

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

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

v.) **No. 23-243** (Randolph County CC-42-2022-F-61)

**Jeffrey Davis Wadkins,
Defendant Below, Petitioner**

MEMORANDUM DECISION

Petitioner Jeffrey Davis Wadkins appeals the final order of the Circuit Court of Randolph County entered on April 11, 2023, denying the petitioner’s Rule 35(b) motion for sentence reduction.¹ The petitioner contends that the circuit court abused its discretion and failed to consider his arguments when it denied his motion. 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).

In October 2019, the petitioner was stopped by a police officer and was arrested for driving under the influence (“DUI”). During the traffic stop, the petitioner gave the officer his brother’s driver’s license instead of his own. The petitioner was later arrested, booked, and entered a guilty plea to DUI, all using his brother’s name. Eventually it was discovered that the petitioner used his brother’s identity, and the petitioner was indicted for taking the identity of another person, third offense DUI, seven counts of forgery, and seven counts of uttering. On November 4, 2022, the petitioner entered a guilty plea to one count of taking the identity of another person and one count of third offense DUI, and all other charges were dismissed.

On March 6, 2023, the circuit court sentenced the petitioner to two to five years of imprisonment for the DUI, and three years of imprisonment for taking the identity of another person, to be served consecutively. The court further ordered that once the petitioner completed serving his sentence for DUI, his sentence for identity theft would be suspended in favor of five years of supervised probation. On April 7, 2023, the petitioner filed a Rule 35(b) motion for sentence reduction and argued that his “conscious is shocked following the time served on the imposition of the sentence,” that he had a “more enlightened and . . . deeper understanding of his remorse,” and that he desired to be placed in long-term rehabilitation and would adhere to any terms and conditions set forth by the circuit court. The circuit court ultimately denied this motion,

¹ The petitioner is represented by counsel S. L. (Les) Mallow Jr. The State of West Virginia is represented by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease Proper. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

finding that the petitioner presented “no new information in the Motion for Reconsideration of Sentence.” The petitioner now appeals the April 11, 2023, order denying his Rule 35(b) motion.

We generally apply a three-part test when reviewing a circuit court’s decision on a Rule 35(b) motion for sentence reduction.

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.

Syl. Pt. 1, *State v. Head*, 198 W. Va. 298, 480 S.E.2d 507 (1996).

“[A] motion to reduce sentence under Rule 35(b) ‘is essentially a plea for leniency from a presumptively valid conviction.’” *State v. Marcum*, 238 W. Va. 26, 31, 792 S.E.2d 37, 42 (2016) (quoting *Head*, 196 W. Va. at 306, 480 S.E.2d at 515 (Cleckley, J., concurring)).

The petitioner argues that following sentencing, “his conscience [was] shocked” and he gained a “deeper understanding of his remorse,” which was new information that the circuit court should have considered in support of his Rule 35(b) motion because he did not raise these arguments at the sentencing hearing. We disagree. The petitioner’s Rule 35(b) motion simply reiterated his arguments of mitigation and remorse, which the circuit court previously considered at sentencing. Further, the petitioner offered essentially no new information relevant to any events that occurred after sentencing to support his plea for leniency. We have previously held that, in considering a defendant’s Rule 35(b) motion, “circuit courts generally should consider only those events that occur within the 120-day filing period[.]” *Marcum*, 238 W. Va. at 27, 792 S.E.2d at 38, Syl. Pt. 3, in part. Accordingly, based upon our review of the record, we find no abuse of discretion in the court’s denial of the petitioner’s Rule 35(b) motion.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: March 19, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV