

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

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

**v.) No. 23-248** (Harrison County Case No. CC-17-2019-F-195)

**Malik Corbin Edler,**  
**Defendant Below, Petitioner**

**MEMORANDUM DECISION**

Petitioner Malik Corbin Edler appeals the Circuit Court of Harrison County’s April 3, 2023, order denying his “Motion to Correct Illegal Sentence.”<sup>1</sup> The petitioner alleges that the circuit court erred in concluding that the evidence and indictment were sufficient to invoke application of statutory sentencing minimums upon conviction for charges involving the use of a firearm. Upon our review, finding no substantial question of law and no prejudicial error, we determine oral argument is unnecessary and that a memorandum decision affirming the circuit court is appropriate. *See* W. Va. R. App. P. 21(c).

In March 2019, the petitioner was indicted for possession with intent to deliver a controlled substance (marijuana), first-degree robbery, malicious assault, assault during the commission of a felony, two counts of use or presentation of a firearm during the commission of a felony, and murder.

On November 9, 2020, the petitioner and the State resolved the pending charges by a plea agreement under which the petitioner pled guilty to possession with intent to deliver a controlled substance; unlawful assault, a lesser included offense of malicious assault; use or presentation of a firearm during the commission of a felony; and voluntary manslaughter, a lesser included offense of murder.<sup>2</sup> The parties’ plea agreement indicated that the State would “request that the Court make a finding that a firearm was used by the defendant during the commission of any of the offenses

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<sup>1</sup> The petitioner appears by counsel Jason T. Gain. The respondent appears by Attorney General John B. McCuskey and Assistant Attorney General Mary Beth Niday. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

<sup>2</sup> While it was referenced by the parties and in the court order, the appellate appendix record does not contain a transcript of the petitioner’s plea hearing.

to which he enters pleas of guilty, and the defendant reserves the right to argue against such finding.”

At the petitioner’s sentencing hearing on January 25, 2021, the circuit court determined that a firearm finding was permissible for the petitioner’s conviction of use or presentation of a firearm during the commission of a felony and could also be applied to the petitioner’s unlawful assault conviction. The petitioner was sentenced to consecutive terms of incarceration of not less than one year nor more than five years for the unlawful assault conviction and to seven years for the use or presentation of a firearm during the commission of a felony conviction.<sup>3</sup> The court determined “that a firearm was used during the commission of this offense” on each of these convictions.<sup>4</sup>

The petitioner appealed his sentence to this Court, alleging that it was constitutionally disproportionate to the crimes he committed. We affirmed the circuit court’s order and indicated that

our review of sentencing orders is limited. . . . It is not the proper prerogative of this Court to substitute its judgment for that of the trial court on sentencing matters, so long as the appellant’s sentence was within the statutory limits, was not based upon any impermissible factors, and did not violate constitutional principles.

*See State v. Edler*, No. 21-0248, 2022 WL 1693754, \*2 (W. Va. May 26, 2022) (memorandum decision) (quoting *State v. Georgius*, 225 W. Va. 716, 722, 696 S.E.2d 18, 24 (2010)).

In August of 2022, the petitioner filed a motion to correct his sentence pursuant to Rule 35(a) of the West Virginia Rules of Criminal Procedure. He alleged that the circuit court erred in finding that a firearm was used in the commission of the first-degree robbery conviction because the indictment had not stated that he was a principal in the first degree. The petitioner also alleged that the court erred in determining that pistol-whipping constituted the use of a firearm for purposes of making a firearm finding. On April 3, 2023, the circuit court denied the petitioner’s Rule 35(a) motion. The court concluded that West Virginia law did not require an indictment to specify that a defendant was a principal in the first degree. The court noted that, prior to entry of this plea, it had reviewed the indictment and “matters involving possible parole eligibility” with the petitioner, and that the petitioner’s own statements at the plea hearing confirmed the factual basis for the charges. Additionally, the court determined that the “plain meaning of the words of use, presentment or, brandishing of a firearm would apply to this case[, and t]he Defendant used a

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<sup>3</sup> The court also sentenced the petitioner to one to five years of incarceration for possession with intent to deliver a controlled substance, and to fifteen years of incarceration for voluntary manslaughter.

<sup>4</sup> The court did not make such a finding for the petitioner’s convictions of possession with intent to deliver a controlled substance or voluntary manslaughter, noting that the indictment contained no allegation that a firearm was used in the commission of those offenses.

firearm to rob a minor, to beat and injure Samantha Bailey, and then to shoot and kill Rex Bailey.” The petitioner now appeals the circuit court’s denial of his Rule 35(a) motion.

Rule 35(a) of the West Virginia Rules of Criminal Procedures provides, in part, that “[t]he court may correct an illegal sentence at any time . . . .” We have held that:

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).

The petitioner argues that it was error for the circuit court to deny his Rule 35(a) motion because the court’s firearm finding on his convictions for the use or presentation of a firearm and unlawful assault were illegal because the indictment did not allege that he was a principal in the first degree. The petitioner contends that the omission of this designation in the indictment violated his constitutional right to have all facts relevant to his punishment be included in the indictment. *See Alleyne v. United States*, 570 U.S. 99, 111 (2013) (“[T]he indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted.”) (quoting 1 J. Bishop, *New Criminal Procedure* § 81, p. 51 (4th ed. 1895)). The petitioner also argues that there was insufficient evidence for the court to find that pistol-whipping the victim constituted use of a firearm for purposes of a firearm finding on the unlawful assault conviction.

As indicated above, the petitioner previously filed an appeal in which he challenged his sentence on proportionality grounds, and we note that he failed to raise the sentencing allegations asserted in this appeal. As to that foregone opportunity, we caution that “[w]hile a defendant is entitled to due process of law, he is not entitled to appeal upon appeal, attack upon attack, and Habeas corpus upon Habeas corpus. There must be some end to litigation, and the proper way to effect this salutary result is to do everything right the first time.” *See Call v. McKenzie*, 159 W. Va. 191, 194, 220 S.E.2d 665, 669 (1975). Despite this failure to timely assert his allegations of error, the petitioner now attempts to challenge the circuit court’s basis for its firearm findings through Rule 35(a). Contrary to the petitioner’s claims, the allegations raised in this appeal of the circuit court’s order exceeds the scope of Rule 35(a) and are more appropriate for a direct appeal or a petition for a writ of habeas corpus. *See Layne v. Siefert*, No. 101278, 2012 WL 2874240, \*1 (W. Va. Jan. 13, 2012) (memorandum decision) (“Rule 35 contemplates correction or reduction of a criminal sentence rather than a challenge to the underlying conviction.”). Accordingly, we find no abuse of discretion in the circuit court’s denial of the petitioner’s Rule 35(a) motion.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** March 19, 2025

**CONCURRED IN BY:**

Chief Justice William R. Wooten

Justice Tim Armstead

Justice Elizabeth D. Walker

Justice C. Haley Bunn

Justice Charles S. Trump IV