

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 22-950 (Jefferson County CC-19-2022-F-35)

Charles Wilbert Cook Jr.,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Charles Wilbert Cook Jr. appeals the sentencing order of the Circuit Court of Jefferson County entered on November 17, 2022, following his convictions for concealment of a deceased human body, felony conspiracy, and voluntary manslaughter.¹ The petitioner argues that the circuit court abused its discretion when it sentenced him to the maximum determinate sentence for voluntary manslaughter and imposed consecutive sentences on all counts, which he contends resulted in a constitutionally disproportionate sentence, and that the circuit court considered an impermissible factor in sentencing. 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.

On June 8, 2021, the police responded to an anonymous call reporting suspicious activity at a motel in Charles Town, West Virginia. The caller reported a strong smell of death in a room and the motel dumpster, along with a bloody mattress. The responding officer, Corporal T.S. Perry, found the mattress from room 120 of the motel in the parking lot when he arrived. The mattress had a large brown stain on it and a distinct odor of human decomposition. He performed a presumptive test that revealed human blood on the mattress. He then searched room 120, which also smelled of human decomposition. In the ensuing crime scene investigation, human blood was located on a bed, the bathtub, and sink of the motel room. Corporal Perry also learned that a person reported missing on May 30, 2021, James Michael Kerns (the "victim"), had visited that motel room and knew the individuals who rented that room—the petitioner and Amanda Frey. Corporal Perry's investigation revealed that the petitioner, Ms. Frey, and the victim were in the motel room, drugs were involved, and the petitioner and the victim argued. The police received conflicting information from Ms. Frey as to whether the victim's death resulted from an overdose or if he was stabbed in the side by the petitioner. In addition, Ms. Frey stated that the victim died of a drug overdose and denied that the petitioner stabbed the victim in messages and conversations with acquaintances. The petitioner and Ms. Frey kept the victim's body in the motel room for multiple

¹ The petitioner is represented by counsel B. Craig Manford. The State of West Virginia is represented by Attorney General Patrick Morrissey and Deputy Attorney General Andrea Nease Proper.

days. The petitioner appears on video from the motel removing the victim's backpack, which was later found on the opposite side of a privacy fence in a wooded area, from the room. The petitioner put the victim's body in a trash can that he then placed in the dumpster of the motel.

The petitioner was indicted for murder, concealment of a deceased human body, and felony conspiracy. His co-conspirator, Ms. Frey, was also indicted for concealment of a deceased human body, felony conspiracy, and accessory after the fact to murder. The petitioner and the State entered into a plea agreement to resolve his charges. The petitioner agreed to plead no contest to voluntary manslaughter, a lesser included offense to murder, concealment of a deceased human body, and felony conspiracy. The plea agreement permitted both the petitioner and the State to argue for any legal sentence.

After the circuit court accepted the petitioner's pleas and prior to the sentencing hearing, the petitioner and State filed exhibits. At the sentencing hearing, the circuit court heard statements from the victim's family members and arguments from counsel, including the petitioner's attempt to mitigate his sentence by noting his minimal prior criminal history and evidence of Ms. Frey's call to the petitioner and messages to others indicating that the victim was not stabbed. The circuit court subsequently entered its sentencing order and, in addition to the above, noted its consideration of the presentence investigation report, the "violent nature of the crime" and the petitioner's "active participation in the concealment of the crime and the body of [the victim]." It imposed the sentence of fifteen years imprisonment for the petitioner's conviction of voluntary manslaughter, which is the maximum determinate sentence specified by West Virginia Code § 61-2-4. For the conviction of concealment of a deceased human body, the petitioner was sentenced to not less than one year nor more than five years of incarceration, which is the sentence specified by West Virginia Code § 61-2-5a, and fined \$1,000, which is within the range of fines provided for in that statute. Finally, for his conviction of felony conspiracy, the circuit court imposed a sentence of not less than one year nor more than five years, which is the sentence specified by West Virginia Code § 61-10-31. The circuit court ordered that the sentences run consecutively.

The petitioner now appeals from the circuit court's sentencing order, which we review for an abuse of discretion, "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). Our analysis of the issues presented by the petitioner in this case is guided by Syllabus Point 4 of *State v. Goodnight*, 169 W. Va. 366, 287 S.E.2d 504 (1982), which provides 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."

Here, the petitioner contends that by imposing the maximum determinate sentence for voluntary manslaughter and ordering his sentences to run consecutively, the circuit court imposed a sentence that was unconstitutionally disproportionate to his crimes given the evidence. The petitioner also argues that the circuit court considered an impermissible factor in reaching its decision to impose the maximum determinate sentence for voluntary manslaughter, namely the concealment and disposal of the victim's body, a separate crime. As discussed above, the sentences imposed by the circuit court fit squarely within the statutory limits for each conviction. In addition, our law provides that it was within the court's discretion to order consecutive sentences. W. Va. Code § 61-11-21; Syl. Pt. 4, *State v. Marcum*, 238 W. Va. 26, 792 S.E.2d 37 (2016). Further, we

have explained that impermissible factors to consider in sentencing include “race, sex, national origin, creed, religion, and socioeconomic status. . . .” *State v. Moles*, No. 18-0903, 2019 WL 5092415, at *2 (W. Va. Oct. 11, 2019) (memorandum decision) (citation omitted). The petitioner does not assert any of these factors were considered by the circuit court at sentencing. Because proportionality standards “are basically applicable to those sentences where there is either no fixed maximum set by statute or where there is a life recidivist sentence,” neither of which characterizes the petitioner’s sentence, a proportionality analysis is not appropriate. *See* Syl. Pt. 4, in part, *Wanstreet v. Bordenkircher*, 166 W. Va. 523, 276 S.E.2d 205 (1981). Accordingly, appellate review is not available.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: July 31, 2024

CONCURRED IN BY:

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