

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jason M. Payne v. Russell Matson

No. 19-1197 (Morgan County 19-C-61) · No. No. 19-1197 · Decided February 2, 2021

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the dismissal with prejudice of Jason M. Payne’s habeas corpus petition. The court held that most of Payne’s newly discovered evidence claims had been previously adjudicated and that the remaining discovery-related claim could not entitle him to relief. The court also rejected his ineffective assistance of habeas counsel claim and concluded that the circuit court did not abuse its discretion.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	February 2, 2021
DOCKET	No. 19-1197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jason M. Payne appealed the Circuit Court of Morgan County's order dismissing with prejudice his petition for a writ of habeas corpus.
STANDARD OF REVIEW	The final order and ultimate disposition in a habeas proceeding 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PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jason M. Payne v. Russell Matson, Superintendent, St. Marys Correctional Center

TOPICS

[state post-conviction relief](#)[successive petitions](#)[appellate procedure](#)[ineffective assistance](#)[evidence](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court's dismissal with prejudice under Habeas Rule 4(c) was improper because a Rule 4(c) dismissal should have been without prejudice.
2. Whether the alleged newly discovered evidence and requested handwriting analysis entitled Payne to habeas relief, discovery, a new trial, or an evidentiary hearing.
3. Whether alleged ineffective assistance by habeas counsel warranted relief.
4. Whether the circuit court clearly erred in finding that a purported July 2018 habeas petition had not been filed.

HOLDINGS

1. A dismissal under Habeas Rule 4(c) may be with prejudice when the claims have been previously and finally adjudicated or waived; the rule's without-prejudice option applies when the petition contains a mere recitation of grounds without adequate factual support.
2. The court may affirm a correct judgment on any legal ground disclosed by the record, and the alleged forged-check evidence did not entitle Payne to habeas relief, discovery, a new trial, or an evidentiary hearing.
3. Payne failed to establish ineffective assistance because he could not show a reasonable probability that counsel's alleged errors would have changed the result of the prior proceedings.

KEY QUOTATIONS

“The court’s summary dismissal order shall contain specific findings of fact and conclusions of law as to the manner in which each ground raised in the petition has been previously and finally adjudicated and/or waived.” (at 5)

“This Court has long held that it may “affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment.”” (at 5)

“Credibility determinations are for a jury and not an appellate court.” (at 6)

FACTUAL BACKGROUND

Payne was convicted after a jury found him guilty of second-degree murder arising from the killing of Keese Bare, while acquitting him of conspiracy. The prosecution's principal witness testified that Payne restrained Bare and beat him with a metal baton, while Payne testified that he was merely present and did not participate. Payne later relied on a codefendant's notarized letter, a purported telephone statement, phone records, and forged checks as alleged newly discovered evidence, but the prior proceedings found the evidence unreliable, previously adjudicated, or insufficient to establish that Payne did not participate in the murder.

PROCEDURAL HISTORY

Payne was convicted of second-degree murder and sentenced to forty years of incarceration plus five years as a recidivist. His direct appeal and prior habeas proceedings, including challenges based on alleged newly discovered evidence, were unsuccessful. He filed the present habeas petition during the pendency of a prior appeal; the circuit court dismissed it with prejudice under Rule 4(c) of the West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Payne, No. 11-1045, 2012 WL 3104253 (W. Va. June 22, 2012)
- Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981)
- Payne v. Ballard, No. 16-0340, 2017 WL 2633507 (W. Va. June 19, 2017)
- Payne v. Ames, No. 17-0730, 2019 WL 181454 (W. Va. January 14, 2019)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Anstey v. Ballard, 237 W. Va. 411, 787 S.E.2d 864 (2016)
- White v. Haines, 215 W. Va. 698, 601 S.E.2d 18 (2004)
- Perdue v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973)
- Barnett v. Wolfolk, 149 W. Va. 246, 140 S.E.2d 466 (1965)
- State ex rel. Wyant v. Brotherton, 214 W. Va. 434, 589 S.E.2d 812 (2003)
- State ex rel. Parsons v. Zakaib, 207 W. Va. 385, 532 S.E.2d 654 (2000)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State ex rel. Daniel v. Legursky, 195 W. Va. 314, 465 S.E.2d 416 (1995)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- State v. Lilly, 194 W. Va. 595, 461 S.E.2d 101 (1995)