

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

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

vs.) No. 11-1322 (Morgan County 10-F-57)

**James Sandridge,
Defendant Below, Petitioner**

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

MEMORANDUM DECISION

Petitioner's appeal, by counsel Christopher J. Prezioso, arises from the Circuit Court of Morgan County, wherein he was sentenced to a term of incarceration of one to five years by order entered on August 22, 2011. The State, by counsel Michele Duncan Bishop, has filed its response.

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 September 7, 2010, petitioner was indicted on one count of breaking and entering, one count of petit larceny, and one count of felony conspiracy stemming from a theft from a Boys and Girls Club. Prior to trial, petitioner entered into a plea agreement wherein he pled guilty to one count of felony conspiracy, the remaining charges were dismissed, and sentencing was to be deferred if petitioner completed successful placement at the Anthony Center for Young Adult Offenders ("Anthony Center"). After being sent to the Anthony Center, the warden of that facility eventually caused petitioner to be returned to the circuit court, having found him to be unfit to remain at the facility. On August 22, 2011, the circuit court held a hearing upon petitioner's return from the Anthony Center. Petitioner requested a return to the Anthony Center or alternative sentencing in the form of probation. The circuit court thereafter sentenced petitioner to a term of incarceration of one to five years, allowing petitioner credit for the time served at the Anthony Center.

On appeal, petitioner alleges that the circuit court abused its discretion in sentencing him to incarceration instead of implementing an alternative sentence such as probation. According to petitioner, he has made positive changes in his life and will gain little from serving his sentence. In response, the State argues that because petitioner admitted to the infractions upon which he was dismissed from the Anthony Center, with one exception, it is undisputed that he broke the facility's rules on at least four occasions, all within a single month. Further, the circuit court

cautioned petitioner at the plea hearing that if he did not adhere to the facility's rules, he would be returned to the circuit court and possibly ordered to serve his sentence in a penitentiary. As such, the circuit court did not abuse its discretion in sentencing petitioner.

“‘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).” 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).

Upon our review, we find no abuse of discretion by the circuit court in sentencing petitioner to incarceration following his return from the Anthony Center. Petitioner pled guilty to one count of felony conspiracy in violation of West Virginia Code § 61-10-31. Pursuant to that statute, any defendant found guilty under that code section “shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.” Because the sentence imposed was within statutory limits and was not based on an impermissible factor, the Court finds no error.

For the foregoing reasons, the circuit court's sentencing order is hereby affirmed.

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