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April 30, 2024
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 22-866 (Preston County 22-F-61)

Robert Quinn,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Robert Quinn appeals the sentencing order entered by the Circuit Court of Preston County on October 24, 2022, sentencing him to imprisonment for life with mercy for first-degree murder and to imprisonment for 180 years for first-degree robbery.[1] Both sentences were to run consecutively. The petitioner appeals his sentence for first-degree robbery and argues the 180-year sentence is disproportionate. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).

The petitioner was charged in a four-count indictment with first-degree murder (Count 1), kidnapping (Count 2), first-degree robbery (Count 3), and concealment of a deceased human body (Count 4). The petitioner was accused of kidnapping, robbing, killing, and concealing the body of Philip Andrew Barlow. The parties negotiated an agreement wherein the petitioner agreed to plead guilty to first-degree murder with a binding sentence of life with mercy, the petitioner agreed to plead guilty to first-degree robbery with sentencing remaining in the circuit court's discretion, and the petitioner agreed to testify against his codefendant. In turn, the State agreed to dismiss Counts 2 and 4 of the indictment. A plea hearing was held, and the circuit court found the petitioner's pleas were freely, voluntarily, intelligently, and knowingly made. A presentence investigation ("PSI") report was also ordered, and a sentencing hearing was set.[2]

[1] The petitioner appears by counsel Michael Safcsak and John Rogers, and the State appears by Attorney General Patrick Morrisey and Deputy Attorney General Andrea Nease Proper.

[2] The plea hearing transcript was not submitted in the record on appeal, but the circuit court's plea hearing order was provided.

A review of the PSI report reveals the petitioner and his codefendant decided to rob their neighbor, Mr. Barlow. After ambushing Mr. Barlow outside of his home one night, the petitioner and his codefendant forced Mr. Barlow into his own truck. The codefendant then drove them to Fortney Mills, West Virginia. During the drive to Fortney Mills, Mr. Barlow told the petitioner and his codefendant that he knew their identities. All three got out of the truck, and Mr. Barlow was taken under a nearby bridge where he was forced to his hands and knees and his throat was slashed, killing him. Both petitioner and the codefendant blame the other for killing Mr. Barlow. Mr. Barlow's wallet contained $50, which was taken. Mr. Barlow's dead body was thrown into the nearby river. The petitioner and his codefendant then set about destroying evidence of the robbery and murder by burning Mr. Barlow's truck and their clothes as well as denying any knowledge of the events that transpired and of Mr. Barlow's whereabouts. Mr. Barlow's body was found ten days later with a deep throat laceration and lacerations to the back of his neck.

At the sentencing hearing, the circuit court asked whether the parties received the PSI report, and they responded affirmatively and stated no corrections or changes were necessary. The circuit court remarked about the petitioner's and his codefendant's vastly different versions of events and the fact that each blamed the other. The circuit court "accept[ed] the factual matter set [forth] in this presentence investigation as this [court's] finding [of] facts in regards to the sentencing hearing." The circuit court also reviewed the written victim impact statements of five of Mr. Barlow's family members, heard two of Mr. Barlow's family members speak, and listened to the lead investigator's testimony. The lead investigator indicated that Mr. Barlow had fought for his life more than once on the night he was killed. Although Mr. Barlow had deep lacerations to his throat, the lead investigator surmised the petitioner and his codefendant attempted to decapitate Mr. Barlow based upon the depth of the cuts to the back of Mr. Barlow's neck. The prosecuting attorney argued that the petitioner serve consecutive terms of life with mercy for his first-degree murder charge and 150 years for his first-degree robbery conviction. The petitioner then expressed his remorse to Mr. Barlow's family. The petitioner's counsel also addressed the circuit court and asked that the petitioner be sentenced to twenty years of imprisonment on the first-degree robbery charge, to be served consecutively with the sentence for his first-degree murder conviction.

Ultimately, the circuit court sentenced the petitioner to life with mercy for first-degree murder, as it was bound to do under the plea agreement. However, exercising the discretion it retained regarding the first-degree robbery conviction, the circuit court sentenced the petitioner to 180 years of imprisonment for that conviction and remarked that just as Mr. Barlow's life had been taken, the petitioner's first-degree robbery sentence would run consecutive to the sentence for first-degree murder.

On appeal, the petitioner argues the circuit court's sentence of 180 years of imprisonment for first-degree robbery is disproportionate and violates the West Virginia Constitution. We review "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). "Where the issue involves the application of constitutional protections, our review is de novo." *State v. Patrick C.*, 243 W. Va. 258, 261, 843 S.E.2d 510, 513 (2020). *See,*

e.g., Syl. Pt. 8, *Dean v. State*, 230 W. Va. 40, 736 S.E.2d 40 (2012) ("A review of a proportionality determination made pursuant to the Excessive Fines Clause of the West Virginia Constitution is de novo."). Furthermore, "Article III, Section 5 of the West Virginia Constitution, which contains the cruel and unusual punishment counterpart to the Eighth Amendment of the United States Constitution, has an express statement of the proportionality principle: 'Penalties shall be proportioned to the character and degree of the offence.'" Syl. Pt. 8, *State v. Vance*, 164 W. Va. 216, 262 S.E.2d 423 (1980). We ordinarily limit proportionality reviews to sentences "where there is either no fixed maximum set by statute or where there is a life recidivist sentence." Syl. Pt. 4, in part, *Wanstreet v. Bordenkircher*, 166 W. Va. 523, 276 S.E.2d 205 (1981). West Virginia Code § 61-2-12(a) sets forth no fixed maximum term for first-degree robbery, accordingly, we turn to the petitioner's argument on appeal.

We apply two tests to evaluate the proportionality of a sentence. "The first is subjective and asks whether the sentence for the particular crime shocks the conscience of the court and society. If a sentence is so offensive that it cannot pass a societal and judicial sense of justice, the inquiry need not proceed further." *State v. Cooper*, 172 W. Va. 266, 272, 304 S.E.2d 851, 857 (1983). The second is an objective inquiry, requiring us to give consideration "to the nature of the offense, the legislative purpose behind the punishment, a comparison of the punishment with what would be inflicted in other jurisdictions, and a comparison with other offenses within the same jurisdiction." *Id*. (quoting Syl. Pt. 5, *Wanstreet v. Bordenkircher*, 166 W. Va. 523, 276 S.E.2d 205 (1981)).

We begin our analysis under the subjective test and consider whether the petitioner's first-degree robbery sentence shocks the conscience of the court and society and whether the sentence is so offensive that it cannot pass societal and judicial muster. The petitioner's challenge to the first-degree robbery sentence centers on his inability to benefit from the bargain of life with mercy, which makes him eligible for parole after fifteen years. The petitioner contends he will not be parole eligible for forty-five years for first-degree robbery. He rationalizes that first-degree murder is a much worse crime than first-degree robbery and, thus, his first-degree robbery sentence is disproportionate. Although the petitioner concedes that his first-degree robbery sentence is "facially permissible," he argues the first-degree robbery sentence is "unduly harsh in light of the totality of this matter." Considering Mr. Barlow was ambushed, forcibly abducted, robbed, slaughtered for $50—all while he fought for his life, and his body discarded; evaluating the petitioner's prior criminal history, which includes two grand larceny convictions, a conviction for second-degree robbery in Maryland, conviction for violation of a protective order, and a shoplifting conviction; and contemplating the harm and loss to the Barlow family, we cannot conclude that the circuit court's sentence for first-degree robbery shocks the conscience. *See State ex rel. Hatcher v. McBride*, 221 W. Va. 760, 656 S.E.2d 789 (2007) (per curiam) (upholding sentence of 212 years imprisonment on one count of aggravated robbery). Further, we are not persuaded that the 180-year sentence is objectively unreasonable under our second test. The petitioner urges we look no further than his plea agreement to compare his first-degree murder and robbery sentences. He fails, however, to adequately address the nature of the first-degree robbery offense, discuss the legislative purpose behind the sentence for first-degree robbery, undertake any comparison of the punishment with what would be inflicted in other jurisdictions, or conduct a

meaningful comparison with other offenses within West Virginia. Thus, the petitioner has failed to establish that his sentence is disproportionate under the objective test. *See State v. Payne*, No. 17-0195, 2018 WL 1444287, at *4 (W. Va. Mar. 23, 2018) (memorandum decision) (petitioner failed to establish that his sentence was disproportionate by not meaningfully addressing each element of the objective test) (citing *State v. Hargus*, 232 W.Va. 735, 744, 753 S.E.2d 893. 902 (2013)).

In view of the foregoing, we find the circuit court did not abuse its discretion in sentencing the petitioner to 180 years imprisonment for first-degree robbery. Accordingly, we find the petitioner's assignment of error to be without merit.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 30, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn