

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Kevin Scott Jordan v. David Ballard, Warden

Jordan v. Ballard · No. No. 12-1015 · Decided October 1, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Kevin Scott Jordan’s amended petition for habeas corpus relief. The court rejected his challenges to convictions for forgery of public records, the jury instructions, and the effectiveness of trial counsel concerning a plea offer.

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	October 1, 2013
DOCKET	No. 12-1015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jordan appealed the Circuit Court of Wood County's order denying his amended petition for a writ of habeas corpus.
STANDARD OF REVIEW	Habeas appeals are reviewed under a three-prong standard: the final order and ultimate disposition for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21 of the West Virginia Rules of Appellate Procedure.
PARTIES	Kevin Scott Jordan v. David Ballard, Warden

TOPICS

- state post-conviction relief
- habeas corpus
- ineffective assistance
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether West Virginia Code §§ 61-4-1 and 61-4-5 create separate and distinct forgery offenses.
2. Whether a fingerprint card signed with a false name can constitute the counterfeit production of a public record, certificate, return, or attestation of a public officer under West Virginia Code § 61-4-1.
3. Whether the indictment was defective for failing to allege how a fingerprint card qualified as a public record, certificate, return, or attestation of a court or officer.
4. Whether the jury instruction correctly tracked the applicable forgery statute.
5. Whether trial counsel provided ineffective assistance by failing to adequately communicate or advise Jordan regarding the State's plea offer.

HOLDINGS

1. The circuit court did not improperly interpret West Virginia Code §§ 61-4-1 and 61-4-5 in denying habeas relief.
2. The jury instruction stating that signing a fingerprint card with a false name was sufficient to constitute the counterfeit production of a public record, certificate, return, or attestation of a public officer properly followed the relevant statutory language.
3. Jordan did not establish ineffective assistance of counsel based on counsel's handling of the plea offer.
4. The circuit court did not abuse its discretion in denying Jordan's amended petition for a writ of habeas corpus.

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.” (1)

“The circuit court’s order reflects its thorough findings of fact and conclusions of law concerning petitioner’s arguments raised on appeal.” (2)

FACTUAL BACKGROUND

In April 2006, Jordan and a codefendant robbed an elderly man by threatening violence. After his arrest, Jordan used a false name and signed three fingerprint cards with that name. He was convicted of robbery, conspiracy, and multiple forgery offenses and received consecutive and concurrent prison sentences. In his habeas petition, he challenged the interpretation of the forgery statutes, the jury instruction concerning fingerprint cards, and counsel's handling of a plea offer.

PROCEDURAL HISTORY

Jordan was convicted by a jury in 2006 of first-degree robbery, conspiracy to commit first-degree robbery, three counts of forgery of a public record, and three counts of forgery. He filed a pro se habeas petition in March 2009

and, after counsel was appointed, filed an amended petition on March 1, 2010. Following two omnibus evidentiary hearings, the Circuit Court of Wood County denied habeas relief on June 6, 2012. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- 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)

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