STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

vs) No. 11-0607 (Raleigh County 09-IF-334-H)

William Haden McKinney,
Defendant Below, Respondent

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

MEMORANDUM DECISION

Petitioner William Haden McKinney pled guilty to Sexual Assault in the Third Degree, West Virginia Code § 61-8B-5. He was sentenced to one to five years in prison, but the circuit court then suspended the prison sentence and imposed five years of probation along with sexual offender treatment. The circuit court also imposed twenty years of extended sexual offender supervision pursuant to West Virginia Code § 62-12-26. Petitioner appeals the imposition of extended supervision. The State of West Virginia has filed a summary response.

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. This Court has considered the parties' briefs and the record on appeal. 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 asserts that West Virginia Code § 62-12-26 is unconstitutional under both the West Virginia and United States Constitutions. Shortly after petitioner filed this appeal, we released our opinion in *State v. James*, 227 W.Va. 407, 710 S.E.2d 98 (2011), wherein we upheld the constitutionality of this Act. In accordance with our holding in *James*, we reject petitioner's arguments that the Act is facially unconstitutional.

Petitioner also argues that twenty years of extended supervision is disproportionate to the facts of his crime. Petitioner, then twenty-two years old, drank alcohol with a thirteen-year-old girl and, when the girl was intoxicated, they engaged in vaginal intercourse.

Petitioner argues that this was an isolated incident and a mistake, he has accepted full responsibility for his actions, he has no prior convictions, psychological evaluators have found him to have a low to moderate risk of recidivism, he is amenable to treatment, he is not a sexually violent predator, and he has a positive work history.

"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). "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). Upon a review of the record and argument of the parties, we find that the circuit court did not abuse its discretion when imposing this period of extended supervision. The circuit court obviously took petitioner's arguments into consideration when suspending the prison sentence and imposing probation.

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