

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Edward M. v. David Ballard, Warden

Edward M. · No. No. 16-0683 · Decided June 16, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Edward M.'s petition for a writ of habeas corpus. The court held that his claims of ineffective assistance by habeas counsel did not warrant relief and that the circuit court properly denied the petition without appointing counsel or conducting another hearing. The decision also applied the Strickland/Miller standard and deferred to the circuit court's credibility findings.

CASE DETAILS

|                       |                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                     |
| WRITING FOR THE COURT | Per Curiam; 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               | June 16, 2017                                                                                                                                                                                                 |
| DOCKET                | No. 16-0683                                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Petitioner appealed the Circuit Court of Wetzel County's denial of his petition for a writ of habeas corpus alleging ineffective assistance by his habeas counsel.                                            |
| 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    | nonprecedential                                                                                                                                                                                               |
| PARTIES               | Edward M. v. David Ballard, Warden, Mt. Olive Correctional Complex                                                                                                                                            |

TOPICS

- state post-conviction relief
- habeas corpus
- ineffective assistance
- appellate procedure
- standard of review

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the circuit court erred by denying petitioner's habeas petition without appointing counsel or conducting another evidentiary hearing on his claim that prior habeas counsel was ineffective.
2. Whether habeas counsel was ineffective for declining to present or further develop petitioner's claim that trial counsel was ineffective.
3. Whether habeas counsel was ineffective for failing to further develop petitioner's claim that trial counsel misinformed him about the State's plea offer.
4. Whether habeas counsel inadequately raised the issues presented in the amended habeas petition.

## HOLDINGS

1. The circuit court did not abuse its discretion by denying the petition without appointing counsel or holding another hearing because the petition, record, and documentary materials showed that petitioner was entitled to no relief.
2. Habeas counsel was not ineffective for declining to call petitioner's trial attorney or pursue the trial-counsel ineffective-assistance claim because counsel reasonably concluded that the claim lacked merit and the record supported that conclusion.
3. Habeas counsel was not ineffective for failing to pursue petitioner's claim that trial counsel misinformed him about the plea offer because the claim was unsupported by evidence other than petitioner's discredited testimony.
4. Petitioner did not establish inadequate presentation because counsel presented oral argument on both issues raised in the amended petition.

## KEY QUOTATIONS

*“A prior omnibus habeas corpus hearing is res judicata as to all matters raised and as to all matters known or which with reasonable diligence could have been known; however, an applicant may still petition the court on the following grounds: ineffective assistance of counsel at the omnibus habeas corpus hearing.”* (3)

*“In West Virginia, claims of ineffective assistance of counsel are governed by the two-pronged test established in Strickland v. Washington, 466 U.S. 668 (1984)”* (3)

## FACTUAL BACKGROUND

In 2005, a jury convicted petitioner of numerous counts of incest and first- and third-degree sexual assault involving two minor victims. After a prior habeas proceeding and omnibus hearing, petitioner filed a new habeas petition alleging that his habeas attorney had ineffectively allowed him to testify and had failed to develop claims that trial counsel was ineffective and had misinformed him about a plea offer. The prior record showed that petitioner had testified at the omnibus hearing, that his testimony was found not credible, and that the record contained no evidence supporting the alleged plea-offer or trial-counsel deficiencies apart from petitioner's assertions.

## PROCEDURAL HISTORY

Petitioner was convicted by a jury in 2005 and ultimately received an aggregate sentence of eighty-five to 245 years of incarceration after correction of his incest sentences. His first habeas proceeding included an omnibus hearing in 2008, after which relief was denied. He filed the present habeas petition in 2016, asserting that habeas counsel was ineffective in handling claims concerning trial counsel's performance and a plea offer. The Circuit Court of Wetzel County denied relief without appointing new counsel or conducting another hearing, 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)
- In re Jeffrey R.L., 190 W.Va. 24, 435 S.E.2d 162 (1993)
- State v. Edward Charles L., 183 W.Va. 641, 398 S.E.2d 123 (1990)
- State v. Triplett, 187 W.Va. 760, 421 S.E.2d 511 (1992)
- Mathena v. Haines, 219 W.Va. 417, 633 S.E.2d 771 (2006)
- Losh v. McKenzie, 166 W.Va. 762, 277 S.E.2d 606 (1981)
- Perdue v. Coiner, 156 W.Va. 467, 194 S.E.2d 657 (1973)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W.Va. 3, 459 S.E.2d 114 (1995)
- State v. Guthrie, 194 W.Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995)