

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

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

vs) No. 11-0222 (Roane County 10-F-16)

**Anita Greathouse,
Defendant Below, Petitioner**

FILED

June 27, 2011

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

MEMORANDUM DECISION

Petitioner Anita Greathouse, convicted of domestic battery by a no contest plea, appeals the circuit court order sentencing her to serve three years' probation and ordering her to register as a child abuse or child neglect offender. The State has filed a response to the petition.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. 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 was originally indicted on six charges, including three counts of child abuse resulting in injury and three counts of domestic battery. The alleged victims were petitioner's sons. Petitioner entered into a plea agreement whereby she would plead no contest to one count of domestic battery against J.R., her child, with a maximum penalty of one year in the regional jail. The State agreed to recommend probation at sentencing. Later, the State filed the terms of probation form, which included a clause that petitioner would register with the state police as a child abuser pursuant to West Virginia Code §15-13-2.

On appeal, petitioner argues that the circuit court erred in requiring her to register as a child abuser by using "charged, but dismissed, offenses" to enhance her sentence, by requiring her to register as a child abuser when the crime to which she pled no contest is not one of the enumerated crimes in West Virginia Code §15-13-2(b), and by misinterpreting West Virginia Code §15-13-2. This Court has found that "[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute,

we apply a *de novo* standard of review.” Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 139, 459 S.E.2d 415, 416 (1995). In response to the petition, the State argues that West Virginia Code §15-13-2 is not a punishment, but is regulatory in nature. The State further argues that although petitioner’s crime is not enumerated in West Virginia Code §15-13-2(b), she is required to register under West Virginia Code §15-13-2(d).

West Virginia Code §15-13-2(d) states as follows:

If a person has been convicted of any criminal offense against a child in his or her household or of whom he or she has custodial responsibility, and the sentencing judge makes a written finding that there is a continued likelihood that the person will continue to have regular contact with that child or other children and that as such it is in the best interest of the child or children for that person to be monitored, then that person is subject to the reporting requirements of this article.

The State admits that the circuit court failed to make the required written findings, but in this case that failure should be deemed harmless error. Upon reviewing the record in this action, it is clear that the criminal offense in this matter, domestic battery, was perpetrated against petitioner’s child. Petitioner pled no contest to this crime, and as the victim was her biological child, there is a continued likelihood that she will have regular contact with that child. Thus, under the facts of this case, this Court finds no error in the circuit court’s sentencing order or the requirement that petitioner register under West Virginia Code §15-13-2.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 27, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum