

**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. 23-508 (Lewis County CC-21-2022-F-22)

**John Steven Prince,
Defendant Below, Petitioner**

MEMORANDUM DECISION

Petitioner John Steven Prince appeals the July 24, 2023, order of the Circuit Court of Lewis County denying his Rule 35(b) motion for sentence reduction.¹ 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.

In July 2022, the petitioner was indicted for battery, battery on a law enforcement officer, obstructing an officer, attempted malicious assault, two counts of domestic battery, and three counts of wanton endangerment involving a firearm. In December 2022, the petitioner entered into a written plea agreement with the State in which he agreed to plead guilty pursuant to *Kennedy v. Frazier*² to one count each of wanton endangerment³ and battery on a law enforcement officer⁴ in

¹ The petitioner is represented by counsel Daniel Armstrong. The State appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

² See Syl. Pt. 1, *Kennedy v. Frazier*, 178 W. Va. 10, 357 S.E.2d 43 (1987) (holding that “[a]n 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”).

³ See W. Va. Code § 61-7-12 (providing that “[a]ny person who wantonly performs any act with a firearm which creates a substantial risk of death or serious bodily injury to another shall be guilty of a felony”).

⁴ See W. Va. Code § 61-2-10b(d) (providing that any person “who unlawfully, knowingly, and intentionally makes physical contact of an insulting or provoking nature with a . . . law-

exchange for the dismissal of the remaining charges and the State's agreement that it would "stand silent at sentencing." The petitioner pled guilty in January 2023, and the circuit court conducted a sentencing hearing on March 16, 2023. At the sentencing hearing, the State presented an argument regarding the details of the incident and requested that the court impose five years of imprisonment for wanton endangerment and six months of imprisonment for battery on a law enforcement officer, to be served consecutively. The petitioner did not object to the State's argument or sentence recommendation. The court imposed the sentence requested by the State and memorialized its sentence in an order dated April 27, 2023.

On June 5, 2023, the petitioner filed a motion for reduction of his sentence pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure, arguing that his circumstances had changed since he was sentenced. This motion specified that the petitioner was in poor health and "has been without access to certain prescribed medication and his hearing aids, which will cause lasting injury." The circuit court denied the petitioner's Rule 35(b) motion without a hearing on July 24, 2023, and the petitioner filed a notice of appeal on August 23, 2023.

The sole issue on appeal is the circuit court's denial of the petitioner's Rule 35(b) motion.⁵ When reviewing such an order, we review the court's decision under an abuse of discretion standard, the underlying facts for clear error, and questions of law are reviewed de novo. *See* Syl. Pt. 1, *State v. Head*, 198 W. Va. 298, 480 S.E.2d 507 (1996). This Court has also indicated that, "in the final analysis, a Rule 35(b) motion is essentially a plea for leniency from a presumptively valid conviction." *Id.* at 306, 480 S.E.2d at 515. Here, the petitioner offers no argument regarding the denial of his Rule 35(b) motion. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure provides that briefs "must contain an argument clearly exhibiting the points of fact and law presented" with "appropriate and specific citations to the record on appeal[.]" Because the petitioner's brief does not contain any argument regarding the court's denial of his Rule 35(b) motion, we affirm the circuit court's July 24, 2023, order.

enforcement officer acting in his or her official capacity, and the person . . . knows or has reason to know that the victim is acting in his or her official capacity" is guilty of a misdemeanor).

⁵ Instead of addressing the circuit court's denial of his Rule 35(b) motion, the petitioner's brief argues that the State violated the plea agreement by recommending a sentence to the court at the sentencing hearing. We decline to address this issue because it was not raised in the motion that is the subject of this appeal, and because "Rule 35(b) cannot be used as a vehicle to challenge a conviction or the validity of the sentence imposed by the circuit court, whether raised in the Rule 35(b) motion or in the appeal of the denial of the Rule 35(b) motion." *State v. Marcum*, 238 W. Va. 26, 31, 792 S.E.2d 37, 42 (2016). We recognize that after this appeal was perfected, the State filed a Rule 35(a) motion in circuit court that does address the petitioner's argument about compliance with the plea agreement. The State's motion remains pending in circuit court, and we do not express an opinion on the merits of that motion. Although the petitioner moved to hold this appeal in abeyance pending the circuit court's ruling on the State's pending motion, we refuse the request as moot.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 25, 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