

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

OPINION

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

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

Edgar W. Friedrichs, Jr., FILED Petitioner Below, Petitioner November 8, 2013

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

vs) No. 13-0031 (Fayette County 10-C-93) OF WEST VIRGINIA David Ballard, Warden,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Edgar W. Friedrichs, Jr., by counsel Thomas Rist, appeals an order of the Circuit Court of Fayette County entered on December 12, 2012, that denied his pro se petition for post-conviction habeas corpus relief. The State of West Virginia, by counsel Marland L. Turner, has filed its response on behalf of Respondent, Warden David Ballard to which petitioner replied. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, 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 affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure. In 2001, petitioner was indicted on five counts: Count One, first degree sexual abuse; and Counts Two through Five, sexual abuse by a custodian. On January 30, 2002, a jury found petitioner guilty on the first four counts and acquitted petitioner on the fifth count. Thereafter, the circuit court sentenced petitioner to sixteen to fifty years in prison for these convictions. Petitioner's direct appeal from his criminal convictions was refused by the Court on June 18, 2003. On April 10, 2010, petitioner filed a pro se petition for writ of habeas corpus asserting twenty-three substantive grounds for relief. Petitioner also filed a motion for appointment of counsel that was denied by the circuit court. By order entered August 3, 2010, the circuit court, absent an evidentiary hearing, denied petitioner's habeas petition, but addressed only the first thirteen grounds for relief. On November 4, 2010, the circuit court appointed Attorney Jeffrey Mauzy to represent petitioner for the purpose of filing an appeal. In that appeal, petitioner argued that the circuit court erred by failing to hold an evidentiary hearing; denying his motion to

appoint habeas counsel; denying relief on his first thirteen grounds for relief; and failing to address his last ten grounds for relief. 1 While petitioner's appeal was pending at this Court, petitioner's appellate counsel, Jeffrey Mauzy, accepted employment with the Fayette County Prosecutor's Office. In *Friedrichs v. Ballard*, No. 11-0564 (W.Va. Supreme Court, June 22, 2012) (memorandum decision), this Court affirmed the circuit court's order in regard to petitioner's first two assignments of error (failing to hold a hearing and to appoint counsel), and adopted the circuit court's order denying relief on petitioner's first thirteen grounds for relief. However, in regard to petitioner's third assignment of error (the circuit court's failure to rule on petitioner's last ten grounds for relief), the Court remanded the case with instructions to the circuit court to so rule. While the case was on remand to the circuit court, petitioner filed a motion to recuse the Fayette County's Prosecutor's Office from appearing in the case on the ground that Mr. Mauzy now worked for that office. Petitioner also moved for the appointment of a special prosecutor. By order entered December 12, 2012, the circuit court noted that it had failed to rule on ten of petitioner's twenty-three grounds for relief due to petitioner's confusing and poorly-drafted petition, and due to natural disasters and other events that resulted in the Fayette County Courthouse being closed for many days. The circuit court then considered and denied petitioner's habeas petition on the remaining ten grounds without appointing habeas counsel, holding an evidentiary hearing, or disqualifying the prosecutor's office. Petitioner now appeals the circuit court's December 12, 2012, order. "In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a de novo review." Syl. Pt. 1, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006). Syl. Pt. 1, *State ex rel. Franklin v. McBride*, 226 W.Va. 375, 701 S.E.2d 97 (2009). Petitioner raises three procedural and ten substantive assignments of error. Petitioner's first two procedural assignments are that the circuit court erred in failing to appoint habeas counsel and in failing to hold an evidentiary hearing. West Virginia Code § 53-4A-7(a) provides, in part, that where a petition for writ of habeas corpus and the record "show to the satisfaction of the court that the petitioner is entitled to no relief . . . the court shall enter an order denying the relief sought" without an evidentiary hearing. Additionally, this Court has stated that, "[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 2 entitled to no relief." Syllabus Point 1, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973). Syl. Pt. 2, *White v. Haines*, 215 W.Va. 698, 601 S.E.2d 18 (2004). In the order on appeal, the circuit court noted that it (1) had conducted a careful review of the relevant law, the complete contents of the court file, the underlying criminal case file, and the trial transcript; and (2) had presided over the jury trial in petitioner's underlying criminal case and was therefore thoroughly familiar with the case. The circuit court then

determined that, pursuant to West Virginia Code § 53-4A-7, no evidentiary hearing was needed. Accordingly, and in light of the Perdue standard, we cannot say that the circuit court abused its discretion in denying petitioner's motion for appointment of habeas counsel and in choosing to rule on petitioner's habeas petition absent an evidentiary hearing. Petitioner's third procedural argument is that the circuit court erred in denying his motions to disqualify the prosecutor's office and to appoint a special prosecutor without holding a hearing to determine if petitioner's former counsel had been effectively and completely screened from involvement in this case. We note the circuit court's comprehensive findings in the order on appeal, which petitioner does not challenge: (1) that petitioner's appeal was fully prosecuted before Mr. Mauzy went to work for the prosecutor's office; (2) that Mr. Mauzy no longer represents petitioner; (3) that no one from the prosecutor's office participated in any manner in drafting the order petitioner now appeals; (4) that Mr. Mauzy's work for the prosecutor was limited to matters involving juvenile delinquency and child abuse and neglect; and (5) that when Mr. Mauzy went to work for the prosecutor's office, the prosecutor sent the following memo to "All Employees:" This is a reminder that no one in this office, secretary or attorney, is to discuss in any way, with Jeff Mauzy, any of the cases he previously worked in, whether it be abuse and neglect, criminal or others. This measure is necessary to ensure that neither the office nor Mr. Mauzy breaches any ethical boundary. This in order to build a "Chinese Wall" around these cases. . . . Attached to this memo was a list of Mr. Mauzy's prior cases, including the appeal of petitioner's first habeas petition. Based on these findings, the circuit court concluded that petitioner's motion to recuse was frivolous. This Court has held: "'As the primary responsibility of a prosecuting attorney is to seek justice, his affirmative duty to an accused is fairness.' Syl. pt. 2, *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). Here, the circuit court found that the prosecutor upheld that primary responsibility and made every effort to effectively and completely screen Mr. Mauzy from petitioner's case and to prevent all other employees in the office from discussing petitioner's case with Mr. Mauzy. As such, we cannot say that the circuit court abused its discretion in denying petitioner's motions to recuse or to appoint a special prosecutor. As for petitioner's claim that the circuit court erred in failing to hold a hearing to determine whether Mr. Mauzy had been effectively and completely screened from involvement in this case, we find that the circuit court fully addressed that issue in its 3 findings and conclusions. Further, and as we noted above, a hearing is not required where the habeas court is satisfied from the pleadings and the record that the petition for habeas relief lacks merit. Petitioner's ten substantive assignments of error address his right to a fair trial, effective assistance of counsel, confrontation of witnesses, and double jeopardy. The circuit court made comprehensive findings in regard to each of these assignments of error, and did not err in concluding that all were without merit under West Virginia and federal law. Having reviewed the circuit court's "Order" entered December 12, 2012, we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions as to the assignments of error raised in this appeal.

The Clerk is directed to attach a copy of the circuit court's order to this memorandum decision. For the foregoing reasons, we affirm. Affirmed. ISSUED: November 8, 2013 CONCURRED IN BY: 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 DISQUALIFIED: Justice Margaret L. Workman 4

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