion thereof, the felony prison sentence be served. Petitioner was unable to post bond during the pendency of his case, and he received a total credit of 251 days time served for his pretrial detention, which was credited toward his sentencing.

Petitioner filed a *pro se* motion for correction of sentence. Petitioner sought an order from the court directing that he serve his prison sentence on his felony conviction prior to serving his consecutive jail sentence on his misdemeanor conviction. There was no subsequent briefing by petitioner's counsel, but counsel did represent petitioner at the hearing held on the motion. Near the conclusion of the hearing, the circuit judge stated: "It is up to the Judge to fix the sentence and fashion the sentence . . . I don't believe the defendant is entitled to relief whatsoever." On September 10, 2010, the circuit court entered an order denying the motion for correction of sentence.

Petitioner asserts that pursuant to West Virginia Code §17-15-4(g), inmates serving jail sentences on misdemeanor convictions are entitled to "work off" up to twenty-five percent of their sentence, which is in addition to other "good time" to which they may be entitled by law. Pursuant to subsection (a) of this statute, these work credits are available to convicted persons who are sentenced to jail and who meet certain criteria. Petitioner states that pretrial detainees are not entitled to the benefit of these provisions. Petitioner asserts that by imposing the jail sentence first, his credit for time served is applied to his jail sentence and he is deprived of the opportunity to "work off" up to twenty-five percent of his misdemeanor sentence. Petitioner asserts that he has suffered a disparate result as compared to a similarly situated person without pretrial jail time credit and that the consecutive sentences, as imposed, violate his constitutional right to equal protection given the disparate impact that his sentences have on his pretrial detainment.¹

The State responds that petitioner's plea agreement did not mention whether the sentences would be served consecutively or concurrently and that petitioner did not raise this issue during his sentencing, thus, he has waived the same. The State notes that petitioner acknowledged in the statement in support of his guilty pleas that he had been advised by his counsel of the penalties for each offense and that he understood that the circuit court would not be bound by any agreement or sentencing recommendation between the prosecutor or the defense. The State adds that the circuit court was not under any constitutional or statutory obligation to run sentences in a specific order. The State points out that "good time" and "trustee time" are not a prisoner's right and that there is no evidence that petitioner's sentence reflects an abuse of discretion by the circuit court.

¹ This is essentially petitioner's entire equal protection argument in his petition for appeal.

"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). Here, the sentences imposed by the circuit court were within statutory limits, and petitioner has not identified an impermissible factor. The circuit court had the discretion to decide how the sentences would be served. Moreover, there is no guarantee that petitioner, who was also convicted of a felony, would have been permitted to participate in the jail work program.² Upon a review of the record and the parties' arguments, we find that the circuit court did not abuse its discretion.

While petitioner mentions an equal protection argument,³ this Court has previously stated that "issues . . . mentioned only in passing but are not supported with pertinent authority, are not considered on appeal." *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) (citations omitted). This Court declines to address this issue because it has not been sufficiently developed by petitioner.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 21, 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

² West Virginia Code §17-15-4(a) sets forth the criteria for eligibility in the jail work program.

³ Petitioner devotes two sentences in his petition for appeal to this issue, and his counsel's entire argument on this issue before the circuit court during the hearing on petitioner's *pro se* motion for correction of sentence was: "And, I guess to some extent, it might raise an issue of, I don't know, due process or equal protection or it - - in a criminal - - the criminal statutes are always to be strictly construed and they're supposed to be interpreted in a light favorable to the defendant, especially in sentencing."