

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

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

**v.) No. 23-298** (Berkeley County CC-02-2021-F-176)

**Jaleesa Creamer,**  
**Defendant Below, Petitioner**

**MEMORANDUM DECISION**

Petitioner Jaleesa Creamer appeals the March 30, 2023, order of the Circuit Court of Berkeley County sentencing her to one to five years of imprisonment upon her conviction for delivery of buprenorphine.<sup>1</sup> The petitioner argues that the circuit court abused its discretion by declining to impose a lesser alternative sentence. 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 charged with distribution, possession with intent to distribute, and conspiracy to distribute buprenorphine. She pled guilty to delivery of buprenorphine, and all other charges were dismissed. At the sentencing hearing, the petitioner moved for a deferred adjudication pursuant to West Virginia Code § 61-11-22a, arguing that she needed to care for her children and maintain her CNA license.<sup>2</sup> The court granted the petitioner's motion and ordered that adjudication be deferred for thirty-six months while the petitioner was on supervised probation. The supervised probation contained several mandatory provisions, including prohibiting her from having contact with known felons, consuming drugs or alcohol, leaving the

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<sup>1</sup> The petitioner is represented by counsel Fallon A. Stone and Robert C. Stone 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.

<sup>2</sup> Under West Virginia Code § 61-11-22a(a), a circuit court,

[u]pon the entry of a guilty plea to a felony or misdemeanor . . . entered in compliance with the provisions of Rule 11 of the West Virginia Rules of Criminal Procedure . . . and applicable judicial decisions, . . . may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary.

state for more than twenty-four hours without the prior approval of her probation officer, and being in the presence of narcotics.

On February 21, 2023, the State filed a motion to revoke the petitioner's deferred adjudication based upon an affidavit from her probation officer. The probation officer reported that the petitioner had four positive drug screens, had communicated with prohibited person(s), had attempted to defeat a drug screen, had possessed alcohol, had possessed and/or sold controlled substances, and had left the State of West Virginia for over twenty-four hours without prior approval. At the petitioner's revocation hearing, she admitted to most of the alleged violations and did not contest the State's motion to revoke her deferred adjudication, but she did contest the claim that she was involved in a drug transaction.<sup>3</sup>

The petitioner argued that due to her employment and custodial responsibility for her children, it would be appropriate for the court to suspend a prison sentence and instead impose probation. She argued that if she had been on post-conviction probation rather than deferred adjudication, her violations would have only resulted in a sanction. The State argued against probation, as the petitioner had already violated the conditions of her deferred adjudication. In the March 30, 2023, order, the circuit court revoked the petitioner's deferred adjudication, adjudged her guilty of delivery of buprenorphine, and sentenced her to the statutory term of one to five years of imprisonment. *See* W. Va. Code § 60A-4-401(a)(ii) (specifying sentence for conviction of delivery of Schedule II controlled substance).

In her sole assignment of error, the petitioner contends that the circuit court erred by sentencing her to one to five years of imprisonment. She argues that an alternative sentence of probation or home confinement would have been more appropriate considering her personal circumstances. She further argues that she did not commit any new criminal conduct during the deferred adjudication period. She relies on West Virginia Code § 62-12-10(a)(2), which provides for graduated sanctions for probation violations, and West Virginia Code § 62-12-10(a)(1)(B), which calls for the revocation of probation upon the commission of new criminal conduct.

This Court reviews sentencing orders “under a deferential abuse of discretion standard, 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). Additionally, “sentences 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).

At the outset, we note that the petitioner wrongly relies upon West Virginia Code § 62-12-10, which applies to violations of probation, to support her argument. The petitioner was not sentenced to probation; rather, her adjudication was deferred pursuant to West Virginia Code § 61-11-22a, and probation was merely a condition of said adjudication. *See State v. Cain*, No. 19-0017, 2020 WL 533963, at \*3 (W. Va. Feb. 3, 2020) (memorandum decision) (applying West Virginia § 61-11-22a to revoke deferred adjudication where probation was a requirement of the deferred adjudication agreement, and the terms of the supervised probation were violated). Under

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<sup>3</sup> During the revocation hearing, there was substantial direct and cross examination of the petitioner's probation officer regarding the petitioner's alleged involvement in the facilitation of a drug transaction, which, according to the probation officer's affidavit, was considered to be “new criminal conduct.”

West Virginia Code §61-11-22a(h), if a court finds reasonable cause to believe a defendant violated the terms of the deferred adjudication, “the court may accept the defendant’s plea to the original offense and impose a sentence in the court’s discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.”

Below, the petitioner admitted to violating numerous conditions of her deferred adjudication, including by having contact with a prohibited person and submitting positive drug screens. Pursuant to West Virginia Code § 61-11-22a(h), these violations served as a sufficient basis for the revocation of the petitioner’s deferred adjudication, and it is immaterial whether she engaged in new criminal conduct. Moreover, to the extent that the petitioner argues her sentence of imprisonment is too harsh, we observe that the sentence imposed is within statutory limits and the petitioner does not allege that the circuit court considered any impermissible factors. *See Goodnight*, 169 W. Va. at 366, 287 S.E.2d at 505, Syl. Pt. 4. (“Sentences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review.”).

Accordingly, the circuit court did not abuse its discretion in imposing the statutory sentence of one to five years of imprisonment.

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