

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Timothy Belle v. Shawn Staughn, Administrator, Northern Regional Jail

No. No. 15-0913, Supreme Court of Appeals of West Virginia (March 13, 2017)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Timothy Belle's petition for habeas corpus relief. The court rejected his claims that trial counsel was ineffective and that his guilty plea was involuntary due to counsel's advice, finding no clear error or abuse of discretion in the circuit court's decision.

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Timothy Belle, FILED Petitioner Below, Petitioner March 13, 2017 RORY L. PERRY II, CLERK vs) No. 15-0913 (Ohio County 14-C-242) SUPREME COURT OF APPEALS OF WEST VIRGINIA Shawn Staughn, Administrator, Northern Regional Jail, Respondent Below, Respondent MEMORANDUM DECISION Petitioner Timothy Belle, by counsel Edward L. Bullman, appeals the Circuit Court of Ohio County's August 19, 2015, order that denied his petition for writ of habeas corpus.

The Administrator of the Northern Regional Jail, Shawn Staughn, by counsel Nic Dalton, filed a response in support of the circuit court's order.¹ On appeal, petitioner argues that the circuit court erred in denying his request for habeas relief because he received ineffective assistance of trial counsel and his guilty plea was involuntary due to counsel's ineffectiveness.

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 affirming the order of the circuit court is appropriate under Rule 21 of the Rules of Appellate Procedure. In May of 2013, an Ohio County grand jury indicted petitioner on one count of first- degree robbery, in violation of West Virginia Code § 61-2-12, and one count of breaking without entering, in violation of West Virginia Code § 61-3-12.

In November of 2013, petitioner's counsel sent him a three-page letter regarding his case and a plea offer made by the State.² The letter indicated that counsel believed that petitioner was 1

Petitioner originally listed Karen Pszczolkowski, Warden of the Northern Correctional Center, as respondent in this matter.

However, petitioner is no longer housed at the Northern Correctional Center and is, instead, housed at the Northern Regional Jail. Pursuant to Rule 41(c) of the West Virginia Revised Rules of Appellate Procedure, the name of the correct public officer has been substituted as the respondent in this action. 2 Petitioner was initially represented by Keith Hart.

Mr. Hart moved to withdraw as counsel due to a breakdown in communications with his client. Mr. Hart's motion was granted and Kevin Neiswonger was appointed to represent petitioner on September 9, 2013. 1 making a "good decision" by entering into the plea agreement and that the plea agreement was in petitioner's "best interest." Thereafter, petitioner pled guilty to one count of second-degree robbery, a lesser included offense of first-degree robbery, and admitted that he had a previous felony conviction.

The State dismissed the single count of breaking without entering and agreed not to file a life recidivist information against him. The parties agreed upon a recommended sentence of not less than ten years nor more than eighteen years of incarceration. Petitioner was sentenced to terms of incarceration of not less than five nor more than eighteen years for the second-degree robbery conviction and a one-time recidivist sentence of five years, for an effective sentence of not less than ten years nor more than eighteen years of incarceration.

In August of 2014, after his conviction and sentencing, petitioner filed a pro se petition for habeas corpus relief with the circuit court alleging (1) ineffective assistance of trial counsel; and (2) that his guilty plea was involuntary due to counsel's ineffectiveness. John Jurco was appointed to represent petitioner on August 25, 2014.

In October of 2014, Mr. Jurco moved to withdraw as petitioner's counsel based on petitioner's assertion that he no longer wanted Mr. Jurco to represent him. The circuit court denied that motion in December of 2014, and Mr. Jurco continued to represent petitioner throughout the proceeding.

In February of 2015, petitioner filed an amended habeas petition wherein he alleged that his trial counsel was ineffective because counsel overstated the "strength of the State's case" and that counsel should not have recommended a plea in petitioner's case.

In July of 2015, the circuit court held an omnibus evidentiary hearing wherein only petitioner testified. Petitioner testified regarding the aforementioned letter he received from counsel. Petitioner contended that his trial counsel overstated the strength of the State's case against him and that the case against him was not as "overwhelming" as counsel indicated.

Petitioner also testified that he disagreed with counsel's assessment that petitioner "[did not] have a case" because, according to petitioner, the victim made several inconsistent statements to the

police. Petitioner further testified that he only accepted the plea agreement because of his counsel's advice and opinion that petitioner had "no defense" to the crimes charged.

Following an omnibus evidentiary hearing, the circuit court entered an order on August 19, 2015, denying petitioner's petition for writ of habeas corpus. This appeal followed. This Court reviews a circuit court order 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).

2 On appeal, petitioner argues that the circuit court erred in denying habeas relief based on his claim that his trial counsel was constitutionally ineffective and that the guilty plea was involuntary because of counsel's ineffectiveness.

We do not agree. Our review of the record supports the circuit court's decision to deny petitioner post-conviction habeas corpus relief based on the error alleged in this appeal, which were also argued below. According to the record on appeal, petitioner was the only witness to testify at the omnibus evidentiary hearing. He failed to offer any factual support to his allegations that counsel was ineffective other than his self-serving claim that the "alleged inconsistencies would have caused the jury to find reasonable doubt." Indeed, the circuit court's order includes well-reasoned findings and conclusions as to the assignment of error raised on appeal.

Given our conclusion that the circuit court's order and the record before us reflect no clear error or abuse of discretion, we hereby adopt and incorporate the circuit court's findings and conclusions as they relate to petitioner's assignment of error raised herein and direct the Clerk to attach a copy of the circuit court's August 19, 2015, "Order Denying Petitioner's Amended Petition Following Omnibus Hearing" to this memorandum decision.

For the foregoing reasons, the circuit court's August 19, 2015, order denying petitioner's request for habeas relief is hereby affirmed. Affirmed. ISSUED: March 13, 2017 CONCURRED IN BY: Chief Justice Allen H. Loughry II Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Elizabeth D. Walker 3