

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

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

vs) No. 101455 (Berkeley County REDACTED)

**REDACTED,
Defendant below, Petitioner**

FILED

February 25, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF
APPEALS OF WEST

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Berkeley County, wherein the circuit court dismissed the Petitioner's appeal of his magistrate court conviction of misdemeanor false pretenses, finding that the Petitioner had no right to appeal his counseled "no contest" plea. *See* W. Va. Code § 50-5-13(e) and Rule 20.1(a) of the Rules of Criminal Procedure for the Magistrate Courts of West Virginia. The circuit court also dismissed issues regarding the voluntariness of the plea based upon the Petitioner's failure to identify an extraordinary remedy that would give the circuit court jurisdiction to hear the matter. This appeal was timely perfected by counsel and the State of West Virginia has filed a response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

The Petitioner, a **REDACTED** who has lived in **REDACTED**, was charged with felony false pretenses as a result of **REDACTED**. The Petitioner retained counsel to defend him. At the preliminary hearing, the Petitioner entered a "no contest" plea to misdemeanor false pretenses and was sentenced by the magistrate to a suspended sixty (60) days in jail and one year of unsupervised probation. The Petitioner appealed his conviction to the circuit court, alleging that his plea was involuntary due to a lack of understanding of the proceedings. The circuit court dismissed the appeal and declined to hear the issues relating to the involuntariness of the plea. The Petitioner filed a motion for reconsideration that was also denied.

On appeal, the Petitioner argues that the circuit court erred in concluding that West Virginia Code § 50-5-13(e) and Rule 20.1(a) bar appeals of counseled “no contest” pleas from magistrate court. The Petitioner argues that the referenced statute and rule only state that appeals of counseled guilty pleas are barred and that they do not separately address counseled “no contest” pleas. As such, the Petitioner contends that “no contest” pleas remain appealable. The circuit court disagreed with this distinction, finding that West Virginia Code § 50-5-13(e) and Rule 20.1(a) bar both types of appeal because the final result of either a guilty plea or a “no contest” plea is a finding of guilt. This Court is persuaded by this reasoning and concludes that the circuit court did not err in reaching this determination.

The Petitioner next argues that the circuit court should have considered his assertions that his plea was involuntary due to his alleged lack of understanding. At the appeal hearing, prior to considering the merits of such arguments, the circuit court requested that the Petitioner identify the extraordinary remedy under which he was proceeding as the circuit court had already determined that an appeal did not lie from the counseled “no contest” plea. When the Petitioner failed to name such extraordinary remedy, the circuit court declined to hear further argument on the issue. On appeal, the Petitioner advances multiple theories which he argues would have allowed the circuit court to consider the involuntary nature of his “no contest” plea. After careful consideration, this Court does not find that any of these theories establish the existence of an extraordinary remedy which would have allowed the circuit court under these facts to consider the voluntariness of a counseled “no contest” plea. As the State of West Virginia noted in its brief, the Petitioner was not incarcerated and successfully completed his sentence of probation prior to the filing of this appeal. Without identification of an applicable extraordinary remedy, this Court cannot find that the circuit court erred in declining to proceed further.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 25, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh