

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Larry B. v. David Ballard, Warden

Larry B. · No. No. 16-0720 · Decided September 5, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Mercer County Circuit Court's denial of Larry B.'s petition for a writ of habeas corpus. The court rejected claims of ineffective assistance of trial counsel and an involuntary guilty plea, adopting the circuit court's findings and conclusions.

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Larry B., Petitioner Below, Petitioner FILED September 5, 2017 vs) No. 16-0720 (Mercer County 15-C-370-DS) RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS OF WEST VIRGINIA David Ballard, Warden, Mount Olive Correctional Complex, Respondent Below, Respondent MEMORANDUM DECISION Petitioner Larry B., by counsel Paul Cassell, appeals the Circuit Court of Mercer County's June 22, 2016, order denying his petition for writ of habeas corpus.¹ Respondent David Ballard, Warden, by counsel Julie A. Warren, filed a response.

On appeal, petitioner argues that the circuit court erred in denying his habeas petition on the grounds of ineffective assistance of trial counsel and that his guilty plea was not knowingly, intelligently, and voluntarily made. 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. During the October of 2003 term of court, a grand jury indicted petitioner on fourteen counts of first-degree sexual assault, eight counts of incest, and sixteen counts of sexual abuse by a custodian. According to the indictment, petitioner was alleged to have engaged in sexual misconduct with three minor children in his care.

In March of 2004, petitioner pled guilty, pursuant to a plea agreement, to three counts of first-degree sexual assault, three counts of incest, and two counts of sexual abuse by a custodian. In exchange, the State agreed to dismiss the remaining counts from the indictment. Thereafter, the circuit court held a sentencing hearing and imposed the following sentence: not less than fifteen

nor more than thirty-five years for the offense of first-degree sexual assault as set forth in 1 Consistent with our long-standing practice in cases with sensitive facts, we use initials where necessary to protect the identities of those involved in this case.

See *In re K.H.*, 235 W.Va. 254, 773 S.E.2d 20 (2015); *Melinda H. v. William R. II*, 230 W.Va. 731, 742 S.E.2d 419 (2013); *State v. Brandon B.*, 218 W.Va. 324, 624 S.E.2d 761 (2005); *State v. Edward Charles L.*, 183 W.Va. 641, 398 S.E.2d 123 (1990). 1 counts one, nine, and thirty-five of the indictment; not less than five nor more than fifteen years for the offense of incest as set forth in counts eleven, seventeen, and thirty-six of the indictment; and not less than ten nor more than twenty years for the offense of sexual abuse by a custodian as set forth in counts twenty-one and thirty-three of the indictment.

The sentences were ordered to run consecutively to one another. Additionally, the circuit court suspended the sentences imposed for counts nine, seventeen, twenty-one, thirty-three, thirty-five, and thirty-six and ordered that petitioner be placed on probation for five years following the completion of his term of incarceration. Petitioner did not appeal this order.

In May of 2013, petitioner filed a pro se petition for writ of habeas corpus and a motion to be resentenced for purposes of appeal. After the circuit court appointed him counsel, petitioner filed a renewed motion to be resentenced for purposes of appeal.

The circuit court thereafter entered two orders resentencing petitioner, although he eventually decided not to pursue a direct criminal appeal in light of his pending habeas action in circuit court. In November of 2015, petitioner, by counsel, filed his petition for writ of habeas corpus.

The petition raised the following grounds: ineffective assistance of counsel, involuntary guilty plea, disproportionate sentence, and deficient indictment. After respondent filed a brief, the circuit court held an omnibus evidentiary hearing in February of 2016. Following the hearing, the circuit court entered an order in June of 2016 denying the petition for writ of habeas corpus.

It is from this order that petitioner appeals. This Court reviews appeals of circuit court orders denying habeas corpus relief 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.” Syllabus point 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).

On appeal to this Court, petitioner argues that he was entitled to habeas relief due to trial counsel’s ineffective representation and his allegation that his guilty plea was not knowingly, intelligently,

and voluntarily made.

The Court, however, does not agree. Upon our review and consideration of the circuit court's order, the parties' arguments, and the record submitted on appeal, we find no error or abuse of discretion by the circuit court. Our review of the record supports the circuit court's decision to deny petitioner post-conviction habeas corpus relief based on these alleged errors, which were also argued below.

Indeed, the circuit court's order includes well-reasoned findings and conclusions as to the assignments of error raised on appeal. Given our conclusion that the circuit court's order and the record before us reflect no clear error or abuse of discretion, we hereby adopt and incorporate the circuit court's findings and conclusions as they relate to petitioner's assignments of error raised herein and direct the Clerk to attach a copy of the circuit court's June 22, 2016, "Order Denying The Petitioner's Petition For Writ of 2 Habeas Corpus Ad Subjiciendum And Removing This Action From the Active Docket Of This Court" to this memorandum decision.

For the foregoing reasons, we affirm. Affirmed. ISSUED: September 5, 2017 CONCURRED IN BY: Chief Justice Allen H. Loughry II Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Elizabeth D. Walker 3