IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0904

STATE OF WEST VIRGINIA,

Respondent,

v.

DAVID EUGENE HALL, JR.,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the October 6, 2021, Order
Circuit Court of Mercer County
Case No. 20-F-157

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. INTRODUCTION

On February 9, 2022, David H.[1] ("Petitioner") appealed a judgment of the Circuit Court of Mercer County sentencing him to an indeterminate prison term of ten to twenty-five years in relation to his conviction of second degree sexual assault, as contained in Mercer County Criminal Case Number 20-F-157-WS. Because Petitioner has failed to demonstrate reversible error in the judgment of the circuit court, this Court should affirm.

II. ASSIGNMENTS OF ERROR

Petitioner raises two assignments of error in his brief:

1. The lower court failed to consider all mandatory factors when sentencing Petitioner as required by West Virginia Code § 61-11-23;

2. The lower court erred by imposing a disproportionate sentence to the offense committed due to Petitioner's diminished mental capacity and age.

Pet'r's Br. at 1.

III. STATEMENT OF THE CASE

A. Underlying Facts and Investigation

On November 28, 2019, Petitioner, his mother, his eleven-year-old half-sister, B.D., and infant sibling, stayed at the Days Inn hotel in Princeton, Mercer County, West Virginia, while

[1] Because the underlying facts involve sexual acts against a minor, Respondent will refer to the parties herein by their initials, in accordance with Rule 40(e)(1) of the West Virginia Rules of Appellate Procedure.

returning to their home in Virginia following a family Thanksgiving-day celebration. A.R. 178.[2] Petitioner, being seventeen-years-old at the time, was given his own room, while his mother, B.D., and infant sibling shared another room. A.R. 178. At some point during their stay, the family went swimming in the hotel's pool. A.R. 178. After returning to their respective rooms, Petitioner's mother left B.D. alone in the room they were sharing while she went to the lobby. A.R. 178. Shortly thereafter, Petitioner entered the room where B.D. was left alone, and proceeded to forcibly remove B.D.'s bathing suit, throw her on the bed, held her down, and sexually assaulted her by engaging in penetrative vaginal intercourse. A.R. 4,178. When Petitioner's mother returned, she knocked on the door, apparently allowing Petitioner time to get dressed before she entered the room. A.R. 177. When she entered, she apparently was unware of what had just happened, and neither Petitioner nor B.D. said anything of the assault. A.R. 177.

Approximately two months later, on January 21, 2020, Cpl. J.R. Tupper of the Princeton Detachment of the West Virginia State Police received a call from Sgt. Lonnie Anders of the Wytheville Police Department in Wytheville, Virginia, in reference to an eleven-year-old girl who had recently provided a positive pregnancy test after arriving at a local hospital seeking medical treatment. A.R. 177. Sgt. Anders explained to Cpl. Tupper that the young female, later identified as B.D., had reported to the hospital with complaints of nausea, vomiting, and loss of appetite. A.R. 180. When the pregnancy test administered to B.D. came back positive, B.D. disclosed that her brother, Petitioner, was the biological father, and that she and her brother had sexual

[2] While Petitioner's Appendix is paginated, it appears that there was an issue with the numbering, resulting in some of the pages identified in the record as not being in sequential order. Moreover, the copy of the Appendix received by Respondent does not display many of the page numbers due to their location in the bottom right corner of each page. For simplicity and clarity, Respondent will refer to the appendix in sequential order, with page one being the first page of the "Emergency Detention Hearing Transcript," and each page being denoted by sequential page number.

intercourse while at the Days Inn hotel in Princeton on Thanksgiving night in 2019. A.R. 180. Although Petitioner had originally arrived at the hospital with B.D. and his mother, he left once confronted with the accusation that he had sexual intercourse with his eleven-year-old sister. A.R. 180. After leaving, Petitioner continued to contact his mother via Facebook Messenger, in which he eventually stated that B.D. "ask [sic] me to," with respect to the motivation behind the sexual assault, and further expressed his desire to not go to jail. A.R. 180. Petitioner also claimed that he was staying in a nearby apartment complex but refused to disclose in which apartment he was staying. A.R. 180. An ultrasound was also performed around this time that further confirmed that B.D. was pregnant. A.R. 180.

After being advised of Petitioner's attempts to avoid law enforcement, Petitioner's mother filled out a "Juvenile Runaway" form after she was asked to do so by officer D.R. Shumate of the Wytheville Police Department. A.R. 181. Officer Shumate then issued a "be-on-the-lookout" notice for Petitioner to nearby law enforcement. A.R. 181.

On January 23, 2020, B.D. participated in a forensic interview where she discussed the circumstances of the sexual assault perpetrated against her by Petitioner. A.R. 178. B.D. disclosed that her brother had sexual intercourse with her resulting in her pregnancy. A.R. 178. During the interview, B.D. also disclosed that Petitioner had solicited sexual acts from her on at least five prior occasions. A.R. 178. Despite reporting these prior incidents to her mother and grandfather, the record reveals that no meaningful action was taken to protect B.D. or to otherwise prevent Petitioner from having contact with, or access to B.D. in light of these disturbing propositions. A.R. 178.

Petitioner was taken into custody around February 3, 2020 and questioned by Cpl. Tupper regarding the alleged sexual assault on his eleven-year-old sister. A.R. 238. During this interview,

Petitioner acknowledged that he was seventeen-years-old, and that he would be eighteen on June 13, 2020. A.R. 238. Petitioner was advised of his *Miranda* rights, and agreed to speak with Cpl. Tupper regarding the sexual assault allegations. A.R. 238-40. During the interview, Petitioner admitted to having sexual intercourse with his eleven-year-old sister at the Days Inn hotel on November 28, 2019, but claimed that it was "consensual" and that his sister had offered to have sex with him if he would agree to purchase a phone card for her. A.R. 240. Petitioner denied having had sex with B.D. prior to that incident, or in the months following. A.R. 241-42. When asked why he had not had sex with B.D., Petitioner stated that "she didn't ask." A.R. 243.

B. Procedural History and Surrounding Facts

On February 3, 2020, Petitioner appeared before the Mercer County Circuit Court for an emergency detention hearing regarding the sexual assault allegations. A.R. 1. Cpl. Tupper testified as to the facts relayed to him from Sgt. Anders, and further testified to the substance of his conversations with Petitioner. A.R. 2-9. Cpl. Tupper advised during his testimony that B.D. did not disclose the sexual assault to her mother out of fear that "she would get in trouble." A.R. 4. Cpl. Tupper further explained that there were plans to obtain DNA, whether it be from the fetus if terminated, or from the amniotic fluid if carried to term. A.R. 6.

After the conclusion of testimony, the circuit court found probable cause to believe that the Respondent, a seventeen-year-old, had committed first degree sexual assault against his eleven-year-old sister, and that he presented a danger to others and the victim if allowed to return home pending further proceedings. A.R. 10. The court ordered that Petitioner be detained pending a preliminary hearing. A.R. 10-11

At a February 14, 2020 hearing, the circuit court acknowledged that the State had previously filed a Juvenile Delinquency Petition charging Petitioner with one count of first degree

sexual assault and one count of incest. A.R. 16. The court relied upon the previous testimony of Cpl. Tupper and found probable cause to believe Petitioner had committed the offenses charged in the petition. A.R. 17.

Following the preliminary hearing, the State filed a motion to transfer Petitioner to the adult criminal jurisdiction of the Mercer County Circuit Court. A.R. 24. A hearing was held upon such motion on July 2, 2020, at which time Cpl. Tupper again testified as to the facts and information he had uncovered during the course of his investigation. A.R. 25-38. During his testimony, Cpl. Tupper testified that DNA was taken, A.R. 31, following the termination of B.D.'s pregnancy, A.R. 154.

Prior to the court announcing its decision with respect to the transfer motion, Petitioner expressed his concern about the potential for him to be removed from his then-current placement at the Sam Perdue Juvenile Detention Center and placed in an adult jail or other facility pending further proceedings. A.R. 38-39. Petitioner also formally asked the Court to deny the motion to transfer. A.R. 39. The State responded by indicating that, even if Petitioner was transferred to the court's adult criminal jurisdiction, the court had the option to impose a juvenile sentence regardless of the transfer. A.R. 40. The State offered that it had no objection to such a resolution in the case. A.R. 141.

At the conclusion of the hearing, the Court granted the State's motion to transfer, A.R. 45, and further ordered that Petitioner remain at the Sam Perdue Juvenile Detention Center pending further adjudication and disposition, A.R. 45.

On August 19, 2020, the parties appeared before the court to enter an Information Plea to one count of second degree sexual assault. A.R. 52. During the hearing, Petitioner acknowledged that he was then eighteen-years-old, and the court proceeded with a Rule 11 colloquy. A.R. 54-

58. During the hearing, Petitioner's counsel explained to the Court that, in consideration of the plea agreement, "[t]he State and the defendant will mutually agree the defendant's sentence is going to be ten to twenty-five years, suspended. This is a recommendation that he be sentenced to Sam Perdue Sexual Offender Facility for full completion of the program." A.R. 58. Petitioner also advised that once he successfully completed the program, the parties agreed that he would be placed on a period of probation determined by the court, and would also be subject to the lifetime sex offender registration requirement and a period of extended supervised release. A.R. 58-59. Petitioner advised the court that he understood the implications of his plea agreement and the possible sentence attached thereto and the consequences of his failure to comply with the terms of the agreement. A.R. 59-76. The court accepted Petitioner's plea and adjudged him guilty of the offense of second degree sexual assault. A.R. 78-79. The parties then agreed that the Petitioner should undergo a sexual offender evaluation, and return for further disposition. A.R. 79-80.

On September 16, 2020, Dr. David T. Ellis provided the court with a copy of Petitioner's Sex Offender Psychological Evaluation. A.R. 182. In the evaluation, the Dr. Ellis noted that Petitioner had previously been found competent and criminally responsible in the instant proceedings following a prior competency evaluation. A.R. 194. The evaluation also revealed that Petitioner was likely to maintain a "highly defensive posture" throughout treatment and rehabilitation efforts, and that "initiating . . . and sustaining [a course of treatment] will be extraordinarily difficult." A.R. 195. The report also expressed significant concerns regarding where Petitioner would reside upon completion of any custodial period. A.R. 195. As the evaluation stated,

> It completely remains to be seen as to where [Petitioner] could potentially reside upon his release from any term of custody. As I understand it, the expectation is that he would complete the sex offender program and then consideration would be given to his release at that point. A major question will be where he will be capable

> of residing. It is certainly the case that he could not return to the home of his mother should other children reside in the home. Thus, alternatives will be necessary such that planning will be required early on in the process of his treatment program to examine potential alternatives that could be considered upon his release.

A.R. 196. While the report opined that Petitioner presented "a low to moderate risk for continued sexually inappropriate conduct," it noted that the "most critical risk factor is the fact that [Petitioner] has not taken responsibility for what has happened, and this is in light of clear and convincing evidence as to what transpired." A.R. 196.

Following the Sex Offender Evaluation, Petitioner also participated in a pre-sentence investigation. A.R. 168. The report emphasized the Sex Offender Evaluation's finding that "[t]he most critical issue that becomes readily apparent is the fact that [Petitioner] consistently denied the offense conduct throughout the entire process until it was clear that DNA evidence indicated otherwise." A.R. 170. The report further indicated that Petitioner has had no history of mental health intervention outside of treatment for "attention deficit problems." A.R. 171.

On October 26, 2020, Petitioner appeared before the court for a dispositional hearing. A.R. 86. The parties acknowledged receipt of the Sex Offender Evaluation and the pre-sentence investigation report. A.R. 88-89. The parties both proffered to the circuit court that they were in agreement that Petitioner should be ordered to remain at Sam Perdue Juvenile Detention Center to complete the sex offender program. A.R. 89. The parties further agreed that upon completion, he would be released on probation, followed by a period of extended supervised release at the discretion of the court. A.R. 89. The court then asked if Petitioner's counsel had "anything [he] want[ed] to say [on his] client's behalf?" A.R. 89. Petitioner's counsel then pointed to Petitioner's family life as a contributing factor with respect to his refusal to accept responsibility, but that Petitioner was "on his way to understanding the severity of what he's doing and I think he'll eventually succeed in the program[.]" A.R. 90. Petitioner declined the court's offer to address the

court directly. A.R. 90. The court then ordered that Petitioner remain at Sam Perdue Juvenile Center for the purpose of completing the sex offender program. A.R. 90. The court then advised once Petitioner completed the program, a subsequent hearing would be held where the court would formally place him on probation and explain the sex offender registry requirements as well as the particularities of his extended supervised release. A.R. 90.

On January 25, 2021, Petitioner returned to the court for a review hearing in response to Sam Perdue Juvenile Detention Center's request that Petitioner be discharged from their program for non-compliance. A.R. 97-98. The court was advised that the Petitioner was "posing a problem to other . . . people at the program" and that he had engaged in "very disturbing behavior to some of the females [in] that program." A.R. 98. The court concluded that the best course of action would be to set the matter for a formal discharge hearing after the parties had an opportunity to review the report provided by the Sam Perdue Juvenile Detention Center detailing Petitioner's violations. A.R. 98.

On March 1, 2021, the parties convened at a dispositional hearing with respect to Petitioner's violations while placed at Sam Perdue Juvenile Detention Center. A.R. 103. At the hearing, the State argued that Petitioner should be sentenced to his underlying prison term of ten to twenty-five years in light of his failure to take advantage of the opportunity he had while at Sam Perdue Juvenile Detention Center. A.R. 105-06. Petitioner's counsel then made a lengthy argument in support of Petitioner being placed at the Anthony Center for Youthful Offenders as opposed to being sent to serve his underlying prison sentence. A.R. 108-14. During his argument, Petitioner's counsel pointed to the fact of Petitioner's age at the time of the offense, his family history, the intensive psychological evaluations, as well as the rehabilitative components the court should consider in deciding the appropriate disposition. A.R. 109. Moreover, Petitioner's counsel

pointed to the fact that Petitioner operated at "almost a seventh grade level" and implored the court to not "give up on him" and "just throw him away." A.R. 110-12. Finally, Petitioner pointed the court to the fact that Petitioner had been successful at Sam Perdue for approximately "six, seven, eight months[,]" but that the Petitioner's intellectual difficulties presented problems with his ability to process the information.[3] A.R. 113.

The circuit court then gave Petitioner an opportunity to speak, at which time he acknowledged that he "messed up" and wanted a chance at completing the program at the Anthony Center. A.R. 113. The court noted that it had reviewed the psychological reports and the pre-sentence investigation report. A.R. 113. The court then reasoned "due to [Petitioner's] age and IQ, I do think Anthony . . . would be an appropriate placement for him." A.R. 113. The court then announced that it sentenced Petitioner to a term of "not less than 10 nor more than 25 years. The Court's going to suspend that [and] place [Petitioner] in the Young Adult Offender Program of Anthony." A.R. 114-15. The court explained to Petitioner that he needed to take advantage of the opportunity to go to the Anthony Center, and that if he is returned as unfit for violating rules, the court would "have no choice but to send [him] to regular adult prison." A.R. 115.

On July 12, 2021, the court convened a detention hearing upon Petitioner being returned as unfit from the Anthony Correctional Center. A.R. 119. At the hearing, Robert Neal, Superintendent for the Anthony Correctional Center, testified that Petitioner had accrued seven separate violations during his brief time at the facility. A.R. 121-22. Mr. Neal testified that

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[3] The record is unclear as to Petitioner's compliance and progress while at the Sam Perdue Juvenile Detention Center. While the record indicates that, at the time of Petitioner's hearing upon the request to discharge him from Sam Perdue, he had accrued "forty-eight pages of violations," A.R. 141, it contains nothing to indicate when those violations occurred. It stands to reason that given the obviously large quantity of violations, it is unlikely that Petitioner was totally compliant with the program throughout the entirety of his time at the Sam Perdue Juvenile Detention Center.

Petitioner was given an administrative hearing for each of his violations. A.R. 122. Petitioner had received two "improvement periods" in response to his violations prior to the one that resulted in his being returned to the court as unfit to remain at the Anthony Center. A.R. 123. Mr. Neal further explained that after Petitioner had received his first "improvement period," he accrued an additional three violations, thus, resulting in the second "improvement period." A.R. 123. Approximately one week after being given his second "improvement period," Petitioner was observed urinating on the building in the recreation yard, which Mr. Neal explained was the precipitating event, in light of the prior violations, in determining that he was unfit to remain at the Anthony Center. A.R. 123. Mr. Neal concluded by stating that it was the facility's position that Petitioner was unfit to remain at the Anthony Center due to his disciplinary record. A.R. 123-24.

Petitioner testified in his defense at the July 21, 2021 hearing. A.R. 134. Petitioner generally feigned accountability for the actions described by Mr. Neal, and explained his violations as being attributable to the fact that he was around "other offenders" and that he was "hanging out with the wrong people, doing wrong stuff I shouldn't do." A.R. 135. Petitioner disputed Mr. Neal's allegations that he was not participating in classes and other services offered to him through the program, A.R. 136, and further claimed that the staff was conspiring to have him removed from the program because they "didn't like my charge," A.R. 138. On cross-examination, Petitioner was asked about his "48 pages of violations" that he had accrued while at Sam Perdue Juvenile Detention Center and whether those violations were the product of the facility's "vendetta against you," which Petitioner denied. A.R. 141.

The court afforded both parties an opportunity to argue what they felt was an appropriate disposition in light of the information provided to the court. A.R. 141-44. Although the court

agreed with the Anthony Center's determination that Petitioner was unfit to remain, it decided to set the matter for another dispositional hearing to allow the court to "go back and reread the sex offender evaluation in this case." A.R. 144-45.

When the parties returned for the dispositional hearing on July 21, 2021, the State reiterated its prior position that Petitioner should be sentenced to his underlying prison term of ten to twenty-five years. A.R. 153. A representative of the victim, B.D. also addressed the court, and concurred with the State's recommendation as to the appropriate disposition. A.R. 153-54. The representative also stated "our client was raped by her own family member and had to get an abortion at age 11. That's going to follow her for the rest of her life." A.R. 154.

After hearing from the State and the victim's representatives, the court permitted Petitioner's counsel to offer information on their client's behalf. A.R. 156. Petitioner's counsel pointed to Petitioner's age, the substance of the psychological reports, his "limited cognitive abilities"—which counsel alleged was attributable to his lack of willingness to accept responsibility for his actions—and the relatively brief period of time he was at the Anthony Center. A.R. 156. Counsel also stated:

> I'm not going to say he's not going to make it, he's going to have some problems at the Department of Corrections, and I know the Court's given him two chances already and . . . then some. But we're trying to save this young man's life, is the way we look at it, and give him an opportunity that sort of gets him some sort of training experience, counseling program to change his attitude so that he can then undergo the sexual applications and treatment that he needs."

A.R. 157. Counsel finally requested that the court "be lenient and give him some sort of alternative sentencing at this time," but did not elaborate on the nature of that "alternative sentencing." A.R. 158. Petitioner declined the court's offer to speak on his own behalf. A.R. 158.

The court then noted that the case had been pending for "close to two years" at the time of the hearing. A.R. 163. The court went on to explain:

> I think everybody in the courtroom, from the defense counsel to even the State to a certain extent, recognized the fact that [Petitioner] was . . . a juvenile when this . . . was committed and for that reason, gave him every chance in the world not to have to go to the penitentiary. That's just the simplest way I could put it.
>
> We've bent over backwards to keep you out of the penitentiary [ ]. You had a chance to basically get probation if you completed the juvenile sex offender treatment program. You couldn't do it. Got kicked out. . . . Well, let's try the young adult offender program where you go to . . . the correction facility for a period of six months to two years, you complete the program, you get probation. . . . Couldn't do that.
>
> You know, the law basically says that if you flunk out of Anthony, I don't have a choice. My hands are tied. You have to go to the penitentiary.

A.R. 163-64. After making these observations, the court sentenced Petitioner "to the penitentiary not less than ten nor more than twenty-five years, . . . impos[ing] the previous sentence." A.R. 164.

On August 6, 2021, the court entered an order setting forth Petitioner's sentence and reasons for its decision. A.R. 236-39. It is from this order that Petitioner now appeals.

IV. SUMMARY OF THE ARGUMENT

The circuit court did not err in failing to consider all of the factors set forth in West Virginia Code §61-11-23(c). Section 61-11-23(c) did not apply to the hearing with which Petitioner takes issue. Moreover, pursuant to West Virginia Code § 25-4-6, the circuit court lacked the authority to impose any sentence other than that which Petitioner received. Finally, Petitioner's interpretation of West Virginia Code § 61-11-23(c) is completely misplaced. If Petitioner's interpretation holds true, it would violate the canon of *noscitur a sociis,* as the words of the statute cannot reasonably be interpreted to mean what Petitioner argues.

Petitioner's sentence was not constitutionally disproportionate. Despite Petitioner's claims to the contrary, the court did not violate any statutory or constitutional command in imposing his

previously suspended prison sentence of ten to twenty-five years of imprisonment for his conviction of second degree sexual assault. Petitioner did not identify any impermissible factors on which the court relied in imposing sentence, and the sentence imposed is the same sentence specifically provided in the statute. Furthermore, Petitioner failed to identify what other legal option the court had other than to impose such sentence. Accordingly, Petitioner has failed to demonstrate reversible error, and his sentence should be affirmed.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to West Virginia Rule of Appellate Procedure 18(a)(4), oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and in the record, and the decisional process would not be significantly aided by oral argument. This case is suitable for resolution by memorandum decision.

VI. ARGUMENT

A. Standard of Review

"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, *State v. Lucas*, 201 W. Va. 271, 496 S.E.2d 221 (1997).

B. The circuit court did not abuse its discretion when it ordered Petitioner to serve his underlying sentence after Petitioner failed to complete two prior alternative sentences designed to offer rehabilitative services without the need for placing him in prison.

Petitioner's first assignment of error asserts that the circuit court erred when it failed to consider each factor identified in West Virginia Code § 61-11-23(c) prior to ordering him to serve his underlying prison sentence of ten to twenty-five years. Pet'r's Br. at 3-4. While Petitioner raises a similar argument in his second assignment of error, it is worth noting at the outset that this Court has routinely held to the view that "[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." Syl. Pt. 4, *State v. Goodnight*, 169 W. Va. 366, 287 S.E.2d 504 (1982). Moreover, and more particularly relevant to Petitioner's arguments raised in his brief, this Court has also recognized that, despite its general reluctance to review a trial court's sentencing determinations when it is within statutory limits and not based upon an impermissible factor, this Court permits review of sentences when they violate a constitutional or statutory command. Syl. Pt. 1, *Lucas*, 201 W. Va. 271, 496 S.E.2d 221.

The argument advanced by Petitioner in his brief with respect to his first assignment of error can be most clearly stated as follows: Petitioner asserts that the factors identified in West Virginia Code § 61-11-23(c) are mandatory, and the circuit court's failure to consider all fifteen factors at the July 21, 2021, hearing amounts to a violation of such statutory provision and warrants this Court granting his request for relief. Pet'r's Br. at 3-4. This assignment is without merit for a variety of reasons: First, West Virginia Code § 61-11-23(c) did not apply to the July 21, 2021 hearing; Petitioner's actual sentencing hearing took place on March 1, 2021, when he was given a suspended sentence of ten to twenty-five years in order to allow him to be placed at the Anthony Center. Second, because the July 21, 2021 hearing was held to determine what action should result from Petitioner being unfit to remain at the Anthony Center, this Court's precedent clearly establishes that a circuit court has no authority but to impose the original sentence; thus, rendering the circuit court's consideration of any mitigating factors irrelevant. *See* Syl. *State v. Patterson*, 170 W. Va. 721, 296 S.E.2d 684 (1982); Syl., *State v. Martin*, 196 W. Va. 376, 472 S.E.2d 822 (1996). Third, the premise upon which Petitioner's argument relies is incorrect; West Virginia Code § 61-11-23(c) does not impose a duty upon the court to consider various mitigating factors regardless of whether a defendant offers mitigating evidence to support the applicability of any

particular factor. To conclude otherwise would impose an obligation upon the court to conduct its own investigation on Petitioner's behalf in order to ascertain any conceivable mitigating information, while removing any incentive for Petitioner to make specific arguments as to why he should receive a more lenient sentence. Such an issue begs the question, if the court's consideration of each factor is *required*, what incentive is there for Petitioner to affirmatively present or prove any mitigating factor at sentencing? Such interpretation places the sentencing court in the inappropriate position of serving as a *de facto* advocate on behalf of the same individual it is tasked with sentencing. With these considerations in mind, Respondent will now address each, in turn.

1. *West Virginia Code § 61-11-23 did not apply to the hearing held on July 21, 2021.*

There is no dispute that West Virginia Code § 61-11-23 applies to the present case. That is not to say, however, that it applies as Petitioner advances in his brief. Because the plain language of West Virginia Code § 61-11-23(c) clearly contemplates various mitigating factors that a court must consider prior to imposing sentence of a juvenile convicted of a felony after being transferred to the adult criminal jurisdiction of the circuit court, the first critical fact to ascertain is what hearing served as the "sentencing hearing" for purpose of the statute.

West Virginia Code § 61-11-23 was enacted in 2014 by the Legislature as the Juvenile Sentencing and Reform Act. The purpose of the Act is to codify several sentencing guidelines when a court is faced with sentencing a juvenile convicted as an adult for a felony offense after being transferred to the adult criminal jurisdiction of the circuit court pursuant to West Virginia Code § 49-4-710. W. Va. Code § 61-11-23(c). Petitioner argues in his brief that the provisions of West Virginia Code § 61-11-23 applied to Petitioner's July 21, 2021, hearing wherein the circuit court imposed his underlying sentence of not less than ten, nor more than twenty-five years of

incarceration resulting from his conviction of second degree sexual assault. Pet'r's Br. at 3-4. But the July 21, 2021 hearing was not the sentencing hearing to which the provisions of West Virginia § 61-11-23 applied. Instead, the code provision applied to the March 1, 2021 hearing following the court's determination that Petitioner had failed to successfully complete the sexual offender program at Sam Perdue Juvenile Detention Center. A.R. 103.

This notion is supported by the fact that the Youthful Offenders Act of West Virginia Code § 25-4-1 *et seq.*, contemplates one being sentenced and such sentence being suspended for participating in a youthful offender program. *See State v. Richards*, 206 W. Va. 573, 576 n. 5, 526 S.E.2d 539, 542 n. 5 (1999) (referencing "circumstances where imposition of sentence is suspended under the [Youthful Offenders] Act" and noting that "[i]ndeed, this is the normal mode of disposition as prescribed by the [Youthful Offenders] Act."). Moreover, a circuit court's decision to treat one as a youthful offender and place him or her in the Anthony Center is one left to the sound discretion of the trial court. Indeed, this Court has explained that "[j]ust as a trial court's decision to grant or deny probation is subject to the discretion of the sentencing tribunal, so too is the decision whether to sentence an individual pursuant to the Youthful Offenders Act." *State v. Shaw*, 208 W. Va. 426, 430, 541 S.E.2d 21, 25 (2000). "[T]here can be no question that the decision whether to invoke the provisions of the Youthful Offenders Act is within the sole discretion of the sentencing judge." *Id.*

This Court has also held that the determinations a sentencing court must make prior to sentencing an individual pursuant to the Youthful Offenders Act "should be predicated on factors relating to the subject's background, and his rehabilitation prospects." *State v. Hersman*, 161 W. Va. 371, 376, 242 S.E.2d 559, 561 (1978). "Of necessity, the decision to treat a person as a youthful male offender is based on the fact that he will benefit and respond to the rehabilitative

atmosphere of a detention center. It does not flow from the thought that he will be declared unfit and require further punishment." *Id.* This Court has also recognized that dispositions pursuant to the Youthful Offenders Act should be read and considered together with the general probation statutes. *State v. Reel*, 152 W. Va. 646, 651, 165 S.E.2d 813, 816 (1969); *see also State ex rel. Simpkins v. Harvey*, 172 W. Va. 312, 316, 305 S.E.2d 268, 272-73 (1983) ("The [Youthful Offenders] Act and our probation statutes are to be read and considered together in determining their scope and effect.") *superseded by statute on other grounds as stated in Peters v. Rivers Edge Min., Inc.*, 224 W. Va. 160, 680 S.E.2d 791 (2009)); *State v. Turley*, 177 W. Va. 69, 73 n. 5, 350 S.E.2d 696, 700 n. 5 (1986) ("The youthful offender statute and the general probation statute, both involving the subject matter of probation, are to be read and considered together.").

Thus, West Virginia Code § 61-11-23(c) applied at the March 1, 2021 hearing wherein Petitioner was given a suspended sentence of ten to twenty-five years, and placed at the Anthony Center. Petitioner does not dispute the circuit court's findings with respect to this hearing, presumably because the circuit court accepted his recommendation and denied the State's request that he be ordered to serve his prison sentence. It is clear that the time to consider mitigation was at the time Petitioner requested that he be placed at the Anthony Center following his discharge from Sam Perdue Juvenile Detention Center. It is equally as clear that the circuit court considered the mitigating factors offered by Petitioner. *See* A.R. 116-18. Had the court not found Petitioner's argument in mitigation of sentence persuasive, or, as Petitioner claims, failed to sufficiently consider the evidence offered in mitigation, it stands to reason that the circuit court would have imposed his underlying prison sentence at that time. But the record reveals that the circuit court did consider the argument of Petitioner in mitigation of his sentence, and found it persuasive enough to reject the State's request that he be ordered to serve his prison sentence, and granted

Petitioner's request to be placed at the Anthony Center. *See* A.R. 116-18. When Petitioner returned for sentencing following his removal from the Anthony Center, the court, as will be discussed in detail in the next section, had no discretion to impose any sentence other than his underlying ten to twenty-five year prison term.

2. *The circuit court was prohibited from imposing any sentence other than the Petitioner's previously suspended prison sentence of ten to twenty-five years.*

West Virginia Code § 25-4-6 governs proceedings with respect to offenders sentenced to, or removed from the Anthony Center. Among the various provisions contained within the statute, a few portions are particularly relevant to the instant proceedings. First, West Virginia Code § 25-4-6 provides that offenders "who have previously been committed to a young adult offender center are not eligible for commitment to this program." Moreover, after an individual has been sent to the Anthony Center, and the warden of the center is of the opinion that the offender is "an unfit person to remain at the center, the offender shall be returned to the committing court to be dealt with further according to law." *Id.* The statute further provides that the offender is entitled to a hearing, and at the hearing, the sentencing court is to determine whether the warden "abused his or her discretion in determining that the offender is an unfit person to remain at the center" based upon the offender's overall record at the center and his or her compliance with rules, policies, procedures, programs, and services. *Id.* Finally, if the court "upholds the warden's determination, the court may sentence the offender for the crime for which the offender was convicted." *Id.* Moreover, if the offender successfully completes the program, but subsequently violates the mandatory probationary period following his or her confinement at the Anthony Center, "the judge *shall* impose the sentence the young adult offender would have originally received had the offender not been committed to the center and subsequently placed on probation." *Id.* (emphasis added)

With respect to the procedures following one's confinement at the Anthony Center, this Court has held:

> Where a criminal defendant has been placed on probation after successfully completing a program of rehabilitation under the Youthful Offenders Act, W. Va. Code §§ 25-4-1 to -12, and such probation is subsequently revoked, the circuit court has no discretion under W. Va. Code 25-4-6 to impose anything other than the sentence that the defendant would have originally received had he or she not been committed to a youthful offender center and subsequently placed on probation.

Syl. Pt. 5, *State v. Scott*, 214 W. Va. 1, 585 S.E.2d 1 (2003) (internal quotation and citation omitted), *disapproved of on other grounds by State v. Middleton*, 220 W. Va. 89, 640 S.E.2d 152 (2006). Moreover, in *State v. Richards*, this Court has noted that, in considering revocations following placement in the Anthony Center:

> § 25-4-6 precludes a sentencing court from considering conduct that follows a defendant's placement in the youthful offender program. The Court notes, however, that the Act imposes no such limitation in situations where a defendant is returned to the circuit court as unfit for inclusion in the program. We can only surmise that the Legislature, in creating this disparity, intended to provide an incentive for individuals to complete the program of rehabilitation.

Richards, 206 W. Va. at 576 n. 5, 526 S.E.2d at 542 n. 5. In recognizing the incentive for offenders placed at the Anthony Center to complete the program, it cannot reasonably be argued that the Legislature conversely intended a less stringent standard for those who fail to complete the program due to their non-compliance or behaviors while at the facility. If, as this Court has recognized, a sentencing court has no discretion to either reduce or increase one's sentence when he or she successfully completes the Anthony Center, but is later found to have violated the terms of the ensuing probationary period, it makes no logical sense to conclude that one who is returned to the sentencing court after failing to complete the Anthony Center is subject to a less stringent standard.

The particular facts outlined in *Richard* are illustrative of this concept. In *Richards,* Richards was convicted of two counts of aggravated robbery and was sentenced to two concurrent eighteen-year prison terms. *Id.* at 574, 526 S.E.2d at 540. Richards moved for, and was granted a reduction of sentence, wherein the court suspended his sentence and placed him at the Anthony Center. *Id.* He went on to complete the program and was released on probation, as required by the Youthful Offenders Act. *Id.* After being placed on probation, the State filed a motion to revoke on the basis that Richards had committed various rules violations. *Id.* When he returned to the circuit court for further sentencing, the court imposed a sentence of two concurrent twenty-five year prison terms—a sentence that amounted to a seven-year increase from his initial sentence that the court previously suspended. *Id.* On appeal, this Court reversed the circuit court's increased sentence, and explained that when a defendant is placed on probation following successful completion of the program at the Anthony Center, but the probationary period is later revoked, West Virginia Code § 25-4-6 confers no discretion for the circuit court to "impose anything other than the sentence that the defendant would have originally received had he or she not been committed to a youthful offender center and subsequently placed on probation." *Id.* at Syl. Pt. 4.

Based upon the clear guidance provided by this Court with respect to a sentencing court's lack of discretion in imposing a sentence following one's successful completion of the Anthony Center and subsequent probation revocation, the only logical conclusion that can be gleaned is that the same applies for those who are returned for further sentencing after being found unfit to remain at the Anthony Center. To conclude otherwise would go against the incentive for offenders to complete the program as recognized by this Court. *See Id.* at 576 n. 5, 526 S.E.2d at 542 n. 5.

This Court's precedent is clear: "W. Va. Code, 25-4-6 does not allow a trial court discretion to impose any less than the original sentence when a male defendant, who has served at a youth

correction facility, violates his probation agreement." Syl., *Patterson*, 170 W. Va. 721, S.E.2d 684; Syl., *State v. Martin*, 196 W.Va. 376, 472 S.E.2d 822 (1996). Petitioner's argument that the circuit court erred by failing to consider various mitigating factors at the July 21, 2021 hearing is, therefore, completely unsupported by legal authority, and further would be inconsistent with the policies that undergird the utility and purpose of placing offenders at the Anthony Center.

3. *Even if West Virginia Code § 61-11-23(c) applied to Petitioner's July 21, 2021 hearing, it does not impose an obligation upon the court to consider mitigating factors that an accused makes no attempt to prove through the introduction of evidence in support of the mitigating factor.*

This Court has recognized "[t]hat which is necessarily implied in a statute, or must be included in it in order to make the terms actually used have effect, according to their nature and ordinary meaning, is as much a part of it as if it had been declared in express terms." Syl. Pt. 1, *Ney v. State Work. Comp. Comm'r.*, 171 W. Va. 13, 297 S.E.23 212 (1982) (internal quotation and citations omitted). "[*N*]o*scitur a sociis*, [is] the well-worn Latin phrase that tells us that statutory words are often known by the company they keep." *Lagos v. United States*, 138 S. Ct. 1684, 1688-89 (2018). Under this doctrine, courts have also recognized that it serves to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." *Yates v. United States*, 574 U.S. 528, 543 (2015); *see also Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 634-35 (2012) ("the commonsense canon of noscitur a sociis—which counsels that a word is given more precise content by the neighboring words with which it is associated." (internal quotation and citation omitted)).

West Virginia Code § 61-11-23(c) clearly requires a sentencing court to consider the listed mitigating factors set forth in numbers (1) through (15). The question, however, is whether the word "shall" creates an unconditional duty upon the court to unconditionally consider each of the factors, regardless of whether there is any evidence presented in support of them, or if it is a

conditional directive, dependent upon the offer of some evidence showing the presence of mitigating information. A reading of the relevant provision clearly demonstrates the latter to be true.

West Virginia Code § 61-11-23(c) clearly sets forth that when an individual who has been transferred to the adult criminal jurisdiction of the circuit court and has been subsequently convicted as an adult, "the court shall consider the following mitigating circumstances." The statute then goes on to list a total of fifteen factors for the court to consider. The final factor, however, provides that a court shall consider "any other mitigating factor or circumstances." W. Va. Code § 61-11-23(c)(15).

First, it is important to note that the word "shall" as used in subsection (c) is not without qualification: it clearly identifies the factors that follow as "*mitigating* circumstances." W. Va. Code § 61-11-23(c) (emphasis added). If Petitioner's argument holds true, what is the court to do when any of those factors prove to be *aggravating* circumstances? It is easy to consider circumstances in which any of the factors identified in West Virginia Code § 61-11-23(c) could be either mitigating or aggravating depending upon the particular facts of each case. For example, a child's lack of "impetuous" behaviors throughout his or her life may be mitigating in one case, but a child's long documented history of "impetuous" behaviors is aggravating. Similar analogies can be made with each of the factors listed in West Virginia Code § 61-11-23(c). It therefore becomes clear why it cannot be true that a court is obligated to consider the various factors outlined in West Virginia Code §61-11-23(c) regardless of whether the offender makes an attempt to prove any of the factors to support the mitigation of his sentence.

Moreover, and in consideration of the canon of *noscitur a sociis*, when the phrase "shall consider the following *mitigating* circumstances" is considered, *see* W. Va. Code § 61-11-23(c)

(emphasis added), along with the last factor that requires consideration of "[a]ny other mitigating factor or circumstance," *id.* at (c)(15), the only conclusion that can be drawn is that the statute contemplates that each of the factors are, in fact, mitigating, and that they have been affirmatively shown to be such by the presentation of evidence. If there is no evidence provided by the defendant with respect to any of the factors listed, there is no way for the court to determine whether they are mitigating in the first instance. Moreover, if the court is to consider "[a]ny other mitigating factor or circumstance," but the defendant does not offer any evidence in support of some other mitigating factor not enumerated within the statute, it would imply that the sentencing court is obligated to conduct its own investigation in order to ascertain any conceivable mitigating fact. If Petitioner's argument that West Virginia Code § 61-11-23(c) imposes an unconditional obligation upon the court to consider each factor is true, a sentencing court's failure to identify any other possibly mitigating factor or circumstance could provide an appealable issue in every case that falls within the parameters of the statute.

Moreover, such an interpretation would fly in the face of the clear mandate for a judge to remain a neutral party in the outcome of a case. As this Court has astutely recognized:

> A Judge is not expected to and should not summarily step from his judicial function and become an investigator, prosecutor, arresting officer, or instigator of legal actions, for when he does, he lessens the public confidence in the impartiality of his office. It is important that the Judge not only actually maintain integrity and impartiality, but that he must also give the appearance of such.

In re Goldston, ___ W. Va. ___, 866 S.E.2d 126, 138 (2021) (internal quotation omitted) (quoting *W. Va. Jud. Inquiry Comm'n v. Dostert*, 165 W. Va. 233, 237, 271 S.E.2d 427, 429-30 (1980)). This Court has also explained:

> In our adversarial system of jurisprudence, the judge is not a party, he is the referee. Canon 3, Judicial Code of Ethics. The judge is an official of an athletic event; and umpire or referee in a ballgame. As his duty, he must require all of the participants to play by the rules. The referee or umpire must not become an adversarial

> participant in the scenario for if he does, he brings discredit to the integrity of the system. For a judge to participate as an adversary denies to the people one fundamental element of due process: the right to an unbiased tribunal. W. Va. Const. art. 3, s 17.

State ex rel. Skinner v. Dostert, 166 W. Va. 743, 757-58, 278 S.E.2d 624, 643 (1981); *see also State v. Wotring*, 167 W. Va. 104, 112, 279 S.E.2d 182, 188 (1981) (recognizing that a judge is required to "maintain the integrity and independence of the judiciary, Canon 1; to avoid even the appearance of impropriety, Canon 2; and, to act impartially, Canon 3."). A judge presiding over a criminal case has no authority to investigate issues on behalf of a defendant. Petitioner in the present case did not present evidence in support of each of the factors identified in West Virginia Code § 61-11-23(c). If it is true that the court was required to consider each of those factors, despite Petitioner failing to offer proof of many of them, and, thus, resulting in reversible error, such a conclusion would necessarily create a quandary where a judge must choose between honoring his or her ethical obligations, or risk a subsequent reversal of his or her sentencing determination. Even more alarming is that the Court would have no ability to prevent this particular dilemma from arising in any case as it would only arise upon the defendant's failure to offer evidence or proof of a particular factor. Even more, the last provision requiring the court to consider any other factor or circumstance presents an unclear and burdensome obligation upon the Court because, if a court is required to consider any other mitigating factor, how would it know that the evidence proffered by the defendant was complete? Thus, Petitioner's interpretation would likely impose an obligation upon the court to conduct investigations in every case that falls within the scope of the statute. This interpretation clearly creates a conflict between the law, and a judge's ethical obligations. There is no reason to believe that the legislature intended for such a conflict to result, or to place the legality of one's sentence upon the sentencing court's investigation conducted on his or her own behalf. Petitioner's argument invites this court to adopt an

interpretation of West Virginia Code § 61-11-23(c) that would require judges to violate their ethical obligations and step into the role of an investigator or advocate on the behalf of a convicted individual in order to protect the integrity of the sentence imposed. It cannot reasonably be argued that, in light of this Court's long-held standard of reviewing sentences imposed by a court of competent jurisdiction under a deferential standard, that it must reverse a sentence should the sentencing judge elect to abide by his or her ethical obligations.

The only logical interpretation of West Virginia Code § 61-11-23 is that the Legislature intended for sentencing courts to consider any mitigating factor that is affirmatively presented by the defendant. It would make little sense to impose an obligation upon the court to consider a list of "mitigating factors" when any one of those factors may be mitigating in one case, or aggravating in another. Moreover, the placement of the catch-all provision in West Virginia Code § 61-11-23(c)(15) clearly demonstrates that the list is not intended to be an exclusive list. Moreover, it cannot be the case that a sentencing just must step aside from its role as a neutral arbiter of justice in order to conduct an investigation on behalf of a party—an act in clear violation of the canons of the Judicial Code of Ethics—in order to protect the integrity of a sentence it imposed.

It goes without saying that each case is unique, as are the individuals involved in them. While it is certainly necessary to consider mitigating factors prior a court making any sentencing determination, to state that the factors listed in West Virginia Code § 61-11-23 will always provide mitigating information to the court is simply inaccurate.

For all of the reasons outlined above, Petitioner's first assignment of error is without merit and does not provide any grounds for this Court to grant the relief he seeks.

C. Petitioner's sentence was not disproportionate, was within the statutory limits, and was not based on any impermissible factor.

Petitioner's second assignment of error raises similar arguments to that presented in his first assignment of error. Petitioner claims in his second assignment of error that the circuit court imposed a constitutionally disproportionate sentence based upon its failure to consider all of the factors set forth in West Virginia Code § 61-11-23(c). Pet'r's Br. at 12-13. Rather than identifying a particular impermissible factor that would trigger this Court's review, however, he merely alleges that the failure to consider certain factors renders his sentence unconstitutional. Pet'r's Br. at 13. Petitioner then goes on to claim that the court failed to consider Petitioner's "mental disability" or "impairment" prior to imposing its sentence. Pet'r's Br. at 13-14.

As noted above, this Court "reviews sentencing orders . . . under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands." Syl. Pt. 1, *Lucas*, 201 W. Va. 271, 496 S.E.2d 221. "Sentences imposed by the trial court, if within statutory limits and if not based on some impermissible factor, are not subject to appellate review." Syl. Pt. 4, *Goodnight*, 169 W. Va. 366, 287 S.E.2d 504. Moreover, this Court has stated that "[w]e deem it generally to be the better practice to decline to review sentences that are within statutory limits and where no impermissible sentence factor is indicated in accord with Syllabus Point 4 of *State v. Goodnight*." *State v. Slater*, 222 W. Va. 499, 508, 665 S.E.2d 674, 683 (2008).

Petitioner has completely failed to demonstrate not only that his sentence was constitutionally disproportionate, but also that it is one that is subject to this Court's review in the first instance. Petitioner was convicted of second degree sexual assault pursuant to a plea agreement. A.R. 273-76. Pursuant to West Virginia Code § 61-8B-4(b), any person convicted of second degree sexual assault "shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years." At the January 25, 2021 hearing, Petitioner's motion to be placed in the

Anthony Center was granted, and the circuit court accordingly sentenced him to a suspended term of ten to twenty-five years of imprisonment, in accordance with West Virginia Code §61-8B-4(b). A.R. 234-37. Petitioner's brief does not allege a single impermissible factor that the court relied on at this hearing, nor does he allege that the court failed to consider any fact required by statute.

Petitioner has failed to allege any facts that would allow this Court to refrain from adopting its long standing precedent of refusing "to review sentences that are within statutory limits and where no impermissible factor" was considered. *See Slater*, 222 W. Va. at 508, 665 S.E.2d at 683.

In addition to this general failure to allege any recognized error in his sentence, Petitioner has completely failed to identify what other legal option the circuit court had in imposing an alternative sentence. Even if it is assumed that the circuit court had the discretion to impose some other sentence that what it did, Petitioner only requested that he be returned to the Anthony Center. This purported alternative to sentencing Petitioner to serve his underlying prison term is clearly in violation of the language contained in West Virginia Code § 25-4-6 which prevents the re-placement of one to the Anthony Center. Moreover, as the record demonstrates, Petitioner had completely failed to show that he was in any way able and willing to comply with the rules of his placement. *See* A.R. 165-68. He failed to meaningfully accept responsibility for his actions throughout the pendency of his case below, and otherwise failed to give the slightest indication that a third attempt at an alternative sentence would be any different than the others. Petitioner was advised as to what his sentence would be, the opportunity that he was receiving, and what would follow should he fail to take advantage of those opportunities. A.R. 117. Notwithstanding these clear parameters described by the Court, Petitioner accrued forty-eight pages of violations while at the Sam Perdue Juvenile Detention Center, as well as seven violations within the span of less than three months at the Anthony Center. A.R. 141-43. Even at Petitioner's hearing upon his

return from the Anthony Center, he continued to minimize any wrongdoing on his part, and instead attempted to point a finger at the facility for conspiring to have him removed. A.R. 140, 67.

All of this, again, is assuming that the court had jurisdiction to impose some other sentence than that which Petitioner ultimately received at his July 21, 2021 hearing. As articulated above, however, the court lacked the discretion to sentence Petitioner to anything other than the statutorily proscribed ten to twenty-five year prison term. Moreover, the record does not reveal any other "alternative" that would be available for the court to consider in disposing of Petitioner's case. He had thoroughly wasted two prior opportunities to complete programs focused on treating any underlying issues that may have resulted in the conduct that provided the basis of his criminal charges. The record contains nothing to indicate that he took those opportunities seriously. Despite this, Petitioner now claims that, because of a technicality based upon a misinterpretation of a particular statute, all of those prior chances are relatively meaningless and his sentence should be overturned. The fact remains that there was no other option for the court but to impose the statutorily mandated sentence. The court lacked the discretion to impose any other sentence in light of Petitioner's failure to complete the Anthony Center, in addition to the fact that the statutory sentence attached to the offense for which he was convicted was an indeterminate sentence for which the court has little, if any, authority to modify.

For these reasons, Petitioner's arguments are without merit. He has failed to demonstrate that the lower court erred, and, thus, this Court should affirm the judgment of the Mercer County Circuit Court.

VII. CONCLUSION

Based upon the foregoing, the judgment of the Mercer County Circuit Court as set forth in its October 6, 2021 sentencing order should be affirmed.

Respectfully Submitted

STATE OF WEST VIRGINIA,
Respondent,

By Counsel,

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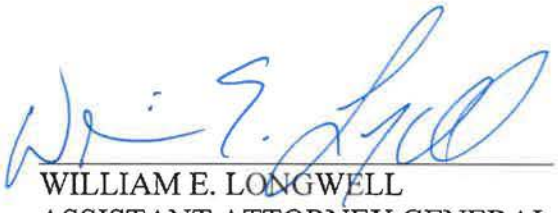

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0904

STATE OF WEST VIRGINIA,

Respondent,

v.

DAVID EUGENE HALL, JR.,

Petitioner.

CERTIFICATE OF SERVICE

I, William E. Longwell, counsel for the State of West Virginia, the Respondent, hereby certify that I have served a true and accurate copy of the foregoing **Respondent's Brief** upon counsel for Petitioner, by depositing said copy in the United States mail, postage prepaid, on this day, March 24, 2022, and addressed as follows:

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