

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

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

**vs) No. 11-0740 ( Raleigh County 10-F-128)**

**Thomas Lee Anderson  
Defendant Below, Petitioner**

**FILED**

**November 10, 2011**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner appeals the circuit court's order sentencing him to serve consecutive terms of one to five years with extended supervision for fifty years based upon his convictions of two counts of first degree sexual abuse. Petitioner challenges the extended supervision portion of his sentence. The State of West Virginia has filed a 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.

Petitioner argues that West Virginia § 62-12-26, which allows extended supervision of sex offenders is unconstitutional as it violates his rights of procedural and substantive due process, equal protection, and double jeopardy. Subsequent to the filing of this appeal, this Court decided the case of *State v. James*, 227 W.Va. 407, 710 S.E. 2d 98 (2011), that upheld West Virginia Code § 62-12-26 on these grounds. As such, petitioner's appeal on these issues must fail.

Petitioner also argues that the circuit court abused its discretion in imposing the maximum period of extended supervision of fifty years and that the period of extended supervision is disproportionate to his crimes. Petitioner was convicted based upon touching the victim's breasts and vaginal area. "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).” Syl. Pt. 2, *State v. Farmer*, 193 W.Va. 84, 454 S.E. 2d 378 (1994). The extended supervision imposed upon petitioner is within statutory limits and the Court concludes that it is not disproportionate. Further, there is no indication that the sentence is based upon any impermissible factors. Under the facts and circumstances of the present case, the Court finds no error.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** November 10, 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