

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Edgar W. Friedrichs, Jr. v. David Ballard, Warden

No. 13-0031 (Fayette County 10-C-93) · No. No. 13-0031 · Decided November 8, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Edgar W. Friedrichs, Jr.'s petition for post-conviction habeas corpus relief. The court held that the circuit court did not abuse its discretion by denying appointment of habeas counsel, declining to hold an evidentiary hearing, or refusing to disqualify the prosecutor's office after petitioner's former appellate counsel joined that office. The court also adopted the circuit court's findings rejecting petitioner's substantive claims concerning his trial and convictions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Senior-Status Justice Thomas E. McHugh sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 8, 2013
DOCKET	No. 13-0031
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Fayette County's order denying his petition for post-conviction habeas corpus relief on ten grounds that had not been addressed in an earlier appeal.
STANDARD OF REVIEW	The final order and ultimate disposition in a habeas corpus action are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Edgar W. Friedrichs, Jr. v. David Ballard, Warden

TOPICS

- state post-conviction relief
- habeas corpus
- appellate procedure
- standard of review
- right to counsel

PRACTICE AREAS

post-conviction relief

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying habeas counsel and resolving the remaining habeas claims without an evidentiary hearing.
2. Whether the circuit court erred by denying motions to recuse the Fayette County Prosecutor's Office and appoint a special prosecutor based on petitioner's former appellate counsel's employment by that office.
3. Whether the circuit court erred in denying petitioner's ten remaining substantive claims concerning a fair trial, ineffective assistance of counsel, confrontation of witnesses, and double jeopardy.

HOLDINGS

1. A habeas court may deny a petition without appointing counsel or holding an evidentiary hearing when the petition and the record show to the court's satisfaction that the petitioner is entitled to no relief. The circuit court therefore did not abuse its discretion by deciding the remaining claims without counsel or a hearing.
2. The circuit court did not abuse its discretion by denying the motions to recuse the Fayette County Prosecutor's Office and appoint a special prosecutor where the petitioner's former counsel had completed the appeal before joining the office, no office employee participated in preparing the challenged order, the former counsel's work was unrelated to the case, and screening procedures barred involvement and discussion of the case.
3. The ten remaining claims concerning the right to a fair trial, effective assistance of counsel, confrontation of witnesses, and double jeopardy were without merit under West Virginia and federal law, and the circuit court correctly denied relief.

KEY QUOTATIONS

“A court having jurisdiction over habeas corpus proceedings may deny a petition for a writ of habeas corpus without a hearing and without appointing counsel for the petitioner if the petition, exhibits, affidavits or other documentary evidence filed therewith show to such court’s satisfaction that the petitioner is entitled to no relief.” (at 2)

“As the primary responsibility of a prosecuting attorney is to seek justice, his affirmative duty to an accused is fairness.” (at 3)

FACTUAL BACKGROUND

In 2002, a jury convicted Edgar W. Friedrichs, Jr. of first-degree sexual abuse and three counts of sexual abuse by a custodian, and he was sentenced to sixteen to fifty years in prison. His post-conviction habeas petition asserted twenty-three grounds for relief. After an earlier appeal required the circuit court to address ten unresolved grounds, the circuit court denied those grounds without an evidentiary hearing or appointment of habeas counsel and rejected Friedrichs's request to disqualify the prosecutor's office because his former appellate

counsel had joined that office. The circuit court found that the former counsel had no involvement in the pending matter and that screening procedures prevented contact with the case.

PROCEDURAL HISTORY

Friedrichs was convicted by a jury in 2002 of first-degree sexual abuse and three counts of sexual abuse by a custodian and received a sentence of sixteen to fifty years. After his direct appeal was refused, he filed a twenty-three-ground habeas petition in 2010. The circuit court initially denied the petition without appointing counsel or holding an evidentiary hearing and addressed only thirteen grounds. In an earlier appeal, the Supreme Court affirmed the rulings on the first thirteen grounds but remanded for the circuit court to address the remaining ten. On remand, the circuit court denied the remaining grounds, declined to appoint habeas counsel or hold an evidentiary hearing, and denied motions to recuse the prosecutor's office and appoint a special prosecutor. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Friedrichs v. Ballard, No. 11-0564 (W. Va. Supreme Court, June 22, 2012) (memorandum decision)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- State ex rel. Franklin v. McBride, 226 W. Va. 375, 701 S.E.2d 97 (2010)
- Perdue v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973)
- White v. Haines, 215 W. Va. 698, 601 S.E.2d 18 (2004)
- State v. Britton, 157 W. Va. 711, 203 S.E.2d 462 (1974)
- State v. King, 183 W. Va. 440, 441, 396 S.E.2d 402, 403 (1990)

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