

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

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

vs) No. 11-0800 (Ohio County 10-F-22)

**Richard A. Martin III,
Defendant Below, Petitioner**

FILED

October 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Richard A. Martin III, by counsel Brent Clyburn, appeals the Circuit Court of Ohio County's April 13, 2011, order sentencing him to one to five years incarceration to be followed by fifty years of supervised release for his conviction of third degree sexual assault. Petitioner's counsel filed this appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). The State filed its response, by counsel Laura Young, in support of the circuit court's sentencing order.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, 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 of Appellate Procedure.

The Court reviews sentencing orders under “a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands.” Syllabus point 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). Moreover, “[s]entences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review.” Syllabus point 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982).” Syl. Pt. 6, *State v. Slater*, 222 W.Va. 499, 665 S.E.2d 674 (2008). Further, “[t]he constitutionality of a statute is a question of law which this Court reviews *de novo*.” Syl. Pt. 1, *State v. Rutherford*, 223 W.Va. 1, 672 S.E.2d 137 (2008). Syl. Pt. 2, *State v. James*, 227 W.Va. 407, 710 S.E.2d 98 (2011). With these standards in mind, we turn to discuss the issues before us.

Petitioner's sentence is in accord with statute. In his *Anders* brief, petitioner's counsel raises a single potential assignment of error—that West Virginia Code § 62-12-26, which provides the circuit court the authority to place petitioner on fifty years of supervised release following his discharge from incarceration, is contrary to the United States and West Virginia constitutional provisions on cruel and unusual punishment, due process of law, and double

jeopardy. However, petitioner's counsel acknowledges that this Court recently held in *State v. James*, 227 W.Va. 407, 710 S.E.2d 98 (2011), that West Virginia Code § 62-12-26 does not violate these constitutional provisions. In light of *James*, we find no abuse of discretion and accordingly, we affirm.

For the foregoing reasons, we affirm the circuit court's decision.

Affirmed.

ISSUED: October 22, 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