

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Patricia Aldridge,
Petitioner Below, Petitioner

v.) **No. 23-314** (Wayne County CC-50-2010-C-245)

J.D. Sallaz, Superintendent,
Lakin Correctional Center,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Patricia Aldridge appeals the final order entered by the Circuit Court of Wayne County on May 12, 2023, denying her motion for sentence reduction.¹ On appeal, the petitioner claims the court erred when it denied her motion without conducting an adequate and meaningful review. Upon our review, 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).

The petitioner was indicted for assisting Mitchell Vickers in the November 2, 1998, killing of the petitioner’s husband. Prior to trial, the petitioner rejected a plea to second-degree murder. At the conclusion of the jury trial, the petitioner was found guilty of first-degree murder without a recommendation of mercy and was sentenced accordingly. The petitioner’s direct appeal of her conviction was refused by this Court on March 7, 2001. The petitioner’s first petition for post-conviction habeas corpus was denied by the circuit court, and this Court refused her appeal of the habeas court’s denial on June 28, 2005. The petitioner’s second petition for habeas corpus was also denied by the circuit court, and this Court affirmed in *Aldridge v. Sallaz*, No. 21-0175, 2022 WL 163941 (W. Va. Jan. 18, 2022) (memorandum decision).

In April 2022, the petitioner filed a Rule 35(b) motion for sentence reduction that conceded the motion was not filed within the time required by the rule.² In March 2023, she filed an amended motion for sentence reduction arguing that her motion was timely because it was filed within 120 days of the mandate from this Court after the appeal of her second petition for habeas corpus was resolved. Citing this Court’s decision in *Barritt v. Painter*, 215 W. Va. 120, 595 S.E.2d 62 (2004),

¹ The petitioner is self-represented. The respondent appears by counsel John B. McCuskey, Attorney General, and Andrea Nease Proper, Deputy Attorney General. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

² In relevant part, Rule 35(b) of the West Virginia Rules of Criminal Procedure states that “[a] motion to reduce a sentence may be made . . . within 120 days after the sentence is imposed . . . or within 120 days after . . . rejecting a petition for appeal of a judgment of a conviction”

the circuit court denied the motion for sentence reduction because it was unavailable “after a denial of habeas corpus relief.” The court also denied the motion for sentence reduction on the merits, finding “that nothing ha[d] substantively changed” since the petitioner was sentenced. The court also denied the motion for appointment of counsel as moot. The petitioner appeals from the court’s order denying her 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).”

Syl. Pt. 1, *State v. Marcum*, 238 W. Va. 26, 792 S.E.2d 37 (2016). Our “abuse of discretion standard on Rule 35 motions continues the deference we have traditionally accorded trial courts in matters of sentencing.” *Head*, 198 W. Va. at 301, 480 S.E.2d at 510.

On appeal, the petitioner alleges that the circuit court did not fully consider her arguments for sentence reduction and the “re-instatement of the previously offered plea” to second-degree murder.³ The petitioner asserts that the documentation and affidavits attached to her motion attested to her “work ethic and general behavior,” and argues that the court should have given her a “second chance . . . after serving twenty-four years for a crime she did not commit.” However, considering that the petitioner did not file her motion for sentence reduction within 120 days after imposition of sentence or this Court’s refusal of her direct appeal, we find that the circuit court did not have jurisdiction to consider the petitioner’s motion for sentence reduction because it was “filed outside the 120-day filing period set out under” Rule 35(b) of the West Virginia Rules of Criminal Procedure. *See* Syl. Pt. 2, in part, *State v. Sims*, 239 W. Va. 764, 806 S.E.2d 420 (2017). Rule 35(b) sets forth the events that trigger the start of the 120-day filing period and as made clear in *Barritt*, “a petitioner is not entitled to application of Rule 35(b) based upon an underlying unsuccessful attempt to obtain habeas relief.” *Barritt*, 215 W. Va. at 123, 595 S.E.2d at 65. Thus, we conclude that the court did not abuse its discretion when it denied the petitioner’s motion for sentence reduction.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: March 19, 2025

³ There is no indication that the State has re-offered this plea.

CONCURRED IN BY:

Chief Justice William R. Wooton

Justice Elizabeth D. Walker

Justice Tim Armstead

Justice C. Haley Bunn

Justice Charles S. Trump IV