

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

vs) No. 11-0219 (Logan County 09-F-125)

**Angela Rankin,
Defendant Below, Petitioner**

FILED
December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Angela Rankin, following her conviction by guilty plea of two counts of obtaining a controlled substance by fraud from a pharmacy, appeals the circuit court's order sentencing her to serve one to four years on each count, to be served concurrently. She argues that the circuit court erred in failing to allow her to allocute, and in failing to order a second pre-sentencing investigation report, after she was dismissed from the drug court program. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed its response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner plead guilty to two counts of obtaining a controlled substance by fraud from a pharmacy and was sentenced to serve one to four years on each count, to be served concurrently. She requested placement in the drug court program, and once she was approved, her sentence was suspended. Pursuant to her plea agreement, if she successfully completed the drug program, petitioner would not have to serve her remaining sentence. Petitioner entered the program in February 2010. However, she was removed from the program in August 2010 for failure to follow the conditions of the program. She then failed to reappear in court, avoided capture and fled the state. She was found in Florida and waived extradition back to West Virginia. She was then sentenced to serve her remaining time on the original sentences.

On appeal, petitioner argues that the circuit court erred in failing to allow her the right to allocution before she was sentenced. This Court has stated that “[i]n the circuit and magistrate courts of this state, the judge or magistrate shall, *sua sponte*, afford to any person about to be sentenced the right of allocution before passing sentence.’ Syl. pt. 6, *State v. Berrill*, 196 W.Va. 578, 474 S.E.2d 508 (1996).” Syl. Pt. 1, *State v. Kenneth Y.*, 217 W.Va. 167, 617 S.E.2d 517 (2005). In the present matter, petitioner’s original sentencing order notes that “the Defendant was set to the bar of this Court and the Court inquired of the Defendant if She [sic] had or knew anything to say before the Court pronounced sentence upon her.” Thus, it is clear that when petitioner was originally sentenced, prior to her dismissal from the drug court program, she was given the opportunity to allocute. Further, petitioner never asked to speak to the court during her second sentencing hearing. This Court finds no error in petitioner’s lack of allocution during the hearing which reimposed her previously ordered sentences.

Petitioner next argues that the circuit court erred in failing to update her pre-sentence report prior to the reimposition of her sentences. Pursuant to Rule 32 of the West Virginia Rules of Criminal Procedure, a pre-sentence report is to be completed prior to sentencing. In the present matter, this report was completed prior to petitioner’s initial sentencing approximately one year prior to the reimposition of petitioner’s sentence after her dismissal from the drug court program. Under the facts of this case, this Court finds no error in the circuit court’s failure to order another pre-sentence report be completed, as petitioner’s previously ordered sentence was simply reimposed, as per her prior plea agreement.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: December 2, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh