

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO.: 22-938 (Ohio County Case No.: 2013-F-311)

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STATE OF WEST VIRGINIA,
Petitioner - State Below,
Respondent,

v.

CODY BRAUTIGAM,
Defendant Below,
Petitioner.

PETITIONER – CODY BRAUTIGAM’S APPEAL BRIEF

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**PLEASE NOTE THAT THIS PETITIONER’S BRIEF IS FILED PURSUANT TO W.VA
RULE OF APPELLATE PROCEDURE Rule 10(c)(10)(b).**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

1. ASSIGNMENTS OF ERROR.....	3
2. STATEMENT OF THE CASE.....	3
a. Factual and Procedural Background.....	3
3. SUMMARY OF ARGUMENT.....	5
4. STATEMENT REGARDING ORAL ARGUMENT AND DECISION.....	5
5. ARGUMENT.....	5
a. Standard of Review.....	5
b. The Circuit Court Erred by Incorrectly Applying §62-12-26(j) When it Sentenced the Defendant to Serve a 25-year Sanction <i>Followed</i> by an Additional 25 Year Period of supervised release.....	6
6. CONCLUSION.....	7

TABLE OF AUTHORITIES

Cases

<i>State v. Raymond B.</i> No. 20-0605 (W. Va. Jun 23, 2021).....	5,6,7
<i>State v. Lucas</i> 201 W.Va. 271, 496 S.E.2d 221 (1997).....	5
<i>State v. James</i> 227 W. Va. 407, 710 S.E.2d 98 (2011).....	5

Statutes

<i>West Virginia Code</i> § 62-12-26.....	5,6,7
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1. ASSIGNMENTS OF ERROR

- a. The Circuit Court committed reversible error when it revoked the Defendant’s 25-year period of supervised release, sentenced him to serve 25 years of incarceration – with credit for 5 years previously served, then subjected him to an additional 25-year period of supervised release after completion of his 25-year sentence.

2. STATEMENT OF THE CASE

a. Factual and Procedural Background

The Petitioner plead guilty to two counts of “Sexual Assault in the Third Degree” on April 22, 2013 and was sentenced to serve a not less than one (1) year nor more than five (5) years in a state correctional facility, on each count to run consecutively, for a cumulative sentence of not less than two (2) nor more than ten (10) years in a state correctional facility. Additionally, he was to be subject to a period of supervised release for twenty-five (25) years. The Petitioner discharged his prison sentence and was placed on twenty-five (25) years of supervised release. He first met with his supervised release probation officer on September 5, 2017.

The Petitioner has been subject to three previous revocations of his supervised release. The first time the Circuit Court revoked his supervised release he was sanctioned to serve 60 days of incarceration. The second time the Circuit Court revoked his supervised release he was sanctioned to served two years of incarceration. The third time the Circuit Court revoked his supervised release he was sanctioned to serve one year of incarceration. It appears from the records that upon completion of each of these sanctions, the Petitioner was to be returned to supervised release to finish serving the original 25-year period. Meaning, that the original 25-year period of supervised release was never extended by the Circuit Court.

Petitioner was released from incarceration on September 16, 2021 after having served the prison/jail sanction for his third revocation and was returned to supervised release to finish out his 25-year requirement. In early 2022 the State filed its Fourth Petition to Revoke Supervised Release and the Petitioner was picked up on the resulting warrant on April 14, 2022. The Ohio County Circuit Court heard the Petition to Revoke Supervised Release on June 27, 2022.

At the June 27, 2022 hearing the Petitioner waived his right to a full hearing and admitted to violating multiple provisions of his supervised release. The court then revoked his supervised release and sentenced him to serve 25-years. The Court gave the Petitioner 5 years credit for time previously served plus the 75 days he was incarcerated from April 14, 2022 (totaling 5 years and 75 days). Additionally, the Circuit Court extended his supervised release by an additional 25 years, to begin upon completion of the 25-year sentence.

It is from this Order that the Petitioner now appeals.

3. SUMMARY OF ARGUMENT

The Circuit Court, by revoking the Petitioner's 25-year period of supervised release, sentencing him to a period of 25-years in prison, and then extending his supervised release for an additional 25-year period after completion of the 25-year sentence, has exceeded the scope of West Virginia Code § 62-12-26(j) by extending the Petitioner's period of supervised release beyond the 50-year maximum authorized by Statute.

4. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary in this matter as Rule 18(a) of the West Virginia Rules of Appellate Procedure renders oral argument unnecessary. The facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument.

5. ARGUMENT

a. Standard of Review

When reviewing the findings of fact and conclusions of law of a circuit court sentencing a defendant following a revocation of probation, we apply a three-pronged standard of review. We review the decision on the probation revocation 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. State v. Raymond B., No. 20-0605, 2021 W. Va. LEXIS 396 (June 23, 2021).

Additionally, "[t]he Supreme Court of Appeals 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). Syl. Pt. 1, State v. James, 227 W. Va. 407, 710 S.E.2d 98 (2011).

b. The Circuit Court Erred by Incorrectly Applying §62-12-26(j) When it Sentenced the Defendant to Serve a 25-year Sanction Followed by an Additional 25 Year Period of Supervised Release

The Ohio County Circuit Court revoked the Defendant's 25-year period of supervised release and sentenced him to serve that 25-year period in prison; he was given credit for 5-years and 75 days served bringing the total sentence down to 19-years and 290 days. Additionally, the Circuit Court imposed a subsequent 25-year period of supervised release to begin upon discharge of the 19-year and 290-day sentence.

The Petitioner believes that this sentence, in its totality, requires him to be on supervised release for a period exceeding 50-years, which is the maximum allowable amount pursuant to W. Va. Code § 62-12-26(j). The Petitioner presented counsel with a calculation showing how the sentence provides for a period of supervised release exceeding 50-years and will likely provide this Court with same in his pro se supplemental brief pursuant to West Virginia Rule of Appellate Procedure Rule 10(c)(10)(b).

The Court discusses this very dilemma in State v. Raymond B., No. 20-0605, 2021 W. Va. LEXIS 396 (June 23, 2021). In Raymond, the Court cites West Virginia Code § 62-12-26(i), which has been subsequently changed to § 62-12-26(j), stating that the length of any additional period of supervised release "shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release."

In that case, the Petitioner's original 20-year period of supervised release was revoked and he was ordered to serve 15 years in prison to be followed by 25-years of extended supervised release. See Raymond. This Court refused to review the Circuit

Court's sentence because it fell within the maximum possible sentence allowed by law of 50-years pursuant to § 62-12-26.

In this case, and according to the Petitioner's calculation, the Circuit Court's sentence is reviewable by this Court because it exceeds the 50-years allowed by statute.

CONCLUSION

The Circuit Court should be reversed because it committed reversible error by revoking the Petitioner's 25-year period of supervised release, sentencing him to a period of 25-years in prison, and then extending his supervised release for an additional 25-year period after completion of the 25-year sentence. The sentence imposed by the Ohio County Circuit Court exceeds the 50-year maximum contemplated by § 62-12-26.

WHEREFORE, your Petitioner, Cody Brautigam, respectfully requests that this Honorable Court find that the Circuit Court committed reversible error, and accordingly reverse the Circuit Court's decision, and remand this case to the Circuit Court with instructions for further proceedings.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, Joshua J. Norman, Esq., do hereby certify that on the 25th day of April, 2023, a true and correct copy of the forgoing Petitioner's Appeal Brief was served *via* the West Virginia Supreme Court of Appeals E-filing System, File & ServeXpress, pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure; and further, a courtesy copy was sent via electronic mail to the following addresses below:

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