

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Christopher Chapman v. David Ballard

Chapman · No. 13-0084 · Decided October 28, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the summary dismissal of Christopher Chapman’s habeas corpus petition challenging his conviction and sentence for receiving stolen goods. The court held that the plea and sentencing transcript sufficiently addressed Chapman’s ineffective-assistance allegations and supported denying an evidentiary hearing and appointment of counsel.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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 28, 2013
DOCKET	13-0084
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Raleigh County's summary dismissal of his petition for a writ of habeas corpus challenging his conviction and sentence on ineffective-assistance grounds.
STANDARD OF REVIEW	The final order and ultimate disposition in a habeas corpus action are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo. A habeas petition may be denied without a hearing or appointment of counsel when the petition and supporting materials show that the petitioner is entitled to no relief.
PRECEDENTIAL VALUE	limited
PARTIES	Christopher Chapman v. David Ballard, Warden, Mount Olive Correctional Complex

TOPICS

- state post-conviction relief
- habeas corpus
- ineffective assistance
- right to counsel
- appellate procedure

PRACTICE AREAS

state post-conviction relief

criminal procedure

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the circuit court erred by summarily dismissing Chapman's habeas petition without an evidentiary hearing.
2. Whether the circuit court erred by refusing to appoint counsel for the habeas proceeding.
3. Whether the record supported Chapman's claim that trial counsel rendered ineffective assistance by misadvising him about the charge and sentence.

HOLDINGS

1. An evidentiary hearing was not required because the plea and sentencing transcript and the existing record were sufficient to resolve Chapman's claim and showed that he was entitled to no habeas relief.
2. The circuit court did not abuse its discretion by declining to appoint counsel because the petition and record adequately presented the issues and established that the petitioner was not entitled to relief.
3. The record did not establish constitutionally ineffective assistance because the plea and sentencing court clearly advised Chapman that he was pleading guilty to a felony and that the sentence would be consecutive, and Chapman knowingly proceeded and waived relevant rights.

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." (3)

"Therefore, the Court concludes that the record was sufficient to allow the circuit court to decide the claim without an evidentiary hearing or the appointment of counsel and that the circuit court did not abuse its discretion in summarily dismissing the petition." (4)

FACTUAL BACKGROUND

Chapman pleaded guilty to felony receiving stolen goods after being advised during the plea and sentencing hearing that he was pleading to a felony and that the sentence could run consecutively to his Kanawha County sentence. He waived indictment and declined to obtain a presentence investigation report, choosing to proceed with sentencing so that he could begin the Anthony Center program. After he failed probation and the original one-to-ten-year sentence was imposed consecutively, he alleged that trial counsel had promised a misdemeanor conviction and a concurrent sentence.

PROCEDURAL HISTORY

Chapman pleaded guilty in 2007 to felony receiving stolen goods and received a sentence consecutive to his Kanawha County sentence. After his probation was revoked and the original sentence was imposed, he filed a

state habeas petition in November 2012 alleging ineffective assistance of trial counsel. The circuit court summarily dismissed the petition as frivolous and denied appointment of counsel, and 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)
- Perdue v. Coiner, 156 W.Va. 467, 194 S.E.2d 657 (1973)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W.Va. 3, 459 S.E.2d 114 (1995)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Christopher Chapman, Petitioner Below, Petitioner FILED October 28, 2013 RORY L. PERRY II, CLERK vs) No. 13-0084 (Raleigh County 12-C-918) SUPREME COURT OF APPEALS OF WEST VIRGINIA David Ballard, Warden, Mount Olive Correctional Complex, Respondent Below, Respondent MEMORANDUM DECISION Petitioner Christopher Chapman, appearing pro se, appeals the order of the Circuit Court of Raleigh County, entered January 14, 2013, that summarily dismissed his petition for writ of habeas corpus.

Respondent Warden, by counsel Andrew Mendelson, filed a summary response. Petitioner filed a reply. The 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. Petitioner is an inmate at Mt. Olive Correctional Complex who is serving multiple sentences for separate offenses. This appeal regards petitioner's conviction out of Raleigh County for the felony offense of receiving stolen goods.

For both the Raleigh County offense and an unrelated Kanawha County offense, petitioner had his prison sentences suspended in favor of alternative sentencing. According to the record, petitioner's Kanawha County offense was "similar" in nature to his Raleigh County offense.

The Raleigh County Circuit Court and the Kanawha County Circuit Court both alternatively sentenced petitioner to the Anthony Center. However, after successfully completing the Anthony

Center program, petitioner failed to successfully complete his probation. According to petitioner's petition, on July 18, 2011, he was convicted of armed robbery in Mercer County and sentenced to thirty years in prison, to be served consecutively.

On October 27, 2010, the Raleigh County Circuit Court revoked petitioner's probation and imposed the original sentence of one to ten years in prison for receiving stolen goods, to be served consecutively to his Kanawha County sentence. Subsequently, on November 2, 2012, petitioner filed a petition for a writ of habeas corpus and motion for the appointment of counsel in regard to his Raleigh County conviction.

In his petition, petitioner alleged that trial counsel provided ineffective assistance because counsel advised that if petitioner quickly pled guilty to the Raleigh 1 County charge, the State would reduce the offense to a misdemeanor and he would receive a sentence concurrent with the Kanawha County sentence. Petitioner asserted that counsel's advice caused him to waive both his right to be indicted and his right to have a presentence investigation report ("PSI") prepared.

Petitioner averred that but for counsel's advice, he would have insisted on a trial. In an order entered January 14, 2013, the circuit court summarily dismissed the petition as frivolous and without merit. The circuit court found that "[t]he Petition, in and of itself, is sufficient for the court to conduct a fair adjudication" and that as "Petitioner has clearly articulated his arguments in the Petition,... it is unnecessary for this Court to appoint legal counsel to represent Petitioner." As to petitioner's substantive arguments, the circuit court ruled as follows: In regard to the argument that Petitioner's legal counsel advised Petitioner that his criminal charge would be reduced from a felony to a misdemeanor if Petitioner plead guilty to Information 07-IF-351(B), the transcript from the November 19, 2007 Plea and Sentencing Hearing is replete with instances in which the Court told Petitioner that he was being charged with a felony, and that the proposed plea agreement between the parties included Petitioner pleading guilty to a felony.

[Citation to Transcript omitted.] Therefore, regardless of what Petitioner's counsel may have discussed with Petitioner, it appears that Petitioner was fully apprised of the nature of his guilty plea to a felony charge during the Plea and Sentencing Hearing of November 19, 2007.

In regard to the "consecutive versus concurrent" sentence issue, this Court thoroughly examined the transcript from Petitioner's Plea and Sentencing Hearing of November 19, 2007, and notes that Petitioner was directly informed of Judge Burnside's intent to sentence Petitioner to a consecutive sentence with the charge pending in Kanawha County.[1] Petitioner was given the opportunity to voice his objections to the consecutive sentence, or to defer sentencing in favor of the filing a [PSI].

However, Petitioner consciously chose to forego the PSI and to proceed with sentencing even though Judge Burnside acknowledged that he would institute a consecutive sentence without a

PSI.[2] [Citation to Transcript omitted.]

Therefore, this Court does not believe that Petitioner's constitutional rights were violated when Judge Burnside imposed a 1 According to petitioner's petition, he had already been sentenced in the Kanawha County case at the time of his plea and sentencing in the Raleigh County case. 2 Petitioner desired to proceed with his sentencing and commence with his Anthony Center program because, in his words, he wanted to get the Raleigh County case and the Kanawha County case "behind me." 2 consecutive sentence at the November 19, 2007 Plea and Sentencing Hearing.

Accordingly, the circuit court concluded as follows: 9. The record from [the] November 19, 2007 Plea and Sentencing Hearing is clear, and it is not cognizable[,] that [petitioner] did not understand (1) that he was pleading guilty to a felony charge, or (2) that his sentence would run consecutively to the... Kanawha County criminal charge. 10. Petitioner's claim of ineffective assistance of legal counsel, even if true, does not rise to a constitutional magnitude, as Judge Burnside tediously and effectively informed Petitioner of his constitutional rights at the Plea and Sentencing Hearing, and Petitioner knowingly waived these rights in open court.[3] Petitioner now appeals the circuit court's January 14, 2013 order that summarily dismissed the petition.

We review the circuit court's order 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.

Syl. Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006). In addition, "[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." Syl.

Pt. 1, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973). On appeal, petitioner argues that the circuit court erred in not holding an evidentiary hearing and in not appointing counsel because, given the nature of his claim, the court could not decide it on the record alone. Respondent counters that the circuit court did not err in summarily 3 While petitioner notes on appeal that he had a right to be indicted instead of charged by an information, petitioner both orally waived that right and executed a waiver form on the record.

3 dismissing the petition because the record and transcript of the plea and sentencing hearing did not support petitioner's assertion that trial counsel was ineffective.⁴ This Court has thoroughly reviewed the transcript of the November 19, 2007 plea and sentencing hearing and finds that the

transcript clearly supports the circuit court's finding that the petition was frivolous and without merit.

The Court also finds that the circuit court discussed with petitioner and his counsel the issues on which petitioner bases his ineffective assistance claim. Therefore, the Court concludes that the record was sufficient to allow the circuit court to decide the claim without an evidentiary hearing or the appointment of counsel and that the circuit court did not abuse its discretion in summarily dismissing the petition.

For the foregoing reasons, we affirm. Affirmed. ISSUED: October 28, 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 4 In West Virginia, claims of ineffective assistance of counsel are governed by the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668 (1984): (1) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

See Syl. Pt. 5, *State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995). 4