

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-582 (Gilmer County CC-11-2017-F-17)

Jason Colt Jarrell,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Jason Colt Jarrell appeals the revocation of his probation, as set forth in the Circuit Court of Gilmer County's sentencing order entered on September 25, 2023.¹ The petitioner argues that the circuit court abused its discretion when it revoked his probation upon his admission to brandishing, reinstated his previously suspended one-year sentence of incarceration for destruction of property, and again suspended that sentence, placing the petitioner on home confinement for one year. 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).

A jury convicted the petitioner on eight misdemeanor counts: three counts of brandishing,² three counts of assault,³ one count of destruction of property,⁴ and one count of shooting within 500 feet of a dwelling.⁵ On March 9, 2018, the circuit court sentenced the petitioner as follows: one year of incarceration for two counts of brandishing (Counts One and Three), with the sentences to run consecutively to each other but which sentences the circuit court suspended, placing the petitioner on one year of home confinement; six months of incarceration for two counts of assault

¹ The petitioner is represented by counsel Andrew Chattin. The State of West Virginia is represented 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* W. Va. Code § 61-7-11.

³ *See* W. Va. Code § 61-2-9(b).

⁴ *See* W. Va. Code § 20-2-58(a)(3).

⁵ *See* W. Va. Code § 61-3-30(a).

(Counts Four and Six), with the sentences to run concurrently with the brandishing sentences, but which the circuit court also suspended; and one year of incarceration for destruction of property (Count Seven), which sentence the circuit court also suspended, imposing a five-year term of probation upon the petitioner's completion of his one year of home confinement. The circuit court also imposed a \$200 fine for shooting within 500 feet of a dwelling (Count Nine) and dismissed an additional count of brandishing (Count Two) and assault (Count Five). The circuit court further imposed multiple conditions upon the petitioner's terms of home confinement and probation.

The petitioner completed his sentence of home confinement on January 8, 2019, and thereafter began serving his five-year term of probation for Count Seven (destruction of property). However, before completing his probation, the petitioner was arrested for, and later pled guilty to, one count of brandishing a deadly weapon in Harrison County on January 30, 2023. Pursuant to this guilty plea, the petitioner was sentenced to ninety days of incarceration, suspended for one year of probation. On April 12, 2023, the State filed a motion to revoke the petitioner's probation in Gilmer County as a result of the petitioner's Harrison County conviction. On September 11, 2023, the court held a revocation hearing and concluded that the petitioner had violated the terms of his probation due to his Harrison County conviction. By sentencing order entered September 25, 2023, the circuit court re-imposed the one-year sentence for the petitioner's destruction of property conviction; however, the court suspended this sentence and placed the petitioner on home confinement for one year. On October 10, 2023, the petitioner filed his notice of appeal with this Court, along with motions to stay his sentence and to request appellate counsel. On November 6, 2023, this Court remanded the petitioner's case for the appointment of appellate counsel, and the petitioner, by counsel, thereafter filed his petitioner's brief.

On appeal, the petitioner assigns error to the circuit court's order reinstating his sentence for his destruction of property conviction and placing him on home confinement following his probation violation. This Court "reviews sentencing orders, including orders of restitution made in connection with a defendant's sentencing, 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).

The crux of the petitioner's argument pertains to the circuit court's underlying 2018 sentencing order that placed him on probation for five years for his conviction of the misdemeanor offense of destruction of property. He claims that the circuit court exceeded its authority by sentencing him to a five-year term of probation when the maximum sentence for that crime was only one year and that, but for this improper sentence, he would not have been on probation, or violated his probation, when he committed his subsequent Harrison County offense. *See* W. Va. Code § 61-3-30(a) (defining sentence for non-felonious destruction of property as "confine[ment] in the county or regional jail [for] not more than one year"); *see also* W. Va. Code § 62-11A-1a(b) (prohibiting alternate sentence from exceeding "maximum period of incarceration otherwise allowed"). The State counters that the petitioner relies on the wrong statute to support his claim for relief because the circuit court did not impose an alternate sentence and that the applicable statute, West Virginia Code § 62-12-11, authorized the circuit court to sentence the petitioner to a five-year probationary period. *See* W. Va. Code § 62-12-11 (providing that "[t]he period of

probation together with any extension thereof shall not exceed seven years”). We agree with the State that the petitioner is not entitled to relief.

First and foremost, the petitioner is, in essence, seeking an appeal from the circuit court’s 2018 sentencing order. He did not earlier and has not now filed a timely appeal from this ruling, and, as a result, he has waived his challenge to it. *See generally* W. Va. R. App. P. 5(b) (requiring party seeking appeal to file notice of appeal “[w]ithin thirty days of entry of the judgment being appealed”). However, even if we reviewed the circuit court’s sentence on the merits, we find that the circuit court did not abuse its discretion because the court had the authority, pursuant to West Virginia Code § 62-12-11, to impose a sentence of probation for a period of up to seven years regardless of the maximum period of incarceration for that offense. Here, the court’s imposition of five years of probation does not exceed the statutorily permitted maximum term of seven years of probation. *See id.*, Furthermore, to the extent that the petitioner claims that an abuse of discretion occurred because his five years of probation exceeds the one-year maximum term of incarceration for the misdemeanor offense of destruction of property, we have held that “[t]he term of probation has no correlation to the underlying criminal sentence” Syl. Pt. 1, in part, *Jett v. Leverette*, 162 W. Va. 140, 247 S.E.2d 469 (1978). In other words, “[t]he fact [that] the probation term exceeds the maximum term for the underlying crime does not render the probation term invalid.” *Id.* at 146, 247 S.E.2d at 473.

Moreover, pursuant to West Virginia Code § 62-12-1, “[a]ny circuit court of this State shall have authority as provided in this article to place on probation any person convicted of a crime,” and a court “may suspend the imposition or execution of sentence and release the offender on probation for such period and upon such conditions as are provided by this article” W. Va. Code § 62-12-3. However, “[r]elease on probation is conditioned upon” the satisfaction of multiple criteria, including “[t]hat the probationer may not, during the term of his or her probation, violate any criminal law of this . . . state[.]” W. Va. Code § 62-12-9(a)(1). Additionally, “[i]f the court or judge finds reasonable cause exists to believe that the probationer . . . [e]ngaged in new criminal conduct other than a minor traffic violation or simple possession of a controlled substance . . . the court or judge may revoke the suspension . . . of sentence . . . and order that sentence be executed.” W. Va. Code § 62-12-10(a)(1)(B)-(C). Here, the circuit court initially sentenced the petitioner to five years of probation for his misdemeanor conviction of destruction of property. Later, the court properly exercised its authority by revoking the petitioner’s probation when he violated its conditions by committing, and pleading guilty to, the offense of brandishing a deadly weapon in Harrison County while he was still serving his five-year term of probation. Therefore, we conclude that the petitioner’s assignment of error is without merit.

For the foregoing reasons, we affirm the circuit court’s September 25, 2023, sentencing order revoking the petitioner’s probation and imposing a one-year sentence of home confinement.

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