

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PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21 of the West Virginia Rules of Appellate Procedure.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)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Kevin Scott Jordan, Petitioner Below, Petitioner FILED October 1, 2013 RORY L. PERRY II, CLERK vs) No. 12-1015 (Wood County 09-P-45) SUPREME COURT OF APPEALS OF WEST VIRGINIA David Ballard, Warden, Respondent Below, Respondent MEMORANDUM DECISION Petitioner Kevin Scott Jordan, by counsel Michael Farnsworth Jr., appeals the Circuit Court of Wood County's order entered on June 6, 2012, denying his amended petition for writ of habeas corpus.

Respondent Warden David Ballard, by counsel Marland Turner, filed a response in support of the circuit court's decision, to which petitioner replied. On appeal, petitioner alleges that the circuit court erred in denying his amended petition for writ of habeas corpus because he was improperly convicted of forgery of a public document, the jury was improperly instructed, and he received ineffective assistance of counsel.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.

For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. In April of 2006, petitioner and his co-defendant robbed an elderly man with the threat of violence. Following an investigation, petitioner was arrested. At the time of petitioner's arrest he provided a fake name and signed three separate fingerprint cards with that false name.

As a result, petitioner was indicted in September of 2006 on one count of first degree robbery in violation of West Virginia Code § 61-2-12; one count of conspiracy to commit first degree robbery in violation of West Virginia Code § 61-10-31; three counts of forgery of a public record,

certificate, return or attestation of court or officer in violation of West Virginia Code § 61-4-1; and three counts of forgery in violation of West Virginia Code § 61-4-5.

Following a two-day jury trial in December of 2006, petitioner was convicted on all counts. Petitioner was sentenced to a term of incarceration of fifty years for first degree robbery, plus an additional five years on a recidivist information filed against petitioner. Additionally, petitioner was sentenced to a term of incarceration of one to five years for conspiracy to commit first degree robbery and two to ten years for each of the three counts of forgery of a public record.

Petitioner's sentences for forgery of a public record were to be served concurrently with each other, but consecutive to the first degree robbery and conspiracy charges. Petitioner filed his pro se petition for writ of habeas corpus in March of 2009.

After the appointment of counsel, petitioner filed his amended petition for writ of habeas corpus on March 1, 2010. After conducting two omnibus evidentiary hearings in an effort to allow both parties to properly present arguments, the circuit court entered its order denying petitioner's amended petition for habeas relief on June 6, 2012. This appeal followed.

Petitioner raises three assignments of error on appeal. First, petitioner argues that a plain reading of West Virginia Code §§ 61-4-1 and 61-4-5 show that the legislature intended to create two separate and distinct crimes: forgery of a public document, and forgery. Petitioner also argues that the circuit court erred because it incorrectly interpreted West Virginia Code § 61-4-1 to include the preparation or alteration of a fingerprint card.

Petitioner argues that the indictment for forgery of a public record, certificate, return or attestation of court or officer was defective because it did not allege how a fingerprint card was a public record, certificate, return or attestation of court or officer.

Second, petitioner argues that the circuit court improperly interpreted West Virginia Code § 61-4-1 and improperly instructed the jury 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.

Finally, petitioner argues that he received ineffective assistance of counsel because his trial counsel failed to adequately communicate and render legal advice regarding the plea offer made by the State. This Court reviews appeals of circuit court orders denying habeas corpus relief under the following standard: "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.” Syllabus point 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006). Syl. Pt. 1, *State ex rel. Franklin v. McBride*, 226 W.Va. 375, 701 S.E.2d 97 (2009).

After careful consideration of the parties’ arguments, this Court concludes that the circuit court did not abuse its discretion in denying the amended petition for writ of habeas corpus. The circuit court’s order reflects its thorough findings of fact and conclusions of law concerning petitioner’s arguments raised on appeal. A review of the entire record supports that the circuit court did not improperly interpret West Virginia Code §§ 61-4-1 and 61-4-5.

The circuit court’s jury instruction followed the language of the relevant statutes. Finally, petitioner did not receive ineffective assistance of counsel. Petitioner represents that he discussed the plea offer with his attorney. Additionally, petitioner’s trial attorney testified that she discussed the plea agreement with petitioner on two different occasions.

The record on appeal does not support petitioner’s assignments of error. Having reviewed the circuit court’s “Amended Order Denying Petition For Habeas Corpus Relief” entered on June 6, 2012, we hereby adopt and incorporate the circuit court’s well-reasoned findings and conclusions as to the assignments of error raised in this appeal.

The Clerk is directed to attach a copy of the circuit court’s order to this memorandum decision. 2
For the foregoing reasons, we affirm. Affirmed. ISSUED: October 1, 2013 CONCURRED IN BY:
Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice
Menis E. Ketchum Justice Allen H. Loughry II 3