

**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. 23-425** (Tucker County CC-47-2017-F-23)

**Jonathan L. Nuzum,**  
**Defendant Below, Petitioner**

**MEMORANDUM DECISION**

Petitioner Jonathan L. Nuzum appeals the Circuit Court of Tucker County’s June 16, 2023, order denying his request for reconsideration of his probation revocation.<sup>1</sup> The petitioner argues that the circuit court erred in finding that he had failed to demonstrate an adequate basis for modification of his sentence under Rule 35(b) of the West Virginia Rules of Criminal Procedure. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision is appropriate. *See* W. Va. R. App. P. 21.

The petitioner was indicted by information for one count of failure to register as a sex offender in October 2017 and agreed to plead guilty to that offense pursuant to an agreement with the State. On October 10, 2017, the circuit court accepted the petitioner’s guilty plea, suspended his sentence of not less than one nor more than five years imprisonment, and placed him on a five-year period of probation. Among other conditions of probation, the petitioner was required to refrain from violating “any criminal law of this State or any other state[,]” from possessing illegal substances and drug paraphernalia, and from knowingly associating with drug users and drug locales.

On September 14, 2022, the State filed a motion to revoke the petitioner’s probation, alleging that he had acquired new charges on August 16, 2022, consisting of driving while license revoked for DUI, second offense; no insurance; improper registration; and failure to use correct turning movements. The State’s revocation motion also contained a copy of a criminal complaint stating that a search warrant had been executed at the petitioner’s residence on August 17, 2022, and ammunition, two handguns, a pistol, a shotgun, methamphetamine, marijuana, and drug paraphernalia were discovered in addition to spent shells and a shooting target in the yard. A pick-up truck, all-terrain vehicle, and drones were also found on the property, none of which the

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<sup>1</sup> The petitioner appears by counsel Morris C. Davis. The respondent appears by Attorney General John B. McCuskey and Assistant Attorney General Mary Beth Niday. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

petitioner had reported as required by the sex offender registry. The petitioner was charged with conspiracy to commit a felony; failure to register as a sex offender, second offense; and prohibited person in possession of a firearm.

After waiving his preliminary revocation hearing, the petitioner appeared before the circuit court for a revocation hearing on February 7, 2023. The arresting officer for the petitioner's new charges testified at the proceeding, and after hearing from the parties, the court revoked the petitioner's probation and imposed the sentence of not less than one nor more than five years imprisonment.

On May 18, 2023, the petitioner filed a motion pursuant to West Virginia Rule of Criminal Procedure 35(b), asking the circuit court to reconsider the revocation of his probation. Rule 35(b) provides, in relevant part:

A motion to reduce a sentence may be made, or the court may reduce a sentence without motion within 120 days after the sentence is imposed or probation is revoked, or within 120 days after the entry of a mandate by the supreme court of appeals . . . dismissing or rejecting a petition for appeal of a judgment of a conviction or probation revocation.

The circuit court conducted a hearing on the petitioner's Rule 35(b) motion on June 14, 2023. Brandon Pyles testified that the petitioner had worked for him for about six months prior to being arrested. Mr. Pyles also stated that he would re-employ the petitioner if he was released from custody. The petitioner, through counsel, informed the court that his significant other had a brain tumor and asked the court to reconsider the revocation of his probation so that he could be of assistance to her. The State opposed the motion, recounting that firearms, ammunition, drugs, and drug paraphernalia were seized from the petitioner's home when he had previously been on probation. The court denied the petitioner's Rule 35(b) motion and, in its June 16, 2023, order, indicated that the court found that the petitioner had "failed to set forth an adequate basis for the Court to reconsider or otherwise modify [his] sentence in this matter." The petitioner now appeals the court's denial of his Rule 35(b) motion.

We review the circuit court's decision on the petitioner's Rule 35(b) motion for an abuse of discretion, the underlying facts under a clearly erroneous standard, and questions of law de novo. Syl. Pt. 1, *State v. Head*, 198 W. Va. 298, 480 S.E.2d 507 (1996). We note that it is well-established that Rule 35(b) is not a mechanism to challenge a conviction or the validity of a sentence. Syl. Pt. 2, *State v. Marcum*, 238 W. Va. 26, 792 S.E.2d 37 (2016). 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.

On appeal, the petitioner alleges that the circuit court erred in finding that he had failed to provide adequate grounds for his Rule 35(b) motion. Specifically, the petitioner argues that the court's finding disregards the evidence from the hearing showing that he was gainfully employed before he was taken into custody, had a good work ethic, was guaranteed re-employment if he was released from custody, and had already served six months in jail with only three months remaining

on his term of probation. The petitioner alleges that these facts were of such significance they warranted the court's grant of his Rule 35(b) motion.

This Court has indicated that a motion under Rule 35(b) of the West Virginia Rules of Criminal Procedure "is essentially a plea for leniency from a presumptively valid conviction." *Head*, 198 W. Va. at 306, 480 S.E.2d at 515. As such, a Rule 35(b) motion "is directed to the sound discretion of the circuit court." *Head*, 198 W. Va. at 301, 480 S.E.2d at 510. In the present case, a review of the record on appeal reveals that, during the Rule 35(b) hearing, the petitioner failed to offer evidence of changes in his circumstances occurring during the period preceding the filing of his motion; instead, the petitioner informed the court of facts that were in existence at the time his probation was revoked. When considering this lack of evidence as well as the petitioner's probation violations and criminal history, we conclude that the circuit court did not err in finding that he had failed to establish adequate grounds for reconsideration of his sentence under Rule 35(b). To the extent that the petitioner attempts to challenge the validity of his sentence, his argument exceeds the scope of Rule 35(b) and will not be considered by this Court. Accordingly, we find that the circuit court did not abuse its discretion in 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. Wooten  
Justice Tim Armstead  
Justice C. Haley Bunn  
Justice Charles S. Trump IV