

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Amy Jo Malcomb

State of West Virginia v. Malcomb, No. 20-0146 (W. Va. Apr. 20, 2021) (memorandum decision) · No. No. 20-0146 · Decided April 20, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Circuit Court of Upshur County's denial of probation and imposition of an indeterminate sentence of one to five years for possession with intent to deliver methamphetamine. The court held that the sentencing court did not abuse its discretion by considering the petitioner's criminal history, nonpayment of prior fines and court costs, substance abuse, lack of employment, and bond violations.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	April 20, 2021
DOCKET	No. 20-0146
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the Circuit Court of Upshur County's order denying probation and imposing an indeterminate sentence of one to five years for possession with intent to deliver methamphetamine.
STANDARD OF REVIEW	Sentencing orders are reviewed under a deferential abuse-of-discretion standard unless the order violates statutory or constitutional commands. A sentence within statutory limits is not subject to appellate review unless it is based on an impermissible factor.
PRECEDENTIAL VALUE	Published memorandum decision under West Virginia Rule of Appellate Procedure 21; the source identifies the decision as published, but the opinion is designated a memorandum decision.
PARTIES	Amy Jo Malcomb v. State of West Virginia

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying probation despite the State's recommendation under the plea agreement.
2. Whether the circuit court impermissibly considered Malcomb's nonpayment of prior fines and court costs as a sentencing factor.
3. Whether Malcomb preserved an objection to the sentencing court's consideration of her nonpayment of fines and court costs.

HOLDINGS

1. The circuit court did not abuse its discretion in denying probation and imposing a one-to-five-year sentence because the sentence was within the statutory limits and was supported by permissible sentencing considerations, including Malcomb's criminal history, substance abuse, lack of employment, and noncompliance with court orders.
2. The circuit court did not commit reversible error by considering Malcomb's nonpayment of prior fines and court costs as part of her history of noncompliance with court orders, because the record showed that the court relied on a variety of permissible factors and did not sentence her solely on the basis of indigence or socioeconomic status.
3. Malcomb failed to preserve an objection to the circuit court's consideration of her nonpayment of fines and court costs because she did not object during the sentencing hearing.

KEY QUOTATIONS

“Sentences imposed by the trial court, if within statutory limits and if not based on some [im]permissible factor, are not subject to appellate review.” (at 1)

“Finally, petitioner’s sentencing was directly related to her general disregard for the law, including eight prior convictions, and not her socioeconomic status.” (at 3)

FACTUAL BACKGROUND

Malcomb pleaded guilty to possession with intent to deliver methamphetamine pursuant to a plea agreement under which the State agreed to recommend probation if she had no prior felonies and did not violate her bond. At sentencing, the circuit court considered her criminal history, including eight prior convictions, nonpayment of prior fines and court costs, lack of steady employment, and continued methamphetamine use. The court found that she had tested positive for methamphetamine multiple times while on bail, resulting in a bail violation and re-incarceration, and imposed a one-to-five-year term of incarceration.

PROCEDURAL HISTORY

An Upshur County grand jury indicted Malcomb in September 2019 for possession with intent to deliver methamphetamine. She pleaded guilty under an agreement in which the State agreed to recommend probation subject to specified conditions. After a January 2020 sentencing hearing, the circuit court denied probation and imposed a one-to-five-year sentence. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Lucas, 201 W. Va. 271, 496 S.E.2d 221 (1997)
- State v. Goodnight, 169 W. Va. 366, 287 S.E.2d 504 (1982)
- State v. Georgius, 225 W. Va. 716, 696 S.E.2d 18 (2010)
- State ex rel. Dunlap v. McBride, 225 W. Va. 192, 202, 691 S.E.2d 183, 193 (2010)
- Robertson v. Goldman, 179 W. Va. 453, 369 S.E.2d 888 (1988)
- State v. Murrell, 201 W. Va. 648, 499 S.E.2d 870 (1997)
- Wimer v. Hinkle, 180 W. Va. 660, 379 S.E.2d 383 (1989)