

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.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	September 5, 2017
DOCKET	No. 16-0720
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Mercer County's order denying his petition for a writ of habeas corpus after an omnibus evidentiary hearing.
STANDARD OF REVIEW	The final order and ultimate disposition in a habeas corpus action are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential effect is not stated in the source.
PARTIES	Larry B. v. David Ballard, Warden, Mount Olive Correctional Complex

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying habeas relief based on alleged ineffective assistance of trial counsel.
2. Whether the circuit court erred in denying habeas relief based on the claim that the guilty plea was not knowingly, intelligently, and voluntarily entered.

HOLDINGS

1. An appellate court reviews the final order and ultimate disposition for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
2. The petitioner was not entitled to habeas relief based on his ineffective-assistance claim because the record and circuit court's order disclosed no clear error or abuse of discretion.
3. The petitioner was not entitled to habeas relief based on his claim that his guilty plea was not knowingly, intelligently, and voluntarily made.

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)

FACTUAL BACKGROUND

Larry B. was indicted on fourteen counts of first-degree sexual assault, eight counts of incest, and sixteen counts of sexual abuse by a custodian involving three minor children in his care. In March 2004, he pleaded guilty under an agreement to three counts of first-degree sexual assault, three counts of incest, and two counts of sexual abuse by a custodian, in exchange for dismissal of the remaining charges. The circuit court imposed consecutive sentences and probationary terms, and Larry B. later sought habeas relief alleging ineffective assistance of counsel and that his guilty plea was not knowing, intelligent, and voluntary.

PROCEDURAL HISTORY

A grand jury indicted Larry B. on multiple sexual-offense counts. He pleaded guilty pursuant to a plea agreement, was sentenced to consecutive terms of imprisonment and probation, and did not pursue a direct appeal. After filing a habeas petition in 2015 raising ineffective assistance of counsel, involuntary plea, disproportionate sentence, and deficient indictment claims, he received an omnibus evidentiary hearing. The circuit court denied relief, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- 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)
- 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)

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