

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. 23-543 (Morgan County CC-33-2022-F-32)

Christopher T. Cook,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Christopher T. Cook appeals his convictions and sentences, as set forth in the May 31, 2023, order of the Circuit Court of Morgan County, for two counts of second offense failure to update his sex offender registration.¹ The petitioner argues that the circuit court erred when it refused to instruct the jury that it must acquit if it found that the West Virginia State Police failed in its duties to collect information from him, and that his sentence is disproportionate to his crime. 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).

In 2003, the petitioner pled guilty to third-degree sexual assault and was ordered to register for life as a sex offender. In 2018, the petitioner pled guilty to one count of first-offense failure to register as a sex offender and, as a result, he was sentenced to one to five years' imprisonment. After the petitioner's release from imprisonment, West Virginia State Police Sergeant S.A. Nazelrod conducted a routine sex offender investigation in March 2022, and visited the petitioner's last known address on Martinsburg Road in Morgan County. Sergeant Nazelrod was unable to locate anyone at the residence, and he tried calling the petitioner, but the phone number that the State Police had on file had been disconnected. Sergeant Nazelrod then left a note on the door of the residence for the petitioner to call him. Sergeant Nazelrod later received a call from Sarah Henry, the petitioner's former friend, who said that the petitioner used to reside with her at the residence on Martinsburg Road, but he had moved out by December 2021. In September 2022, the petitioner was indicted for two counts of second-offense failure to update sex offender registration for failing to report the changes of his address and phone number.

¹ The petitioner is represented by counsel Jason Gain. 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.

The petitioner filed a motion to dismiss the charges, alleging that the West Virginia State Police failed to comply with provisions in the West Virginia Code of State Rules relating to sex offender registration requirements. At a hearing on this motion, counsel proffered that the petitioner went to the Berkeley Springs detachment to update his registry information in a timely manner, but “the secretary said no, you can’t register now, you have to make an appointment.” Counsel continued that, under the Code of State Rules, the petitioner had ten days to update his registry information after he moved from the residence on Martinsburg Road and changed his phone number, and the State Police had a duty to take the petitioner’s updated information when he showed up at the detachment without requiring him to make an appointment and come back at a different time.² The circuit court denied the motion to dismiss, stating that whether the petitioner unsuccessfully attempted to update his registry information was “a fact question for the jury to decide, not a legal question[.]” and that “it is probably going to be a jury question as to whether or not the jury believes that [the petitioner] met his duties and responsibilities or didn’t.”

At trial, the State presented evidence from Sergeant Nazelrod, who testified about his investigation of the petitioner’s failure to timely update his address and phone number for the sex offender registry. Ms. Henry also testified about the petitioner’s previous living arrangement with her, and that she had reminded the petitioner that he had an obligation to keep the State Police apprised of any changes in his registry information. After Sergeant Nazelrod and Ms. Henry testified, the State rested its case-in-chief. Then, the defense called one witness – the petitioner’s girlfriend, Stevie Cornell. Ms. Cornell testified that she drove the petitioner to the State Police detachment to update his sex offender registration on two occasions in November or December 2021, but she did not know what happened when he went inside the detachment. The petitioner did not testify, and the defense rested. Then, the State called a rebuttal witness, Lisa Johnson, who was an employee of the West Virginia State Police working at the Berkeley Springs detachment. Ms. Johnson testified that she was the only person at the Berkeley Springs detachment who set up appointments for sex offenders to update their sex offender registration, and she had no knowledge of the petitioner being turned away. Ms. Johnson further testified that she had never told a sex offender who showed up to update their information “to leave and come back.”

After all the evidence was submitted by the parties, the petitioner submitted a jury instruction stating that if the jury found that the “West Virginia State Police failed in it’s [sic] duties to collect sex offender registry information from the Defendant according to West Virginia or Federal law then you must find the Defendant not guilty.” The circuit court rejected this instruction, finding that “the law puts the burden on the defendant to register[.]” And even if the petitioner arrived at the detachment to update his registration and was told to make an appointment and come back, the court ruled that “I don’t think that . . . negates his duty to register and it does not warrant a defense to this charge[.]” Ultimately, the jury convicted the petitioner of both charges in the indictment, and the court sentenced the petitioner to two concurrent terms of ten to twenty-five years of imprisonment.

² The petitioner did not present any evidence to substantiate his factual assertions at the motion hearing.

On appeal, the petitioner claims that the circuit court erred when it refused to instruct the jury that it must acquit the petitioner if it found that the West Virginia State Police failed in its duty to take his updated sex offender registration information when he arrived at the Berkeley Springs detachment. We have held that “[a]s a general rule, the refusal to give a requested jury instruction is reviewed for an abuse of discretion. By contrast, the question of whether a jury was properly instructed is a question of law, and the review is *de novo*.” Syl. Pt. 1, *State v. Hinkle*, 200 W. Va. 280, 489 S.E.2d 257 (1996).

We have explained that “[a] criminal defendant is entitled to an instruction on the theory of his or her defense if he or she has offered a basis in evidence for the instruction, and if the instruction has support in law.” *Id.* (citing *State v. LaRock*, 196 W.Va. 294, 308, 470 S.E.2d 613, 627 (1996)). Without weighing in on the legal basis for the petitioner’s requested instruction, we find that the evidence did not support his entitlement to it and so find that the court did not err in refusing to give the petitioner’s requested instruction.

This Court has held that “[w]hether facts are sufficient to justify the delivery of a particular instruction is reviewed by this Court under an abuse of discretion standard. In criminal cases where a conviction results, the evidence and any reasonable inferences are considered in the light most favorable to the prosecution.” Syl. Pt. 12, *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994). Here, the petitioner argues that he went to the Berkeley Springs detachment on two occasions in 2021 to update his sex offender registration information, and the State Police violated its own rules by refusing to accommodate him. *See* W. Va. Code R. § 81-14-13.4 (providing that “[w]hen a person previously registered arrives at the detachment to report a change of address or a change in any other registration information, the Detachment Commander or in his/her absence, another uniformed member shall” take the information). The evidence at trial did not establish this factual premise. Because there are insufficient facts in the record to justify the delivery of the petitioner’s jury instruction, the circuit court did not abuse its discretion when it refused the instruction.

The petitioner also contends that his sentences were unconstitutionally disproportionate. *See* W. Va. Const. art. III, § 5. The circuit court imposed concurrent sentences of ten to twenty-five years of imprisonment for each conviction, which is the sentence specified by West Virginia Code § 15-12-8(c) for the petitioner’s crimes of failure to update changes to his sex offender registration information, second or subsequent offense. Our analysis of this issue is guided by Syllabus Point 4 of *State v. Goodnight*, 169 W. Va. 366, 287 S.E.2d 504 (1982), which provides that “[s]entences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review.” Impermissible factors include “race, sex, national origin, creed, religion, and socioeconomic status” *State v. Moles*, No. 18-0903, 2019 WL 5092415, at *2 (W. Va. Oct. 11, 2019) (memorandum decision) (citation omitted). In this case, the petitioner does not assert that the court considered any impermissible factor, and his sentences are within statutory limits. As such, appellate review is not available.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 25, 2025

CONCURRED IN BY:

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

DISQUALIFIED:

Justice Charles S. Trump, IV