

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Ancel W. v. David Ballard, Warden

No. 15-0335 (Mingo County 14-C-65) · No. No. 15-0335 · Decided October 28, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Ancel W.'s habeas corpus petition. The court held that the petitioner's claims were previously adjudicated or waived, and that the record showed ineffective assistance of trial counsel had been raised in his first habeas proceeding.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 28, 2016
DOCKET	No. 15-0335
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Mingo County's order denying his petition for a writ of habeas corpus.
STANDARD OF REVIEW	In a habeas appeal, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error found under Rule 21
PARTIES	Ancel W. v. David Ballard, Warden, Mt. Olive Correctional Complex

TOPICS

state post-conviction relief

successive petitions

ineffective assistance

habeas corpus

appellate procedure

PRACTICE AREAS

state post-conviction relief

habeas corpus

criminal procedure

QUESTIONS PRESENTED

1. Whether the circuit court adequately determined that petitioner's grounds for habeas relief had been previously and finally adjudicated or waived.
2. Whether petitioner's ineffective-assistance claim was barred because ineffective assistance of trial counsel had been raised in his first habeas proceeding and his first habeas attorney had been found effective.
3. Whether the circuit court abused its discretion by denying the instant habeas petition.

HOLDINGS

1. A prior omnibus habeas corpus hearing is res judicata as to matters raised and matters known or discoverable through reasonable diligence, subject to recognized exceptions such as ineffective assistance at the omnibus hearing or a retroactively applicable favorable change in law.
2. The circuit court's finding that petitioner's grounds were previously and finally adjudicated or waived was adequate to deny relief where the record conclusively established that ineffective assistance of trial counsel had been raised in the first habeas proceeding and petitioner did not challenge the prior finding that his habeas attorney was effective.
3. The circuit court did not abuse its discretion in denying petitioner's habeas petition.

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.” (2)

“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 . . . or, a change in the law, favorable to the applicant, which may be applied retroactively.” (2)

FACTUAL BACKGROUND

A jury convicted Ancel W. of fifteen counts each of first-degree sexual assault, incest, and sexual abuse by a parent, guardian, or custodian. The circuit court sentenced him to an aggregate term of 225 to 525 years. After several prior habeas proceedings, petitioner filed the instant petition challenging numerous aspects of his criminal trial and resentencing, including evidentiary rulings, jury issues, alleged constitutional violations, and ineffective assistance of counsel.

PROCEDURAL HISTORY

A jury convicted petitioner in 1997 of multiple counts of first-degree sexual assault, incest, and sexual abuse by a parent, guardian, or custodian, and the circuit court imposed an aggregate sentence of 225 to 525 years. His direct appeal was refused in 1999. Petitioner filed multiple habeas petitions; his first petition was denied after an omnibus hearing, his second petition was denied, and a third petition was dismissed. In the instant petition, filed in 2014, he raised thirteen grounds concerning his criminal trial and resentencing. The circuit court denied relief

on the ground that all claims had been previously and finally adjudicated or waived, 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)
- 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)
- State ex rel. Watson v. Hill, 200 W. Va. 201, 488 S.E.2d 476 (1997)
- Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012)
- Stanley v. Dale, 171 W. Va. 192, 298 S.E.2d 225 (1982)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)