

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

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

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

v.) No. 24-685 (Jackson County CC-18-2023-F-29)

**Thomas Layton,
Defendant Below, Petitioner**

MEMORANDUM DECISION

Petitioner Thomas Layton appeals the Circuit Court of Jackson County’s October 22, 2024, sentencing order.¹ The petitioner argues the circuit court erred in imposing his sentences without first verifying during the sentencing hearing that the petitioner had reviewed the presentence investigation (“PSI”) report. 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).

The Jackson County Grand Jury returned a thirteen-count indictment against the petitioner in March 2023, charging him with one count of second-degree sexual assault, five counts of third-degree sexual assault, and seven counts of sexual abuse by a parent, guardian, custodian, or person in position of trust. On February 9, 2024, the petitioner entered an *Alford/Kennedy* plea to three counts of third-degree sexual assault and one count of a lesser included offense of felony attempt to commit the offense of sexual abuse by a parent, guardian, custodian, or person in position of trust.² The circuit court held a plea hearing on February 9, 2024, and after engaging in a thorough plea colloquy with the petitioner, accepted his *Alford/Kennedy* plea. The court then ordered the petitioner to participate in a PSI. The sentencing hearing was subsequently held on May 20, 2024. At the outset of the hearing, the circuit court questioned the petitioner’s counsel regarding receipt of the PSI report, and counsel stated “I received it and I reviewed the PSI. My client has reviewed the PSI. We have no substantive additions or corrections.” Counsel did note, however, that the

¹ The petitioner is represented by counsel Roger L. Lambert. The State of West Virginia is represented by Attorney General John B. McCuskey and Assistant Attorney General William E. Longwell.

² *See* Syl. Pt. 1, *Kennedy v. Frazier*, 178 W. Va. 10, 357 S.E.2d 43 (1987) (“An accused may voluntarily, knowingly and understandingly consent to the imposition of a prison sentence even though he is unwilling to admit participation in the crime, if he intelligently concludes that his interests require a guilty plea and the record supports the conclusion that a jury could convict him.”); *see also North Carolina v. Alford*, 400 U.S. 25 (1970).

petitioner had noticed one small factual discrepancy in the PSI report. During his allocution, the petitioner did not reference the PSI report and, rather, simply requested leniency. At the conclusion of the hearing, the circuit court sentenced the petitioner to one to five years of imprisonment for each of the three third-degree sexual assault convictions and to one to three years of imprisonment for the felony attempt conviction. The court further ordered that the three sexual assault sentences were to run consecutively to one another but concurrently to the sentence for attempt. In a May 28, 2024, order memorializing the sentences, the court “determine[d] that the Defendant and his Counsel did have an opportunity to participate in the pre-sentence investigation” and that “the parties did have an opportunity to read and discuss the pre-sentence investigation report, which was made available to the State and the Defendant pursuant to Rule 32(b) of the West Virginia Rules of Criminal Procedure” and that “there were no unresolved objections to said pre-sentence investigation report[.]” The court later reentered the sentencing order on October 22, 2024. It is from this order that the petitioner appeals.

We have stated that this Court “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). Furthermore, because a circuit court’s “interpretations of statutes and rules, are primarily questions of law, we apply a *de novo* review. . . .” *Phillip Leon M. v. Greenbrier Cnty. Bd. of Educ.*, 199 W. Va. 400, 404, 484 S.E.2d 909, 913 (1996); Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

On appeal, the petitioner argues that the circuit court erred in imposing his sentence without first directly asking him if he had read the PSI report, in violation of West Virginia Rule of Criminal Procedure 32(c)(3)(A).³ The petitioner contends that without directly questioning the defendant, and not just counsel, a court cannot accurately verify whether a defendant has actually received and reviewed the document. While the petitioner impliedly acknowledges that he did not object to the PSI report, he points to *State v. Rogers*, No. 14-0373, 2015 WL 869323, at *3 (W. Va. Jan. 9, 2015) (memorandum decision), for the proposition that his failure to timely object to this issue should not be held against him because the court was required to “specifically ask him if he objected to the PSI report.”

We find no merit to the petitioner’s arguments. At the outset we note that Rule 32(c)(3)(A) provides that a court must ascertain that a defendant has read the PSI report but does not indicate that counsel may not make this representation on behalf of a defendant. *See State ex rel. Aaron v. King*, 199 W. Va. 533, 539, 485 S.E.2d 702, 708 (1997) (stating that a circuit court must ascertain whether a defendant has had the opportunity to review the PSI report and that the court may do so by asking “the defendant, his lawyer, or both”). Moreover, contrary to the petitioner’s claims, *Rogers* does not require a circuit court to directly ask a defendant, rather than his counsel, whether he has read the PSI report. In *Rogers*, the defendant filed a motion for reconsideration of sentence, raising issue with the contents of the PSI report. 2015 WL 869323, at *2. The circuit court denied the motion, finding that the petitioner failed to timely object to the PSI report at sentencing. *Id.* On

³ West Virginia Rule of Criminal Procedure 32(c)(3)(A) provides, in relevant part, that “[b]efore imposing sentence, the court must . . . verify that the defendant and defendant’s counsel have read and discussed the presentence report[.]”

appeal, the defendant argued that he did not waive any objections, pointing out that the circuit court did not specifically ask him whether he objected to the PSI report. The *Rogers* Court rejected the defendant's argument, finding that the record was clear that the defendant had been provided with a copy of the PSI report well in advance of the sentencing hearing and that he had ample time to object to the report during the hearing but failed to do so. *Id.* at *3. Accordingly, the petitioner's reliance on *Rogers* is misplaced, as its analysis is inapposite to the petitioner's argument.

Moreover, this Court addressed a similar scenario in *State v. Bleck*, 243 W. Va. 293, 843 S.E.2d 775 (2020), in which a defendant raised issue with the circuit court's consideration of an allegedly incorrect fact in the PSI report for the first time on appeal. This Court found that the defendant had waived his right to appeal the alleged error, stating that "the appropriate time to object to any portion of a [PSI] report is prior to the sentencing hearing, or at the very least, for good cause, prior to the imposition of sentence." *Id.* at 298, 843 S.E.2d at 780. We noted that "the circuit court explicitly inquired as to whether the parties had received the PSI report" and that the defendant's "counsel affirmatively stated that he had." *Id.* at 300, 843 S.E.2d at 782. We further noted that the "circuit court then gave the parties an opportunity to orally object to any material inaccuracies contained within the PSI report prior to pronouncing the sentence" and that counsel "did, in fact[,] make an objection demonstrating that he had reviewed the PSI report prior to the sentencing hearing." *Id.* Consequently, the Court in *Bleck* determined that the defendant had waived his right to challenge the PSI report on appeal. *Id.*

Here, as in *Bleck*, the petitioner's counsel informed the circuit court that both the petitioner and counsel had reviewed the PSI report. Indeed, counsel informed the court that the petitioner took issue with a factual discrepancy in the PSI report, which, as we noted in *Bleck*, indicates that both counsel and the petitioner had read the PSI report prior to the sentencing hearing. Further, when given the opportunity to address the court, the petitioner simply asked the court for leniency rather than advising the court that he had not reviewed the PSI report or contesting his counsel's representations to the court. Thus, in accordance with *Bleck*, we must conclude that the petitioner waived any argument concerning whether the court should have made further inquiry into his receipt of the PSI report.⁴

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: September 10, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

⁴ The petitioner does not assert that the circuit court erred in considering the PSI report or that any of its contents were inaccurate.