

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

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

v.) **No. 22-886** (Jackson County CC-18-2022-F-2)

**Christopher Jackson,**  
**Defendant Below, Petitioner**

**MEMORANDUM DECISION**

Petitioner Christopher Jackson appeals the November 9, 2022, order entered by the Circuit Court of Jackson County denying his motion to reduce sentence pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure.<sup>1</sup> 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 indicted by the October 2020 term of the grand jury for child neglect resulting in death in violation of West Virginia Code § 61-8D-4a(a). The parties engaged in plea negotiations wherein petitioner agreed to plead guilty to an information charging him with child neglect creating risk of death or serious bodily injury in violation of West Virginia Code § 61-8D-4(c); the State agreed to stand silent at sentencing. At the plea hearing, the parties placed their agreement on the record, and the circuit court found the petitioner voluntarily, intelligently, and knowingly entered into the plea agreement.

During the sentencing hearing, the circuit court ordered the petitioner to serve a sentence of imprisonment of not less than one nor more than five years for the felony offense of child neglect creating risk of death or serious bodily injury, to pay a fine, to enroll with the West Virginia State Police Child Abuse Registry for ten years, and to be subject to extended probation supervision for twenty years. On the petitioner's motion, the circuit court granted an alternative sentence of home incarceration. The circuit court also advised the petitioner of his right to appeal. The circuit court's sentencing order was entered on June 9, 2022, and the petitioner did not appeal his sentence.

A few days later, the State filed a motion to revoke the petitioner's home confinement after he was found to be in possession of methamphetamine, marijuana, and drug paraphernalia and he tested positive for and admitted to using methamphetamine. The State claimed the petitioner

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<sup>1</sup> Petitioner appears by counsel Roger L. Lambert, and the State appears by Attorney General Patrick Morrissey and Deputy Attorney General Andrea Nease Proper.

violated the Jackson County Home Incarceration Program Participant Agreement by possessing controlled substances, possessing drug paraphernalia, and consuming controlled substances.

During the hearing on the State's motion to revoke, the petitioner admitted to consuming methamphetamine in violation of the terms and conditions of his home confinement. The circuit court found that this admission constituted a violation of home confinement, revoked the petitioner's home confinement, and sentenced him to imprisonment for not less than one and no more than five years. The circuit court also gave the petitioner's counsel "leave for reconsideration on [drug treatment] with some sort of substantive plan to address what caused us to be here today." The circuit court entered its revocation and sentencing order on November 1, 2022.

Petitioner timely filed his motion to reduce sentence pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure and requested the circuit court reconsider his sentence because of his acceptance into a long-term drug treatment program. After a hearing, the circuit court denied the petitioner's motion by order entered November 9, 2022, and petitioner timely appealed that order.

We begin our review with Syllabus Point 1 of *State v. Head*, 198 W. Va. 298, 480 S.E.2d 507 (1996), which provides:

In reviewing the findings of fact and conclusions of law of a circuit court concerning an order on a motion made under Rule 35 of the West Virginia Rules of Criminal Procedure, we apply a three-pronged standard of review. We review the decision on the Rule 35 motion under an abuse of discretion standard; the underlying facts are reviewed under a clearly erroneous standard; and questions of law and interpretations of statutes and rules are subject to a *de novo* review.

In his sole assignment of error, the petitioner alleges that the circuit court committed plain error when it sentenced him to home incarceration without complying with the requirements of West Virginia Code § 62-11B-5, which specifies terms and conditions to be included in a home incarceration order. However, the petitioner's argument pertains to the June 9, 2022, sentencing order. The current appeal is from the November 9, 2022, order denying his Rule 35(b) motion. "Rule 35(b) of the West Virginia Rules of Criminal Procedure only authorizes a reduction in sentence. Rule 35(b) is not a mechanism by which defendants may challenge their convictions and/or the validity of their sentencing." Syl. Pt. 2, *State v. Marcum*, 238 W. Va. 26, 792 S.E.2d 37 (2016). The petitioner candidly admits that his assertion of error regarding the circuit court's June 9, 2022, sentencing order is raised for the first time in this appeal. In that regard, we observe that "[i]ndependently of Rule 35(b), the sentencing order itself is subject to appellate review, both as to its constitutionality and its compliance with the West Virginia Rules of Criminal Procedure and the applicable statutory provisions." *Head*, 198 W. Va. at 305, 480 S.E.2d at 514 (Cleckley, J., concurring). Here, petitioner neither filed a notice of appeal within thirty days of the entry of the sentencing order nor filed a motion to extend the deadlines for appeal. *See* W. Va. R. App. P. 5(b) (specifying time period for docketing appeal); W. Va. R. App. P. 5(i) (permitting motion for extension of time). Accordingly, we decline to consider this alleged error.

Because petitioner’s brief fails to address the merits of the circuit court’s November 9, 2022, order denying his Rule 35(b) motion, we deem any arguments regarding the validity of that order to be waived. *See State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) (“[I]ssues which are not raised, and those mentioned only in passing but [which] are not supported with pertinent authority, are not considered on appeal.”) 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