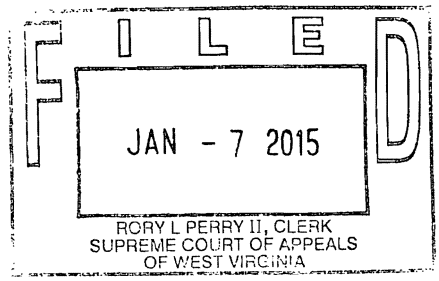
COPY

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
UPON ORIGINAL JURISDICTION

No. 15-0020



STATE OF WEST VIRGINIA
ex rel. WILTON FREDERICK BLAND,

Petitioner,

v.

HONORABLE PHILIP P. JORDAN,
Judge of the Circuit Court of
Mineral County, West Virginia,

Respondent.

PETITION FOR WRIT OF MANDAMUS

Eric S. Black, Esquire
West Virginia State Bar #7567
380 South Washington Street
Berkeley Springs, West Virginia 25411
(304) 258-2931
esblegal@frontier.com

Counsel for Petitioner
Wilton Frederick Bland

TABLE OF CONTENTS

I. Questions Presented 1

II. Statement of the Facts of the Case 1

III. Summary of the Argument 3

IV. Statement Regarding Oral Argument and Decision 4

V. Argument 4

VI. Conclusion and Relief Requested 7

TABLE OF AUTHORITIES

CASES **Page**

State ex rel. Damron v. Ferrell, 149 W.Va. 773, 143 S.E.2d 469.....4

State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (W.Va. 1969).....4

STATUTES **Page**

West Virginia Code §53-1-1 et seq.....3, 4

West Virginia Code §53-4A-7.....1, 4, 6, 7

PETITION FOR WRIT OF MANDAMUS

I. QUESTIONS PRESENTED

Whether the Circuit Court erred in not ruling upon Petitioner's Habeas Corpus Petition as required by West Virginia Code §53-4A-7.

II. STATEMENT OF THE CASE

Petitioner Wilton Frederick Bland was indicted by a Mineral County Grand Jury in the May 2007 Term of Court on the following charges: forty-one (41) counts of possession of material depicting minors engaging in sexually explicit conduct, four (4) counts of use of obscene matter with intent to seduce a minor, two (2) counts employment of a minor to produce obscene matter, and one (1) count of distribution and display to a minor of obscene matter. (A.R. 99-144). In addition, Petitioner was also indicted by a Grant County Grand Jury in the July, 2007 Term of Court on thirty (30) counts of sexual assault in the first degree, and thirty (30) counts of sexual abuse by a custodian. (A.R. 145-161). The Court appointed John G. Ours, Esquire to defend Petitioner against the allegations contained in both the Mineral County and Grant County indictments.

Petitioner ultimately entered a global guilty plea under Alford circumstances for both Mineral and Grant counties on March 14, 2008, to the felony offenses of one (1) count of sexual assault in the first degree, and ten (10) counts of sexual abuse in the first degree, with the sentences to run consecutively and the remaining counts dismissed.

A plea taking and sentencing hearing took place before the Honorable Phil Jordan in the Circuit Court of Grant County on March 14, 2008. Pursuant to the global plea agreement, the Court sentenced Petitioner to a term of not less than fifteen (15) nor more than thirty-five (35) years on the charge of first degree sexual assault, and one (1) to five (5) years on the ten

(10) counts of sexual abuse in the first degree, all of which would run consecutive to each other, for a total sentence of not less than twenty-five (25) nor more than eighty-five (85) years. The Court further ordered that said sentences would run consecutively with each other. (A.R. 3-7).

Petitioner filed a *pro se* Petition for Writ of Habeas Corpus Ad-Subjiciendum on July 10, 2009 in the Circuit Court of Grant County, West Virginia. (A.R. 10-11 and A.R. 38-65). Petitioner also filed a *pro se* Petition for Writ of Habeas Corpus Ad-Subjiciendum in the Circuit Court of Mineral County on said date, July 10, 2009. (A.R. 8-9 and A.R. 66-98). The Court, acting in its capacity as the assigned Judge for the Mineral and Grant County cases, scheduled a hearing on Petitioner's habeas Petition for July 10, 2010. Prior to the evidentiary hearing, Mr. Bland moved the Court for new counsel and for additional time for new counsel to prepare for the hearing. The Court's July 10, 2010, Order stated the following:

> Despite all of this, the Court will grant two of the three requests of Mr. Bland. The Court hereby cancels the hearing set for July 20. The Court hereby relieves Chad Cissel of any further duties in this case. However, the Court will not appoint another counsel. Since Mr. Bland's family can afford to pay an inmate, they can afford to pay a lawyer. Mr. Bland is no longer considered indigent. *This Court will schedule a hearing only after licensed counsel has been retained by the Bland family.* (A.R. 1-2).

Petitioner retained the undersigned counsel and counsel filed a Notice of Appearance with the Circuit Court of Mineral County and the Circuit Court of Grant County on May 25, 2011. A copy of the Notice of Appearance and letter to the Circuit Court was forwarded to the Honorable Philip P. Jordan. (A.R. 12-14, and A.R. 15-17).

Petitioner filed, with the assistance of his retained counsel, a Second Amended Petition for Writ of Habeas Corpus and a *Losh* list with the Circuit Court on August 4, 2011. A copy of Petitioner's Amended pleading was forwarded directly to the Honorable Philip P.

Jordan. (A.R. 25-37).

From August 4, 2011, through March 29, 2013, the Circuit Court did not schedule the matter for a new evidentiary hearing, nor did the Court address or rule on Petitioner's original or amended Petitions for Habeas Corpus relief. Because of the same, Petitioner's counsel filed a Motion to Schedule Status Hearing with the Circuit Court on March 29, 2013. In his Motion, Petitioner respectfully moved the Court to set the matter down for a status hearing so that Petitioner's claims could be addressed. A copy of said Motion was forwarded to the Honorable Philip Jordan by separate cover letter. (A.R. 18-24).

Despite Petitioner's Amended pleadings and Motion for Status Hearing, the Circuit Court of Mineral and Grant Counties has not set the matter down for any type of hearing, nor has the Court in any way addressed or ruled upon Petitioner's long standing habeas corpus claims. Petitioner now files the instant Petition for Writ of Mandamus moving this Honorable Court to grant the relief requested herein.

III. SUMMARY OF THE ARGUMENT

Petitioner seeks a Writ of Mandamus pursuant to W.Va. Code §53-1-1 et seq. to compel the Respondent, the Circuit Court of Mineral and Grant County, to grant Petitioner's request for an evidentiary hearing on the matters raised in his *pro se* Petition for a Writ of Habeas Corpus Ad-Subjiciendum filed on July 10, 2009, and his Second Amended Petition for Writ of Habeas Corpus filed on August 10, 2011.

Petitioner respectfully requests that the instant Petition be granted, and that this Honorable Court issue a Writ of Mandamus directing the Circuit Court of Mineral and Grant County schedule and conduct a full evidentiary hearing on Petitioner's previously filed Petition(s) for Writ of Habeas Corpus so that Petitioner may prosecute his claims.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner states his Petition for Writ of Mandamus contains the facts and legal argument pertinent to the Petition. Petitioner further states he does not believe oral argument is necessary in this matter unless the Court deems the same necessary to the disposition of Petitioner's Petition.

V. ARGUMENT

A. PETITIONER IS ENTITLED TO MANDAMUS RELIEF TO COMPEL THE CIRCUIT COURT OF MINERAL AND GRANT COUNTY TO ADDRESS HIS CLAIMS FOR RELIEF PURSUANT TO WEST VIRGINIA CODE §53-4A-7

Petitioner respectfully moves this Honorable Court to grant him mandamus relief pursuant to West Virginia Code §53-1-1 et seq. The West Virginia Supreme Court of Appeals has set forth a three (3) element analysis when considering extraordinary claims for mandamus relief:

> In State ex rel. Damron v. Ferrell, 149 W.Va. 773, 143 S.E.2d 469, this Court said: 'The general rule is that the writ of mandamus will not issue unless three elements coexist--(1) the existence of a clear right in the petitioner to the relief sought; (2) the existence of a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and, (3) the absence of another remedy at law.' *See* State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (W.Va., 1969).

In the instant case, a review of the record clearly demonstrates that Petitioner can satisfy the three (3) element analysis set forth in *Kucera* and its progeny. As demonstrated herein, the Petitioner can establish a clear right to the relief sought, the West Virginia Code imposes a duty on the circuit court to address his habeas claims, and the Petitioner has no other remedy at law but to seek extraordinary relief from this Honorable Court.

Petitioner filed a *pro se* Petition for Writ of Habeas Corpus Ad-Subjiciendum on July 10, 2009 in the Circuit Court of Grant County (A.R. 38-65), and he also filed a *pro se* Petition

in the Circuit Court of Mineral County on said date. (A.R. 66-98). The Court, acting in its capacity as the assigned Judge for the Mineral and Grant County cases, scheduled a hearing on Petitioner's habeas Petition for July 10, 2010. Prior to the evidentiary hearing, Mr. Bland moved the Court for new counsel and for additional time for new counsel to prepare for the hearing. The Court's July 10, 2010, Order stated the following:

> Despite all of this, the Court will grant two of the three requests of Mr. Bland. The Court hereby cancels the hearing set for July 20. The Court hereby relieves Chad Cissel of any further duties in this case. However, the Court will not appoint another counsel. Since Mr. Bland's family can afford to pay an inmate, they can afford to pay a lawyer. Mr. Bland is no longer considered indigent. *This Court will schedule a hearing only after licensed counsel has been retained by the Bland family.* (A.R. 1-2).

Petitioner retained the undersigned counsel and counsel filed a Notice of Appearance with the Circuit Court of Mineral County and Grant County on May 25, 2011. A copy of the Notice of Appearance and letter to the Circuit Court was forwarded to the Honorable Philip P. Jordan. (A.R. 12-14 and A.R. 15-17). Petitioner filed, with the assistance of his retained counsel, a Second Amended Petition for Writ of Habeas Corpus and a *Losh* list with the Circuit Court on August 4, 2011. A copy of Petitioner's Amended pleading was forwarded directly to the Honorable Philip P. Jordan. (A.R. 25-37).

From August 4, 2011, through March 29, 2013, the Circuit Court did not schedule the matter for a new evidentiary hearing, nor did the Court address or rule on Petitioner's original or amended Petitions for Habeas Corpus relief. Because of the same, Petitioner's counsel filed a Motion to Schedule Status Hearing with the Circuit Court on March 29, 2013. In his Motion, Petitioner respectfully moved the Court to set the matter down for a status hearing so that Petitioner's claims could be addressed. A copy of said Motion was forwarded to the Honorable Philip Jordan by separate cover letter. (A.R. 18-24).

As of the filing of this Petitioner, despite Petitioner's Amended pleadings and Motion for Status Hearing, the Circuit Court of Mineral and Grant Counties has not set the matter down for any type of further hearing, nor has the Court in any way addressed or ruled up Petitioner's long standing habeas corpus claims.

West Virginia Code §53-4A-7 provides the following protocol and standard for assessing and addressing a petition for habeas corpus relief:

> **§53-4A-7. Denial of relief; hearings; evidence; record; judgment.**
>
> (a) If the petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or the record in the proceedings which resulted in the conviction and sentence, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall enter an order denying the relief sought. If it appears to the court from said petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or any such record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall promptly hold a hearing and/or take evidence on the contention or contentions and grounds (in fact or law) advanced, and the court shall pass upon all issues of fact without a jury. The court may also provide for one or more hearings to be held and/or evidence to be taken in any other county or counties in the state.
>
> (b) A record of all proceedings under this article and all hearings and evidence shall be made and kept. The evidentiary depositions of witnesses taken by either the petitioner or the state, on reasonable notice to the other, may be read as evidence. The court may receive proof by proper oral testimony or other proper evidence. All of the evidence shall be made a part of the record. When a hearing is held and/or evidence is taken by a judge of a circuit court or statutory court in vacation, a transcript of the proceedings shall be signed by the judge and certified to the clerk of the court in which the judgment is to be rendered, and be entered by him among the records of that court. A record of all proceedings in the Supreme Court of Appeals shall be entered among the records of such court.

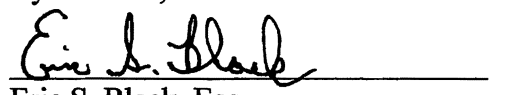
> (c) When the court determines to deny or grant relief, as the case may be, the court shall enter an appropriate order with respect to the conviction or sentence in the former criminal proceedings and such supplementary matters as are deemed necessary and proper to the findings in the case, including, but not limited to, remand, the vacating or setting aside of the plea, conviction and sentence, rearrangement, retrial, custody, bail, discharge, correction of sentence and resentencing, or other matters which may be necessary and proper. In any order entered in accordance with the provisions of this section, the court shall make specific findings of fact and conclusions of law relating to each contention or contentions and grounds (in fact or law) advanced, shall clearly state the grounds upon which the matter was determined, and shall state whether a federal and/or state right was presented and decided. Any order entered in accordance with the provisions of this section shall constitute a final judgment, and unless reversed, shall be conclusive.

West Virginia Code §53-4A-7 clearly requires a circuit court to either (1) enter an order denying the claims for relief, or (2) "promptly hold a hearing or take evidence." In the instant case, the Court entered an Order setting an evidentiary hearing for July 20, 2010. Thus, the Circuit Court has already made a determination that an evidentiary hearing is appropriate in Petitioner's case. To date, however, the Court has not granted any further hearing in this matter, nor has the Court entered an Order denying Petitioner's various claims for relief (which include ineffective assistance of counsel). Based upon the same, Petitioner respectfully moves this Court to grant the requested Mandamus relief so that he may prosecute his claims as provided by West Virginia law.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Petitioner respectfully requests that his Petition for Writ of Mandamus be granted and that the Circuit Court of Mineral and Grant County be required to schedule and conduct a full evidentiary hearing to address Petitioner's *pro se* Petition for Writ of Habeas Corpus and Petitioner's Second Amended Petition for Writ of Habeas Corpus so that Petitioner may finally prosecute the merits of his claims.

Respectfully submitted,
Petitioner Frederick Wilton Bland,
By Counsel,



Eric S. Black, Esq.
State Bar I.D. #7567
380 South Washington Street
Berkeley Springs, West Virginia 25411
(304) 258-2931

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF MORGAN, to-wit:

I, Eric S. Black, Esquire, counsel for Wilton Frederick Bland, the Petitioner named in the foregoing PETITION FOR WRIT OF MANDAMUS, being duly sworn, say that the facts contained herein are true, except so far as they are therein stated to be on information and belief, and that insofar as they are therein stated to be on information and belief, I believe them to be true.

Eric S. Black

Eric S. Black
Counsel for Petitioner

Taken, subscribed and sworn to before me, the undersigned authority in my county and state this 2nd day of January, 2015.

Official Seal
Notary Public, State Of West Virginia
Julie A. Stotler
Eric S. Black Esquire
380 South Washington Street
Berkeley Springs, WV 25411
My commission expires June 25, 2022

Julie A. Stotler

NOTARY PUBLIC

My commission expires: 6/25/22

CERTIFICATE OF SERVICE

I, Eric S. Black, counsel for the Petitioner, Wilton Frederick Bland, do hereby certify that I have served a true and accurate copy of the foregoing PETITION FOR WRIT OF MANDAMUS AND APPENDIX upon the following persons at the following addresses by U.S. Mail, first class, postage prepaid, on this 2nd day of January, 2015:

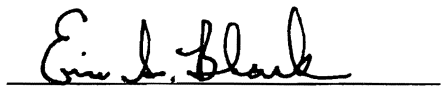
Honorable Philip B. Jordan, Jr.
The Circuit Court of Mineral County
Mineral County Courthouse
P.O. Box 150
Keyser, West Virginia 26726

James W. (Jay) Courrier, Jr., PA
Mineral County Prosecuting Attorney
Office of the Prosecuting Attorney
P.O. Drawer 458
Keyser, West Virginia 26726

Jeffrey Roth, PA
Grant County Prosecuting Attorney
Office of the Prosecuting Attorney
5 Highland Avenue
Petersburg, West Virginia 26847

Honorable Krista Johnson Dixon, Clerk
The Circuit Court of Mineral County
Mineral County Courthouse
150 Armstrong Street
Keyser, West Virginia 26726

Honorable Nancy Berg Dayton, Clerk
The Circuit Court of Grant County
5 Highland Avenue
Petersburg, West Virginia 26847



Eric S. Black, Esq.
State Bar I.D. #7567
380 South Washington Street
Berkeley Springs, West Virginia 25411
(304) 258-2931