

SUPREME COURT OF APPEALS OF WEST VIRGINIA

George H. Watts v. David Ballard, Warden

No. 12-0813 (W. Va. May 24, 2013) (memorandum decision) · No. No. 12-0813 · Decided May 24, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of George H. Watts’s petition for habeas corpus relief. The court rejected claims concerning grand-jury influence and indictment, ineffective assistance of trial and habeas counsel, and the absence of a transcript from the omnibus evidentiary hearing. The court concluded that no abuse of discretion, clear error, or prejudicial error warranted reversal.

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	May 24, 2013
DOCKET	No. 12-0813
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Wayne County Circuit Court's denial of his petition for a writ of habeas corpus.
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PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	George H. Watts v. David Ballard, Warden

TOPICS

state post-conviction relief habeas corpus appellate procedure ineffective assistance grand jury

PRACTICE AREAS

criminal post-conviction habeas corpus criminal procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying habeas relief based on an allegedly improper indictment caused by prosecutorial influence over the grand jury.
2. Whether the circuit court failed to make findings and conclusions concerning alleged ineffective assistance of trial counsel and initial habeas counsel.
3. Whether Watts was denied due process because he was not provided a transcript of the omnibus evidentiary hearing.
4. Whether the circuit court erred in denying habeas corpus relief.

HOLDINGS

1. Habeas appeals are reviewed under a three-part standard: abuse of discretion for the final order and ultimate disposition, clear error for underlying factual findings, and de novo review for questions of law.
2. Dismissal of an indictment is appropriate only when a violation substantially influenced the grand jury's decision to indict, or when grave doubt exists that the decision to indict was free from substantial influence by the violation; Watts failed to establish such error.
3. Watts was not entitled to relief on his ineffective-assistance claims because he failed to meet the applicable burden of proof under the two-pronged ineffective-assistance standard.
4. A habeas court may deny a petition without a hearing and without appointing counsel when the petition and supporting materials show that the petitioner is entitled to no relief; Watts therefore had no demonstrated entitlement to relief based on the missing transcript, particularly because the appellate issues were reviewable without it.

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.” (at 2)

“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.” (at 2)

“The dismissal of an indictment is only appropriate if it is established that a violation substantially influenced a grand jury’s decision to indict, or if grave doubt exists that the decision to indict was free from the substantial influence of any such violation.” (at 3)

FACTUAL BACKGROUND

A jury convicted George Watts of various sexual offense, robbery, and burglary charges. After his direct appeal was refused, Watts pursued habeas relief based on alleged defects in the indictment, insufficient evidence, and improper jury instructions. During the habeas proceedings, counsel confirmed the grounds Watts wished to

pursue from the Losh list and expressly stated that Watts did not wish to pursue ineffective assistance of trial counsel, although Watts later attempted to raise ineffective-assistance and transcript-related claims on appeal.

PROCEDURAL HISTORY

A jury convicted Watts of various sexual offense, robbery, and burglary charges, and his direct appeal was refused. He filed an original habeas petition in the Circuit Court of Wayne County, asserting an allegedly improper indictment, insufficient evidence, and improper jury instructions. After a Losh-list clarification hearing in April 2006 and an omnibus evidentiary hearing in May 2006, the circuit court denied relief by order entered July 28, 2008. Watts appealed, raising the indictment issue, ineffective-assistance claims concerning trial and habeas counsel, and an alleged due-process violation based on the lack of a transcript of the omnibus hearing.

DISPOSITION

affirmed

CASES CITED

- Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981)
- 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)
- 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)
- Perdue v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973)
- State ex rel. Pinson v. Maynard, 181 W. Va. 662, 383 S.E.2d 844 (1989)

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