

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Brandon Rice v. Marvin Plumley, Warden

No. 12-0902 (W. Va. July 8, 2013) · No. No. 12-0902 · Decided July 8, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Brandon Rice’s petition for a writ of habeas corpus. Rice argued ineffective assistance of counsel, lack of a factual basis for his voluntary manslaughter plea, involuntariness, and failure to receive the case record. The court held that the record established a factual basis for the Kennedy plea and that the circuit court did not abuse its discretion.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	July 8, 2013
DOCKET	No. 12-0902
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Fayette County’s denial of his petition for a writ of habeas corpus challenging his voluntary-manslaughter conviction and sentence.
STANDARD OF REVIEW	In a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Brandon Rice v. Marvin Plumley, Warden, Huttonsville Correctional Center

TOPICS

- post-conviction relief
- habeas corpus
- ineffective assistance
- plea bargaining
- appellate procedure

PRACTICE AREAS

post-conviction relief

criminal procedure

habeas corpus

ineffective assistance

plea bargaining

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying habeas relief on Rice's ineffective-assistance-of-counsel claim.
2. Whether the record established a factual basis for Rice's guilty plea and conviction for voluntary manslaughter.
3. Whether Rice's claim that pre-existing injuries and alcoholism caused the victim's death entitled him to habeas relief or deprived the circuit court of jurisdiction.
4. Whether Rice was entitled to relief based on his assertion that he had not received a copy of the case record.

HOLDINGS

1. The circuit court did not abuse its discretion in denying Rice's petition for a writ of habeas corpus.
2. The appendix record established a factual basis for Rice's guilty plea and conviction, including evidence that the victim's death resulted from the injuries sustained in the altercation.
3. Rice failed to establish a defect in counsel's performance sufficient to warrant habeas relief.

KEY QUOTATIONS

“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.” (2)

“The appendix record establishes a factual basis for petitioner’s guilty plea and conviction. Therefore, after careful consideration, this Court concludes that the circuit court did not abuse its discretion in denying the petition for a writ of habeas corpus.” (3)

FACTUAL BACKGROUND

Rice became involved in an altercation with Kenneth Lee Workman over Workman's dog. Workman suffered a skull fracture, subdural hematoma, and cerebral hemorrhage, remained alive for approximately one month, and then died; the forensic pathologist classified the manner of death as homicide. Rice was indicted for second-degree murder but entered a Kennedy plea to voluntary manslaughter and received a fifteen-year sentence. In habeas proceedings, Rice challenged counsel's performance, the factual basis and voluntariness of his plea, and the State's handling of medical and case records.

PROCEDURAL HISTORY

After the victim died from injuries sustained in an altercation, Rice was indicted for second-degree murder and entered a Kennedy plea to voluntary manslaughter. The circuit court sentenced him to fifteen years in prison.

Rice later filed a habeas petition alleging ineffective assistance of counsel, an involuntary or factually unsupported guilty plea, and failure to provide him the record. The circuit court denied relief, and the Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Kennedy v. Frazier, 178 W.Va. 10, 357 S.E.2d 43 (1987)
- State v. Miller, 194 W.Va. 3, 459 S.E.2d 114 (1995)
- Mathena v. Haines, 219 W.Va. 417, 633 S.E.2d 771 (2006)
- State v. Durham, 156 W.Va. 509, 195 S.E.2d 144 (1973)
- Perdue v. Coiner, 156 W.Va. 467, 194 S.E.2d 657 (1973)
- Brady v. Maryland, 373 U.S. 83 (1963)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Brandon Rice, Petitioner Below, Petitioner FILED July 8, 2013 RORY L. PERRY II, CLERK vs.) No. 12-0902 (Fayette County 12-C-226) SUPREME COURT OF APPEALS OF WEST VIRGINIA Marvin Plumley, Warden, Huttonsville Correctional Center, Respondent Below, Respondent MEMORANDUM DECISION Petitioner Brandon Rice, pro se, appeals the order of the Circuit Court of Fayette County, entered July 19, 2012, denying his petition for a writ of habeas corpus.

The respondent warden, by counsel Andrew D. Mendelson, filed a summary response. Petitioner filed a reply. The 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 is appropriate under Rule 21 of the Rules of Appellate Procedure. On August 16, 2009, petitioner and the victim, Kenneth Lee Workman, became involved in an altercation over the victim's dog. When officers arrived at the victim's residence, they found him bleeding profusely from injuries to his face and the back of his head.

The victim was unable to give a detailed statement, but indicated that he was trying to prevent two individuals from abusing his dog and that those individuals beat him badly. Petitioner stated that he was walking by the victim's house when the victim's dog came out and began biting him. According to petitioner, the person whom he was with took a second dog up the road.

Petitioner stated that he then commenced trying to hurt the victim's dog because that was what he would do to his own dog if it bit him. Petitioner stated that the victim came outside and grabbed the chain and pulled his dog off. Petitioner stated that he pushed the dog toward the victim and that the victim fell backwards. Petitioner had injuries to his arms consistent with dog bites.

The victim in this case clung to life for a month, dying on September 16, 2009, in the Charleston Area Medical Center. An autopsy was performed on September 17, 2009, the day after the victim expired. A forensic specialist with the Fayette County Sheriff's Office traveled to the Office of the Chief Medical Examiner in Charleston, West Virginia, to observe the autopsy performed by forensic pathologist H. Mahmoud, M.D. "[T]he cause of death was a cerebral hemorrhage resulting from a linear skull fracture and a subdural hematoma (bruising of the 1 brain[.])." The manner of death was classified as "homicide." Subsequently, petitioner was indicted for murder in the second degree.

According to a response to ongoing discovery, the State produced the death certificate on March 8, 2010. On April 5, 2010, petitioner entered a guilty plea to the lesser included offense of voluntary manslaughter pursuant to *Kennedy v. Frazier*, 178 W.Va. 10, 357 S.E.2d 43 (1987). At the plea hearing, petitioner indicated that he was satisfied with his lawyers and that they explained to him the different options he had in dealing with the indictment against him.

The circuit court accepted petitioner's guilty plea and adjudged him guilty of voluntary manslaughter. At the sentencing hearing on May 28, 2010, the circuit court denied petitioner's request for probation. The circuit court sentenced petitioner to fifteen years in the state penitentiary "because of the severity of the beating and the seriousness of the crime." Among the factors the circuit court noted was that "[the victim] suffered a skull fracture, a subdural hematoma, bruising of the brain, and the coroner determined that the cause of death, the manner of death was homicide." Petitioner filed a petition for a writ of habeas corpus on July 9, 2012.

Petitioner alleged ineffective assistance of counsel and a denial of due process because there was "no factual basis" for his conviction and his guilty plea "was involuntary where [the] victim died of pre-existing head injuries and alcoholism and not from any blows inflicted by my actions." Petitioner also alleged that he did not receive a copy of the record.

On July 19, 2012, the circuit court denied the petition finding that the three grounds of relief to be without merit. First, "[t]he Court, having presided in the underlying criminal case, perceived no defects in counsel's performance which would violate the... standard announced in [*State v. Miller*], 194 W.Va. 3, 459 S.E.2d 114 (1995)]." Second, with regard to petitioner's claim that it was pre-existing injuries and alcoholism that killed the victim, the circuit court found that rather than be tried by a jury, petitioner chose instead to enter a *Kennedy* plea.

Third, the circuit court found that “no... requests [for a copy of the record] appear in the court file in this matter or in the court file in Indictment No. 10-F-40.”¹ We review a circuit court’s order denying a habeas petition under the following standard: 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. ¹ In his brief, petitioner indicates that he has “receiv[ed] his entire case from the Circuit Court of Fayette County, including transcripts.” ² Syl.

Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).² On appeal, petitioner asserts that his attorneys encouraged him to plead guilty without knowing whether the victim’s death was a homicide. Petitioner asserts that he is entitled to the victim’s full medical records because “if the victim’s death was not found to be a homicide [then] the Fayette County Circuit Court had no jurisdiction to find him guilty of voluntary manslaughter[.]” The respondent warden asserts that the appendix record shows that a factual basis existed for petitioner’s guilty plea and that the victim’s death was a homicide.

The respondent warden cites *Syllabus Point Three of State v. Durham*, 156 W.Va. 509, 195 S.E.2d 144 (1973): “A defendant may be held criminally responsible where he inflicts upon another a wound resulting in death, even though the cause of death is related to the proper treatment of the wound or related to such treatment or effect of a preexisting physical disability of the victim.” The finding of the Chief Medical Examiner’s forensic pathologist is in the record.

The circuit court referenced the finding in sentencing petitioner by noting that that “[the victim] suffered a skull fracture, a subdural hematoma, bruising of the brain, and the coroner determined that the cause of death, the manner of death was homicide.” (emphasis added).

The appendix record establishes a factual basis for petitioner’s guilty plea and conviction. Therefore, after careful consideration, this Court concludes that the circuit court did not abuse its discretion in denying the petition for a writ of habeas corpus.³ For the foregoing reasons, we affirm. Affirmed. ISSUED: July 8, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II ² See also Syl.

Pt. 1, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973) (“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.”).

3 In his reply brief, petitioner argues that a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), occurred when the State did not produce the autopsy report. Petitioner did not make this argument to the circuit court.

Moreover, as was just explained, the finding of homicide by the forensic pathologist is in the record. 3