

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Wendell K. Ash v. David Ballard, Warden

Ash v. Ballard · No. No. 12-0470 · Decided April 5, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Wendell K. Ash’s petition for a writ of habeas corpus challenging his conviction and sentence for second-degree sexual assault. The court held that the circuit court did not abuse its discretion, adopted the circuit court’s findings and conclusions, and declined to consider an issue not raised below.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	April 5, 2013
DOCKET	No. 12-0470
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 conviction and sentence for second degree sexual assault entered pursuant to a guilty plea.
STANDARD OF REVIEW	The denial of a habeas corpus petition is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 as a memorandum decision and finds no substantial question of law or prejudicial error.
PARTIES	Wendell K. Ash v. David Ballard, Warden

TOPICS

- state post-conviction relief
- habeas corpus
- appellate procedure
- right to counsel
- preservation of error

PRACTICE AREAS

state post-conviction relief

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion in denying Ash's habeas corpus petition.
2. Whether the circuit court erred by denying the petition without appointing habeas counsel.
3. Whether Ash could raise on appeal a claim that trial counsel failed to inform him of the details of the victim's written statement when that claim was not presented to the circuit court.

HOLDINGS

1. The circuit court did not abuse its discretion in denying Ash's petition for a writ of habeas corpus.
2. A court with jurisdiction over habeas corpus proceedings may deny a petition without a hearing and without appointing counsel when the petition and supporting materials demonstrate that the petitioner is entitled to no relief.
3. The Court would not consider a claim that was not raised before the circuit court.

KEY QUOTATIONS

“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.” (-1)

FACTUAL BACKGROUND

Ash was already incarcerated at Mt. Olive Correctional Complex when he was charged with four offenses arising from the sexual assault of a female prison employee in June 1995. He pleaded guilty to second degree sexual assault, and the other three counts were dismissed as part of the plea agreement. The circuit court imposed a ten-to-twenty-five-year sentence consecutive to the life-without-parole sentence Ash was already serving for first degree murder.

PROCEDURAL HISTORY

Ash pleaded guilty to second degree sexual assault in 1996, and the remaining three indictment counts were dismissed under the plea agreement. The circuit court sentenced him to ten to twenty-five years to run after his existing Wood County life-without-parole sentence. In 2011, Ash filed a habeas petition, which the circuit court denied after making findings of fact and conclusions of law. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Perdue v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Sands v. Security Trust Co., 143 W. Va. 522, 102 S.E.2d 733 (1958)

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