STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

vs) **No. 11-1081** (Cabell County 10-F-290)

William Trent Spaulding,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner's appeal, by counsel Connor Robertson, arises from the Circuit Court of Cabell County, wherein he was sentenced to forty-five years of incarceration following a conviction, by jury, of three counts of first degree armed robbery by order entered on June 13, 2011. The State, by counsel Jacob Morgenstern, has filed its response, to which petitioner filed a reply.

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.

On August 30, 2010, petitioner was indicted on seven charges which included three counts of armed robbery. Following his indictment, petitioner and the State entered into a plea agreement whereby petitioner would be allowed to plead guilty to a single count of armed robbery. All the parties and the circuit court agreed to be bound by a sentencing range of twenty to thirty years of incarceration pursuant to this plea. On April 6, 2011, the parties appeared for a plea hearing and the circuit court questioned petitioner pursuant to Rule 11(d) of the West Virginia Rules of Criminal Procedure. During the hearing, the circuit court expressed concern about the knowing and voluntary nature of petitioner's plea due to his reluctance and hesitancy in answering questions about his involvement in the robbery. Therefore, the circuit court adjourned the hearing and rescheduled the same for April 24, 2011. However, the State thereafter withdrew the plea offer and all subsequent offers were more severe. The matter proceeded to jury trial on May 3, 2011, and petitioner was convicted on all three counts of armed robbery and was subsequently sentenced to forty-five years of incarceration.

On appeal, petitioner alleges that the circuit court erred in refusing to accept his plea on April 6, 2011. While petitioner agrees that he failed to sufficiently state a factual basis for pleading guilty as a principal in the first degree to armed robbery, he argues that he did

sufficiently state a factual basis for being guilty as a principal in the second degree. Citing West Virginia Code § 61-11-6 and our prior precedent, petitioner argues that the punishments for being a principal in the first degree and second degree are the same. As such, it is petitioner's contention that the circuit court erred by failing to accept his plea agreement because he sufficiently established a factual basis for his being a principal in the second degree to the armed robbery. Because the circuit court declined to accept his plea agreement, petitioner now argues that he was severely prejudiced because of his subsequent conviction on three counts of armed robbery and forty-five year sentence. Petitioner further rebuts the State's argument that he undermined his original explanation as to his involvement in the robbery by stating that he always admitted to being a non-violent participant.

The State responds in support of the circuit court's decision regarding petitioner's plea and argues that petitioner failed to provide a sufficient factual basis for his plea and displayed multiple instances of hesitancy and reluctance when questioned about the necessary elements of first degree robbery. According to the State, many of petitioner's admissions were subsequently undermined by his statements and behavior during the plea hearing, and petitioner responded in the negative when the circuit court asked him if he was "backing [his co-defendant's] play." The State argues that this Court has stated that mere presence at the crime scene, even with knowledge of the criminal purpose of the principal in the first degree, is not, alone, sufficient to make the accused guilty as a principal in the second degree. Syl. Pt. 3, *State v. Haines*, 156 W.Va. 281, 192 S.E.2d 879 (1972). As such, the State argues that aiding and abetting, together, must also be proven. According to the State, it is clear from the evidence that petitioner's plea agreement lacked a sufficient factual basis for the circuit court to accept the plea agreement.

The Court has previously stated that "'West Virginia Rules of Criminal Procedure, Rule 11, gives a trial court discretion to refuse a plea bargain.' Syllabus Point 5, *State v. Guthrie*, 173 W.Va. 290, 315 S.E.2d 397 (1984)." Syl. Pt. 1, *State v. Sears*, 208 W.Va. 700, 542 S.E.2d 863 (2000). The Court has also stated that "'[a] court's ultimate discretion in accepting or rejecting a plea agreement is whether it is consistent with the public interest in the fair administration of justice.' Syllabus Point 4, *Myers v. Frazier*, 173 W.Va. 658, 319 S.E.2d 782 (1984)." Syl. Pt. 2, *id*. In offering direction on this point, the Court has held as follows:

> "[a]s to what is meant by a plea bargain being in the public interest in the fair administration of justice, there is the initial consideration that the plea bargain must be found to have been voluntarily and intelligently entered into by the defendant and that there is a factual basis for his guilty plea. Rule 11(d) and (f). In addition to these factors, which enure to the defendant's benefit, we believe that consideration must be given not only to the general public's perception that crimes should be prosecuted, but to the interests of the victim as well." Syllabus Point 5, *Myers v. Frazier*, 173 W.Va. 658, 319 S.E.2d 782 (1984).

Syl. Pt. 3, *id*. Based upon our review, the Court finds no error in the circuit court refusal to accept petitioner's plea agreement. In accepting a plea agreement, a circuit court must first determine that the agreement was entered into voluntarily and intelligently by the defendant. The record shows that the circuit court had concerns about these issues in regard to petitioner's plea

agreement such that the plea hearing was rescheduled. Subsequent to that initial hearing, the State withdrew the plea offer and all subsequent offers were more severe. Based upon the reluctance and hesitation that petitioner exhibited at the plea hearing when discussing his involvement in the crime at issue, the circuit court did not abuse its discretion in refusing to accept the plea agreement.

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

Affirmed.

ISSUED: November 19, 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