

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Eric Kell v. Donnie Ames, Superintendent, Mt. Olive Correctional Complex

Eric Kell v. Donnie Ames, Superintendent, Mt. Olive Correctional Complex · No. 21-0978 · Decided June 13, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Eric Kell’s petition for a writ of habeas corpus. The court held that Kell’s unconditional guilty plea waived his challenge to the suppression ruling and that he also waived arguments concerning alleged tampering with his recorded statement and the effect of Xanax because those grounds were not properly raised below.

CASE DETAILS

|                       |                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                     |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn                                                              |
| JURISDICTION          | West Virginia                                                                                                                                                                                                 |
| DECIDED               | June 13, 2023                                                                                                                                                                                                 |
| DOCKET                | 21-0978                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Petitioner appealed the Circuit Court of Mercer County's order denying his petition for a writ of habeas corpus after an omnibus evidentiary hearing.                                                         |
| 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    | published                                                                                                                                                                                                     |
| PARTIES               | Eric Kell v. Donnie Ames, Superintendent, Mt. Olive Correctional Complex                                                                                                                                      |

TOPICS

state post-conviction relief

habeas corpus

preservation of error

suppression of evidence

appellate procedure

## PRACTICE AREAS

state post-conviction relief

criminal procedure

appellate procedure

evidence

## QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying habeas relief based on the alleged tampering with a recorded law-enforcement interview and Kell's alleged impairment by Xanax.
2. Whether Kell's unconditional guilty plea waived his challenge to the suppression ruling and other antecedent nonjurisdictional constitutional or statutory claims.
3. Whether Kell waived the tampering and medication arguments by failing to raise them in the circuit court.

## HOLDINGS

1. A knowing, voluntary, and intelligent unconditional guilty plea waives antecedent constitutional and statutory violations that do not implicate the court's jurisdiction, including a challenge to the court's ruling on a motion to suppress.
2. Arguments not raised in the habeas petition or during the omnibus habeas hearing are waived and cannot support appellate habeas relief.

## 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 1)

*“If any principle is well settled in this State, it is that, in the absence of special circumstances, a guilty plea waives all antecedent constitutional and statutory violations save those with jurisdictional consequences.”* (at 1)

*“our law clearly supports the proposition that any grounds not raised in the petition for habeas corpus are deemed waived.”* (at 2)

## FACTUAL BACKGROUND

Kell pleaded guilty to twelve offenses involving sexual abuse and third-degree sexual assault after an extensive plea colloquy in which the circuit court found that his plea was freely, voluntarily, intelligently, knowingly, and understandably entered. He later sought habeas relief, asserting multiple grounds, but on appeal focused on an allegation that a law-enforcement interview recording had been tampered with and that he was under the influence of Xanax when he gave his statement. The circuit court denied habeas relief after an omnibus

evidentiary hearing, and the appellate court noted that Kell had neither raised the tampering and medication arguments in his habeas petition or hearing nor filed a direct appeal.

#### PROCEDURAL HISTORY

Kell pleaded guilty to six counts of sexual abuse by a parent, guardian, custodian, or person in a position of trust to a child and six counts of third-degree sexual assault. He was sentenced and did not file a direct appeal, instead seeking habeas relief in the Circuit Court of Mercer County. After conducting an omnibus evidentiary hearing, the circuit court denied relief, and Kell appealed. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision without oral argument.

#### DISPOSITION

affirmed

#### CASES CITED

- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Meadows v. Mutter, 243 W. Va. 211, 842 S.E.2d 764 (2020)
- State v. Greene, 196 W. Va. 500, 473 S.E.2d 921 (1996)
- State v. Bennett, 179 W. Va. 464, 370 S.E.2d 120 (1988)
- Lewis v. Ames, 242 W. Va. 405, 836 S.E.2d 56 (2019)