

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-556 (Roane County, CC-44-2021-F-87)

Dustin Scott Gibson,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Dustin Scott Gibson appeals his sentences for wanton endangerment and possession of a firearm by a prohibited person, as set forth in the Circuit Court of Roane County's sentencing order entered on August 30, 2023.¹ The petitioner argues that the circuit court abused its discretion by imposing disproportionate sentences. 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 January 27, 2021, the petitioner argued with his brother while performing construction work on a house in Roane County. The argument intensified, and the petitioner ultimately retrieved a shotgun, which fired,² hitting his brother and the porch of a nearby residence. On September 29, 2021, a Roane County grand jury indicted the petitioner on two counts of wanton endangerment involving a firearm; one count of malicious or unlawful assault; one count of possession of a firearm by a prohibited person; four counts of use or presentation of a firearm during commission of a felony; one count of domestic battery; one count of domestic assault; and one count of brandishing a deadly weapon. On November 23, 2022, the petitioner's counsel moved to withdraw due to a deterioration of the attorney-client relationship; however, the petitioner's counsel withdrew this motion at the November 28, 2022, hearing. The petitioner then pled guilty to one

¹ The petitioner is represented by counsel Keisha D. May. The State of West Virginia is represented by Attorney General John B. McCuskey and Assistant Solicitor General Frankie Dame. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

² It is not clear from the record whether the petitioner fired the gun or whether it discharged accidentally.

count of wanton endangerment³ and one count of possession of a firearm by a prohibited person,⁴ and the court accepted his guilty pleas. The petitioner thereafter failed to appear for his sentencing hearing; law enforcement captured him; and, on August 30, 2023, the circuit court sentenced the petitioner to five years of incarceration for one count of wanton endangerment and five years of incarceration for one count of possession of a firearm by a prohibited person.⁵ The circuit court ordered the petitioner's sentences to run consecutively.

The petitioner, through counsel, now appeals from the circuit court's sentencing order, arguing that his imposed sentences were disproportionate and "particularly harsh," considering that there was no victim statement, and asserting ineffective assistance of counsel.⁶ 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). Moreover, "[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." Syl. Pt. 4, *State v. Goodnight*, 169 W. Va. 366, 287 S.E.2d 504 (1982). We have explained that impermissible factors at sentencing 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).

Upon review, we conclude that the circuit court did not abuse its discretion in sentencing the petitioner to five years of incarceration for each of the crimes to which he pled guilty, because the circuit court sentenced the petitioner within the statutory limits set forth in West Virginia Code §§ 61-7-12 and 61-7-7(b)(2), each of which allows a maximum sentence of five years of incarceration. *See* W. Va. Code § 61-7-12 (establishing term of "confine[ment] in the penitentiary for a definite term of years of not less than one year nor more than five years" for conviction of wanton endangerment); W. Va. Code § 61-7-7(b)(2) (providing that one convicted of possession of a firearm by a prohibited person under this section "shall be confined in a state correctional facility for not more than five years"). Moreover, because the petitioner fails to allege that the circuit court based its sentencing decision on any impermissible factor, the petitioner's sentence is not reviewable on appeal. *See Goodnight*, 169 W. Va. at 371, 287 S.E.2d at 508, Syl. Pt. 4. Furthermore, to the extent the petitioner's counsel argues that his sentences were disproportionate, we likewise reject that claim, because the sentences imposed by the circuit court were in accordance with statutes that had fixed maximum penalties and did not involve recidivist

³ *See* W. Va. Code § 61-7-12.

⁴ *See* W. Va. Code § 61-7-7(b). It is unclear from the record what the petitioner's prior felony conviction was.

⁵ The petitioner alleges that, prior to filing his appeal, his counsel filed a motion for reconsideration on December 20, 2023, but the circuit court had not ruled on this motion when he filed this appeal.

⁶ The petitioner's attorney filed the Petitioner's Brief in accordance with Rule 10(c)(10) of the West Virginia Rules of Appellate Procedure, and the petitioner filed a separate, pro se, supplemental brief.

sentencing. *See* Syl. Pt. 4, *Wanstreet v. Bordenkircher*, 166 W. Va. 523, 276 S.E.2d 205 (1981) (“While our constitutional proportionality standards theoretically can apply to any criminal sentence, they are basically applicable to those sentences where there is either no fixed maximum set by statute or where there is a life recidivist sentence.”).

Finally, we likewise reject the petitioner’s assignment of error regarding the lack of a victim statement.⁷ This issue, which is comprised of one sentence in the petitioner’s supplemental brief, is devoid of any factual background, citation to the record, or legal analysis to support it, and therefore does not comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure.⁸ Although the petitioner filed his supplemental brief as a self-represented litigant, the petitioner must still support his alleged error in accordance with Rule 10(c)(7), even “leniently reviewing” the petitioner’s filing. *See State v. Suttle*, No. 20-0975, 2022 WL 293397, at *3 (W. Va. Feb. 1, 2022) (memorandum decision). Because the petitioner has failed to comply with Rule 10(c)(7) pertaining to this matter, we are unable to address the merits of this issue.

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

⁷ The petitioner additionally claims that he received ineffective assistance of counsel during his underlying criminal proceedings. Because we do not have a fully developed record on this point, we decline to address this issue. *See generally* Syl. Pt. 10, *State v. Triplett*, 187 W. Va. 760, 421 S.E.2d 511 (1992) (“It is the extremely rare case when this Court will find ineffective assistance of counsel when such a charge is raised as an assignment of error on a direct appeal. The prudent defense counsel first develops the record regarding ineffective assistance of counsel in a habeas corpus proceeding before the lower court, and may then appeal if such relief is denied. This Court may then have a fully developed record on this issue upon which to more thoroughly review an ineffective assistance of counsel claim.”).

⁸ West Virginia Rule of Appellate Procedure 10(c)(7) directs:

Argument: The brief must contain an argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The Intermediate Court and the Supreme Court may disregard errors that are not adequately supported by specific references to the record on appeal. *Id.*