

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jack J. v. Karen Pszczolkowski, Warden

Jack J. v. Pszczolkowski · No. 17-0014 · Decided June 8, 2018

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Jack J., Petitioner Below, Petitioner FILED June 8, 2018 vs) No. 17-0014 (Ohio County 13-C-167) EDYTHE NASH GAISER, CLERK SUPREME COURT OF APPEALS OF WEST VIRGINIA Karen Pszczolkowski, Warden, Northern Correctional Facility, Respondent Below, Respondent MEMORANDUM DECISION Petitioner Jack J., by counsel John M. Jurco, appeals two orders of the Circuit Court of Ohio County related to his petition for a writ of habeas corpus: (1) the October 7, 2016, order granting the motion to dismiss filed by Respondent Karen Pszczolkowski, Warden, Northern Correctional Facility, in response to petitioner’s request for habeas relief, and (2) the December 8, 2016, order denying his “Notification of Remaining Claim and Request for Evidentiary Hearing.” Respondent, by counsel Gordon L. Mowen, II, filed a response in support of the circuit court’s orders.

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 circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure. In January 2008, petitioner was indicted on six counts of sexual assault in the first degree, seven counts of sexual abuse by a custodian or parent, and conspiracy. These counts charged petitioner with a wide variety of acts of sexual misconduct against R.M., his girlfriend’s daughter.

The evidence at trial showed that petitioner began sexually abusing R.M. when she was three or four years old.¹ Though petitioner’s first trial resulted in a mistrial, he was subsequently convicted of all counts charged in the indictment as a result of a second trial. He was sentenced to an aggregate term of incarceration of 161 to 355 years. ¹ A graphic and detailed description of petitioner’s criminal acts is set forth in *State v. Jack[J.]*, 230 W. Va. 692, 742 S.E.2d 108 (2013) (affirming petitioner’s convictions).

R.M.’s mother, Jessica Jane M., participated in some of the sexual acts against her daughter; her criminal convictions were affirmed by this Court in *State v. Jessica Jane M.*, 226 W. Va. 242, 700

S.E.2d 302 (2010). 1 Petitioner appealed his convictions to this Court. This Court affirmed his convictions. See *State v. Jack[J.]*, 230 W. Va. 692, 742 S.E.2d 108 (2013).

Petitioner subsequently filed a pro se petition for habeas relief in the Circuit Court of Ohio County and, after the appointment of counsel, filed two amended petitions. Respondent filed a motion to dismiss the petition. By order entered on October 7, 2016, the circuit court granted respondent's motion to dismiss. Petitioner subsequently filed a "Notification of Remaining Claim and Request for Evidentiary Hearing," relating to his claims of ineffective assistance of counsel, cruel and unusual punishment, and juror bias.

The circuit court denied the same by order entered on December 8, 2016. It is from the October 7, 2016, and December 8, 2016, orders that petitioner now appeals. Our review of the circuit court's order denying petitioner's request for habeas relief is governed by 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).

In this appeal, petitioner raises the same arguments that he presented in the habeas proceeding before the circuit court. As he did below, petitioner argues that the trial court erred in denying numerous claims: (1) prejudicial pretrial publicity; (2) denial of the right to a speedy trial; (3) incompetency to be sentenced; (4) suppression of helpful evidence; (5) knowing use of perjured testimony; (6) erroneous information in pre-sentence investigation report; (7) ineffective assistance of counsel; (8) imposition of consecutive sentences for the same transaction, violation of the prohibition against double jeopardy, severer sentences than expected, and excessive sentences; (9) bail was excessive and then wrongfully denied; (10) denial of a preliminary hearing; (11) challenges to composition of Grand Jury, its procedures, and nondisclosure of Grand Jury minutes; (12) defective indictment; (13) pre-indictment delay; (14) refusal to turn over witness notes after the witness testified; (15) unconstitutionality of West Virginia's rape shield law and the *State v. Quinn*² falsity exception as applied to petitioner and denial of petitioner's motion for discovery regarding these issues; (16) prejudicial statements made by prosecutor and improper communications between prosecutor, witnesses, and jurors; (17) insufficiency of the evidence; (18) juror's failure to disclose the fact that she knew petitioner; (19) denial of petitioner's motion to interview the jury; and (20) denial of petitioner's request for an evidentiary omnibus hearing.

Each of petitioner's claims were addressed at length in the circuit court's orders. We find no error or abuse of discretion by the circuit court. Our review of the record ² *State v. Quinn*, 200 W. Va. 432, 490 S.E.2d 34 (1997). 2 supports the circuit court's decision to grant respondent's motion to

dismiss and deny petitioner's requests for post-conviction habeas corpus relief, including the relief sought in his "Notification of Remaining Claim and Request for Evidentiary Hearing" based on these alleged errors, which were also argued below.

Indeed, the circuit court's orders include well-reasoned findings and conclusions as to the assignments of error raised on appeal. Given our conclusion that the circuit court's orders 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 the assignments of error raised herein and direct the Clerk to attach a copy of the circuit court's October 7, 2016, and December 8, 2016, orders to this memorandum decision.

For the foregoing reasons, we affirm. Affirmed. ISSUED: June 8, 2018 CONCURRED IN BY: Chief Justice Margaret L. Workman Justice Robin Jean Davis Justice Menis E. Ketchum Justice Allen H. Loughry II Justice Elizabeth D. Walker 3