

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Alvie N.

State of West Virginia v. Alvie N. · No. No. 20-0604 · Decided August 27, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Alvie N.'s motion under West Virginia Rule of Criminal Procedure 35(b) seeking concurrent sentences or an alternative placement. The court held that Rule 35(b) permits only sentence reduction, does not provide a vehicle to challenge the validity of a sentence, and that the circuit court did not abuse its discretion in denying relief.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	August 27, 2021
DOCKET	No. 20-0604
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Cabell County's denial of his motion for reduction of sentence under Rule 35(b) of the West Virginia Rules of Criminal Procedure.
STANDARD OF REVIEW	A circuit court's ruling on a Rule 35 motion is reviewed under a three-pronged standard: the Rule 35 decision for abuse of discretion, underlying facts for clear error, and questions of law and statutory or rule interpretation de novo.
PRECEDENTIAL VALUE	Memorandum decision; the opinion states that a memorandum decision under Rule 21 was appropriate.
PARTIES	Alvie N. v. State of West Virginia

TOPICS

[sentence modification](#)[sentencing](#)[post-conviction relief](#)[appellate procedure](#)[preservation of error](#)

PRACTICE AREAS

Criminal procedure

Sentencing

Appellate procedure

Post-conviction relief

QUESTIONS PRESENTED

1. Whether Rule 35(b) permitted petitioner to challenge the validity or alleged illegality of his sentence after he failed to pursue a timely direct appeal.
2. Whether the circuit court abused its discretion by denying petitioner's Rule 35(b) request for concurrent sentences or other sentence reduction.
3. Whether petitioner had established a right to transfer to a particular penal institution.

HOLDINGS

1. Rule 35(b) authorizes only a reduction in sentence and cannot be used to challenge a conviction or the validity or legality of the sentence imposed. Such challenges must be brought through a timely direct criminal appeal.
2. The circuit court did not abuse its discretion in denying petitioner's Rule 35(b) motion because petitioner identified no material post-sentencing event or changed circumstance warranting a reduction in his consecutive sentences.
3. When a defendant is convicted of two separate crimes, the trial court has discretion to impose concurrent sentences; absent an order directing concurrency, the sentences run consecutively.

KEY QUOTATIONS

“Rule 35(b) of the West Virginia Rules of Criminal Procedure only authorizes a reduction in sentence. Rule 35(b) is not a mechanism by which defendants may challenge their convictions and/or the validity of their sentencing.” (at 3)

“When a defendant has been convicted of two separate crimes, before sentence is pronounced for either, the trial court may, in its discretion provide that the sentences run concurrently, and unless it does so provide, the sentences will run consecutively.” (at 5)

FACTUAL BACKGROUND

Petitioner pleaded guilty to first-degree sexual assault and sexual abuse by a parent, guardian, custodian, or person in a position of trust involving his step-granddaughter. At sentencing, the State sought maximum sentences and the defense requested alternative sentencing based on petitioner's lack of criminal history, employment, risk assessment, and family responsibilities. The circuit court imposed consecutive prison sentences totaling the statutory terms of 25 to 100 years and 10 to 20 years, followed by twenty-five years of supervised release. In his Rule 35(b) motion, petitioner relied primarily on matters already considered at sentencing and requested concurrent sentences, alternative sentencing, or transfer to another facility.

PROCEDURAL HISTORY

In November 2019, petitioner was charged by information with first-degree sexual assault and sexual abuse by a parent, guardian, custodian, or person in a position of trust, and he pleaded guilty to both counts. The circuit court imposed consecutive sentences of 25 to 100 years and 10 to 20 years, followed by twenty-five years of supervised release. Petitioner did not file a direct appeal, later moved under Rule 35(b) for concurrent sentences or alternative relief, and the circuit court denied the motion. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- State v. Head, 198 W. Va. 298, 480 S.E.2d 507 (1996)
- State v. Marcum, 238 W. Va. 26, 792 S.E.2d 37
- State ex rel. Davis v. Boles, 151 W. Va. 221, 151 S.E.2d 110 (1966)
- Keith v. Leverette, 163 W. Va. 98, 254 S.E.2d 700 (1979)