

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Myrick Peacock

No. No. 15-0234, Supreme Court of Appeals of West Virginia (June 17, 2016)

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Circuit Court of Morgan County's denial of Myrick Peacock's Rule 35(b) motion for reduction of sentence. The court held that the circuit court did not abuse its discretion in revoking Peacock's probation and reimposing his original sentence after multiple probation violations, including alcohol and drug use. The court also concluded that the circuit court's order contained sufficient findings and conclusions to permit meaningful appellate review.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 17, 2016
DOCKET	No. 15-0234
DISPOSITION	affirmed
PROCEDURAL POSTURE	Peacock appealed the Circuit Court of Morgan County's denial of his motion for reduction of sentence under West Virginia Rule of Criminal Procedure 35(b), following revocation of his probation and reimposition of his original sentence.
STANDARD OF REVIEW	A decision on a Rule 35 motion is reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law and interpretations of statutes and rules are reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; precedential effect not expressly stated in the opinion text.
PARTIES	Myrick Peacock v. State of West Virginia

TOPICS

- probation
- sentencing
- criminal procedure
- standard of review
- appellate procedure

PRACTICE AREAS

criminal procedure

sentencing

probation

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Peacock's Rule 35(b) motion for reduction of sentence.
2. Whether the circuit court improperly failed to correct the alleged error in revoking Peacock's probation and reimposing his original sentence.
3. Whether the circuit court's order denying the Rule 35(b) motion contained sufficient findings of fact and conclusions of law to permit meaningful appellate review.

HOLDINGS

1. The circuit court did not abuse its discretion in denying Peacock's motion for reduction of sentence because he repeatedly violated the terms and conditions of probation and the reimposed sentence was within statutory limits and was not based on an impermissible factor.
2. The circuit court's order contained sufficient findings of fact and conclusions of law to permit meaningful appellate review.
3. Review of a circuit court's ruling on a Rule 35 motion applies a three-pronged standard: abuse of discretion for the ruling, clear error for underlying facts, and de novo review for questions of law and interpretations of statutes and rules.

KEY QUOTATIONS

"Probation is a matter of grace and not a matter of right," (3)

"Sentences imposed by the trial court, if within the statutory limits and if not based on some [im]permissible factor are not subject to appellate review." (3)

"requisite findings of fact and conclusions of law to permit meaningful appellate review." (4)

FACTUAL BACKGROUND

Peacock pleaded guilty to one count of sexual abuse by a custodian and received a ten-to-twenty-year sentence suspended in favor of supervised probation. His probation was first revoked after alcohol-related violations, but the circuit court reinstated probation after he completed an alcohol rehabilitation program. Probation was later revoked again after Peacock appeared intoxicated at counseling, failed to enter detoxification as directed, and admitted using alcohol, heroin, and Valium; the circuit court then reimposed his original sentence.

PROCEDURAL HISTORY

Peacock pleaded guilty under an Alford/Kennedy plea to one count of sexual abuse by a custodian and received a ten-to-twenty-year sentence suspended in favor of five years of supervised probation. After multiple probation violations, the circuit court revoked probation and reimposed the original sentence. The circuit court later denied Peacock's Rule 35(b) motion for reduction of sentence, and the Supreme Court of Appeals affirmed that order.

DISPOSITION

affirmed

CASES CITED

- State v. Head, 198 W. Va. 298, 480 S.E.2d 507 (1996)
- State v. Rose, 156 W. Va. 342, 192 S.E.2d 884 (1972)
- State v. Goodnight, 169 W. Va. 366, 287 S.E.2d 504 (1982)
- State v. Redman, 213 W. Va. 175, 178, 578 S.E.2d 369, 372 (2003)
- North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970)
- Kennedy v. Frazier, 178 W. Va. 10, 357 S.E.2d 43 (1987)

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