

FILED
July 30, 2025

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-373 (Kanawha County 22-F-183)

Izael Fisher,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Izael Fisher appeals the Circuit Court of Kanawha County’s order denying the petitioner’s Rule 35(b) Motion for Reduction of Sentence, which was re-issued on May 25, 2023, for the purposes of appeal.¹ The petitioner argues that the court abused its discretion in denying his motion given the petitioner’s adolescent substance abuse and history of physical/sexual abuse by his stepfather, and erred in denying the motion without holding a hearing to discuss these issues. 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).

On March 19, 2022, the petitioner, his girlfriend, and two unidentified men robbed an individual at gunpoint inside a stairwell of the petitioner’s apartment building. While the others held the victim at gunpoint, the petitioner punched the victim in the face before taking his phone, wallet, and car keys. After searching the victim’s vehicle, the petitioner returned the keys to the victim and allowed him to leave. The petitioner was later indicted for one count of first-degree robbery and one count of use or presentment of a firearm during the commission of a felony. On September 21, 2022, the petitioner pleaded guilty to second-degree robbery, and, in exchange, the State agreed to dismiss the count of use or presentment of a firearm. Prior to sentencing, a pre-sentence investigation (“PSI”) report was filed before the court. The PSI report explained that the petitioner had been physically, sexually, and emotionally abused by his stepfather since the petitioner was eleven years old. According to the PSI report, the stepfather also forced the petitioner to sell drugs, and he subsequently developed a serious substance abuse problem.

At sentencing, the petitioner relied on the PSI report, his history of substance abuse, and his stepfather’s sexual abuse to request that the court sentence him to the Anthony Center for Young Adults. The court ultimately denied the petitioner’s request and sentenced him to five to

¹ The petitioner is a self-represented litigant. 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.

eighteen years of imprisonment. Thereafter, on December 1, 2022, the petitioner's counsel filed a motion for reconsideration of sentencing pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure, arguing that (1) the petitioner had already served several months of imprisonment at the time of the motion, (2) the petitioner was very young and "regretful of his decisions," (3) the petitioner would greatly benefit from being placed in the Anthony Center to receive treatment, and (4) the petitioner had a one-year-old child who needed his support. Several days later, the court denied the petitioner's motion, finding that good cause did not exist to reconsider the petitioner's sentence. Subsequently, the petitioner requested that the order to be reissued for the purposes of appeal. On May 25, 2023, the order was reissued, and it is from this reissued order that the petitioner appeals.

We review the circuit court's order denying the petitioner's Rule 35(b) 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, in part, *State v. Head*, 198 W. Va. 298, 480 S.E.2d 507 (1996).

On appeal, the petitioner asserts two assignments of error regarding the court's denial of his Rule 35(b) motion. Specifically, the petitioner argues that the court erred in denying his request to be resentenced to the Anthony Center given his childhood history of physical and sexual abuse at the hands of his stepfather, as well as his untreated substance abuse issues. The petitioner likens his case to *State v. Arbaugh*, 215 W. Va. 132, 595 S.E.2d 289 (2004), where this Court reversed the circuit court's denial of the petitioner's request for probation based upon the petitioner's history of extreme abuse. *Id.* at 137, 595 S.E.2d at 294. Lastly, the petitioner asserts that the court abused its discretion in denying the Rule 35(b) motion without holding a hearing to determine whether there was good cause to place the petitioner in the Anthony Center.

It is well-established that Rule 35(b) is not a mechanism to challenge the petitioner's conviction or the validity of his sentence. Syl. Pt. 2, *State v. Marcum*, 238 W. Va. 26, 792 S.E.2d 37 (2016). Rather, "a motion to reduce sentence under Rule 35(b) 'is essentially a plea for leniency from a presumptively valid conviction.'" *Id.* at 31, 792 S.E.2d at 42 (quoting *Head*, 196 W. Va. at 306, 480 S.E.2d at 515 (Cleckley, J., concurring)). Further, in evaluating a Rule 35(b) motion, circuit courts should generally consider "only those events that occur within the 120-day filing period[.]" *Head*, 198 W. Va. at 299, 480 S.E.2d at 508, Syl. Pt. 5, in part.

Here, the petitioner's Rule 35(b) motion failed to raise any new information or events that occurred within the 120-day filing period and, rather, simply reiterated his arguments of mitigation. While the petitioner argues that the court should have considered the petitioner's childhood trauma and other extenuating circumstances, the court was aware of the petitioner's age, drug addiction, physical/sexual abuse, and criminal history by virtue of the PSI report prepared prior to the sentencing hearing. As such, these issues do not warrant relief.

To the extent the petitioner claims the court should have considered *Arbaugh* in determining whether to resentence the petitioner, we find that *Arbaugh* does not entitle the petitioner to the relief sought. As we have previously stated in *State v. Georgius*, 225 W. Va. 716, 721, 696 S.E.2d 18, 23 (2010),

[t]his Court’s decision in *Arbaugh* did not create any new standards, guidelines, or requirements to be followed by the circuit courts of this State *Arbaugh* was a per curium decision decided by this Court upon application of existing precedent and was confined to the very specific facts of that case.

Therefore, we find no merit to the petitioner’s argument that the court was required to consider *Arbaugh* at sentencing, that the petitioner was entitled to be sentenced to the Anthony Center under *Arbaugh* simply because he too suffered from childhood abuse, or that *Arbaugh* negated the court’s broad discretion in deciding whether to grant an alternative sentence. *See State v. Shaw*, 208 W. Va. 426, 430, 541 S.E.2d 21, 25 (2000) (stating that the decision whether to sentence an individual pursuant to the Youthful Offender’s Act is entirely within the circuit court’s decision).

Lastly, we find that the petitioner’s claim that the court abused its discretion by not holding a hearing on his Rule 35(b) motion is without merit. We have previously held that a circuit court is not required to hold a hearing on a Rule 35(b) motion where the record established that “the circuit court held lengthy hearings when the appellant pled guilty and when he was sentenced.” *State v. King*, 205 W. Va. 422, 425, 518 S.E.2d 663, 666 (1999). The record indicates that the court held a plea hearing on August 11, 2022, and a sentencing hearing on September 21, 2022, during which the parties presented evidence for the court’s consideration. Accordingly, we find no abuse of discretion in the court’s decision denying the petitioner’s Rule 35(b) motion.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV