

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jackie M. Martin v. Michael Martin, Acting Warden

No. 16-1062 (W. Va. Jan. 8, 2018) · No. No. 16-1062 · Decided January 8, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Jackie M. Martin’s amended second petition for a writ of habeas corpus. The court rejected claims of ineffective assistance by prior habeas counsel, concluding that the alibi evidence had been developed during the first habeas proceeding and that Martin could not establish prejudice. The court also held that the kidnapping-sentence claim was barred by res judicata and declined to address the second-degree robbery sentencing claim because Martin failed to support it with legal authority.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	January 8, 2018
DOCKET	No. 16-1062
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Wood County’s order denying his amended second petition for a writ of habeas corpus.
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 memorandum decision; no reporter citation appears in the source text.
PARTIES	Jackie M. Martin v. Michael Martin, Acting Warden, Huttonsville Correctional Center

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Martin was denied effective assistance of prior habeas counsel based on counsel's alleged failure to develop and present additional evidence concerning his alibi defense.
2. Whether Martin's life sentence for kidnapping violated due process and the right to trial by jury because bodily harm was not alleged or found beyond a reasonable doubt.
3. Whether Martin's corrected five-to-eighteen-year sentence for second-degree robbery was unconstitutional because he was not charged or indicted for second-degree robbery.

HOLDINGS

1. Martin failed to establish ineffective assistance of prior habeas counsel because he did not show deficient performance or a reasonable probability that the outcome of the prior habeas proceeding would have been different.
2. The kidnapping-sentence claim was barred by res judicata because Martin had raised a similar claim in his first habeas proceeding and did not establish an applicable exception.
3. The court declined to address the claim because Martin cited no legal authority supporting it and therefore failed to comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure.

KEY QUOTATIONS

“Failure to meet the burden of proof imposed by either part of the Strickland/Miller test is fatal to a habeas petitioner’s claim.” (at 4)

“Accordingly, petitioner’s prior omnibus hearing is res judicata as to this issue.” (at 5)

“Because petitioner provides no law to support this assignment of error, it is not in compliance with our Rules and we decline to address it on appeal.” (at 6)

FACTUAL BACKGROUND

Martin was convicted after a trial arising from an incident in which he allegedly threatened a female acquaintance, forced her into his vehicle, transported her to her apartment, abused her, and demanded \$150. At trial, Martin presented an alibi involving activities in Marietta, Ohio, while the victim was leaving work in nearby Williamstown, West Virginia. Martin later argued that trial counsel and prior habeas counsel failed to develop and present additional alibi evidence, including testimony from Julie Hupp and documentary evidence from Hupp's workplace and doctor.

PROCEDURAL HISTORY

Martin was convicted of kidnapping, aggravated robbery, extortion, and first-degree sexual abuse and received consecutive sentences for several convictions. His direct appeal was refused in 2001. The circuit court denied his amended first habeas petition in 2006, and the Supreme Court of Appeals refused his appeal. After filing a

second habeas petition in 2012 and litigating it through an omnibus hearing, the circuit court denied the amended petition on October 13, 2016. The Supreme Court of Appeals 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 (2009)
- Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State ex rel. Daniel v. Legursky, 195 W. Va. 314, 465 S.E.2d 416 (1995)
- State ex rel. Vernatter v. Warden, W.Va. Penitentiary, 207 W. Va. 11, 528 S.E.2d 207 (1999)

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