

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Paul K. Hardy,
Petitioner Below, Petitioner**

FILED
February 11, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs) **No. 11-1281** (Berkeley County 08-C-1178)

**Marvin Plumley, Warden,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Paul K. Hardy, by counsel Christopher J. Prezioso, appeals the Circuit Court of Berkeley County's order entered on August 9, 2011, denying his petition for writ of habeas corpus. Respondent Warden Plumley¹, by counsel Christopher Quasebarth, filed a response in support of the circuit court's decision. Petitioner has filed a reply.

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 is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner pled guilty under an *Alford* plea to one count of first degree robbery, one count of burglary, two counts of wanton endangerment with a firearm, and one count of destruction of property. Petitioner filed a petition for writ of habeas corpus, alleging ineffective assistance of counsel, competency issues, and that his sentence violates the Eighth Amendment of the United States Constitution. The petition for writ of habeas corpus was denied. Petitioner now appeals this denial.

This Court reviews appeals of circuit court orders 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

¹ Pursuant to Rule 41(c) of the West Virginia Rules of Appellate Procedure, we have replaced the respondent party's name with Warden Marvin Plumley of Huttonsville Correctional Center. The initial respondent on appeal, David Ballard, is the Warden at Mount Olive Correctional Complex, but petitioner is no longer incarcerated at Mount Olive.

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).

On appeal, petitioner first argues that the circuit court erred in failing to hold an evidentiary hearing because probable cause existed to believe that petitioner was entitled to habeas relief. Petitioner further argues that his counsel was ineffective; specifically, petitioner alleges that he was unduly coerced by counsel into signing the plea agreement, that counsel did not properly explore mental health defenses, that counsel did not properly investigate the case, and that counsel failed to explain that he had the right to appeal. Petitioner also argues that he suffered with issues of competency at the time he entered his guilty plea, and that his sentence was unduly harsh in violation of the Eighth Amendment of the United States Constitution.

In response, the State argues that a hearing was unnecessary and the circuit court did not err in denying relief absent a hearing. The State also argues petitioner’s counsel was effective and that there was no evidence that petitioner was suffering from any mental illness or competency issues. Finally, the State argues that petitioner’s sentence is not subject to review because it is within the statutory limits.

This Court has previously addressed the denial of a writ of habeas corpus without holding a hearing, as follows:

“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).

Syl. Pt. 2, *State ex rel. Watson v. Hill*, 200 W.Va. 201, 488 S.E.2d 476 (1997). In the present matter, the circuit court did not err in failing to hold an evidentiary hearing. A review of the record presented and of the circuit court’s order shows that the circuit court properly determined that petitioner was not entitled to relief without the necessity of a hearing.

As to the other assignments of error, our review of the record reflects no clear error or abuse of discretion by the circuit court. Having reviewed the circuit court’s “Final Order Denying Petition for Writ of Habeas Corpus” entered on August 9, 2011, we hereby adopt and incorporate the circuit court’s well-reasoned findings and conclusions as to the assignments of error raised in this appeal. The Clerk is directed to attach a copy of the circuit court’s order to this memorandum decision.

For the foregoing reasons, we affirm the circuit court’s order.

Affirmed.

ISSUED: February 11, 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

C. Prezioso

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
Division II

STATE ex rel. PAUL K. HARDY,

Petitioner,

v.

DAVID BALLARD, Warden,

Respondent.

CIVIL CASE NO. 08-C-1178
Underlying Criminal Action
Numbers: 05-F-122
JUDGE WILKES

BERKELEY COUNTY
CIRCUIT CLERK
2011 AUG -9 AM 9:47
M. SINE, CLERK

FINAL ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter came before the Court this 9 day of August 2011, pursuant to Petitioner's Pro Se Petition Under West Virginia Code 53-4A-1 for a Writ of Habeas Corpus and Amended Petition for Writ of Habeas Corpus. Upon the appearance of Petitioner, Paul K. Hardy, by counsel Christopher Prezioso, and Respondent, David Ballard, by counsel Christopher Quasebarth.

FINDINGS OF FACT

1. On May 19, 2005, a True Bill of Indictment was issued against Petitioner, Paul K. Hardy, in which Petitioner was charged under the following counts: Count 1-First Degree Robbery by Presentation of a Firearm under W. Va. Code § 61-2-12(a)(1); Count 2-Burglary under W. Va. Code § 61-3-11(a); Count 3-Breaking and Entering under W. Va. Code § 61-3-12; Count 4-Wanton Endangerment with a Firearm under W. Va. Code § 61-7-12; Count 5- Wanton Endangerment with a Firearm under W. Va. Code § 61-7-12; Count 6-Destruction of Property, a misdemeanor, under W. Va. Code § 61-3-30; Count 7- Destruction of Property, a misdemeanor,

under W. Va. Code § 61-3-30; Count 8- Destruction of Property, a misdemeanor, under W. Va. Code § 61-3-30.

2. On September 23, 2005, Petitioner entered a Guilty Plea under Alford circumstances to one count First Degree Robbery, one count Burglary, two counts of Wanton Endangerment with a Firearm, and one count Destruction of Property. The remaining counts, which were one count Breaking and Entering and two counts of Destruction of Property, were dismissed. Under the terms of the same plea agreement, the parties submitted an agreed sentencing recommendation.

3. On September 23, 2005, pursuant to the parties' agreement, the Court sentenced Petitioner to a determinate term of thirty (30) years for First Degree Robbery, an indeterminate term of 1 to 15 years for Burglary, a determinate term of five (5) years for Wanton Endangerment with a Firearm, a determinate term of five (5) years for Wanton Endangerment with a Firearm, and a determinate term of one (1) year for Destruction of Property. The sentences for the two counts of Wanton Endangerment were to be served concurrently, with all other sentences served consecutively. Petitioner was also ordered to pay restitution and court costs.

4. By Order dated January 12, 2006, the Court denied Petitioner's Motion for Sentence Reconsideration, relying on the reasons state by the Court at the time of sentencing and the following reasons for denial:

“1. The defendant entered into a negotiated plea bargain and to alter or amend the sentence would depreciate the terms of the plea agreement.

2. The record in this matter establishes that there is a substantial risk that the defendant would commit another crime during any period of probation or conditional discharge.

3. Release, reduction, probation or conditional discharge would unduly depreciate the seriousness of the defendant's crime." Order, Jan. 12, 2006, Crim. Case No. 05-F-122.

5. Throughout the underlying criminal case, Petitioner was represented by counsel, Thomas Stanley.

6. Petitioner never filed an appeal on any issues relating to his underlying criminal case, Crim. Case No. 05-F-122.

7. On September 18, 2008, Petitioner filed his Pro Se Petition Under West Virginia Code 53-4A-1 for a Writ of Habeas Corpus.

8. An attorney was appointed to assist Petitioner through the habeas corpus proceedings and on January 7, 2010, through assistance of counsel, Petitioner filed an Amended Petition for Writ of Habeas Corpus.

CONCLUSIONS OF LAW

This matter comes before the Court upon Petitioner's Petition for Writ of Habeas Corpus. This Court has previously appointed counsel, who filed an amended petition, and subsequent to an initial review the Court has ordered the respondent to file an answer. At this point in the proceedings the Court is to review the relevant filings, affidavits, exhibits, records and other documentary evidence attached to the petition to determine if any of petitioner's claims have merit and demand an evidentiary hearing to determine if the writ should be granted. Otherwise the Court must issue a final order denying the petition.

The procedure surrounding petitions for writ of habeas corpus is "civil in character and shall under no circumstances be regarded as criminal proceedings or a criminal case." W. Va. Code § 53-4A-1(a); *State ex rel. Harrison v. Coiner*, 154 W. Va. 467 (1970). A habeas corpus

proceeding is markedly different from a direct appeal or writ of error in that only errors involving constitutional violations shall be reviewed. *Syl. Pt. 2, Edwards v. Leverette*, 163 W. Va. 571 (1979).

“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 . . . 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.” W. Va. Code § 53-4A-7(a).

If the court upon review of the petition, exhibits, affidavits, or other documentary evidence is satisfied that the petitioner is not entitled to relief the court may deny a petition for writ of habeas corpus without an evidentiary hearing. *Syl. Pt. 1, Perdue v. Coiner*, 156 W. Va. 467 (1973); *State ex rel. Waldron v. Scott*, 222 W. Va. 122 (2008). Upon denying a petition for writ of habeas corpus the court must make specific findings of fact and conclusions of law as to each contention raised by the petitioner, and must also provide specific findings as to why an evidentiary hearing was unnecessary. *Syl. Pt. 1, State ex rel. Watson v. Hill*, 200 W. Va. 201 (1997); *Syl. Pt. 4, Markley v. Coleman*, 215 W. Va. 729 (2004); R. Hab. Corp. 9(a). On the other hand, if the Court finds “probable cause to believe that the petitioner may be entitled to some relief . . . the court shall promptly hold a hearing and/or take evidence on the contention or contentions and grounds (in fact or law) advanced” W. Va. Code § 53-4A-7(a).

When reviewing the merits of a petitioner’s contention the Court recognizes that “there is a strong presumption in favor of the regularity of court proceedings and the burden is on the person who alleges irregularity to show affirmatively that such irregularity existed.” *Syl Pt. 2, State ex rel. Scott v. Boles*, 150 W. Va. 453 (1966). Furthermore, specificity is required in habeas pleadings, thus a mere recitation of a ground for relief without detailed factual support

will not justify the issuance of a writ or the holding of a hearing. W. Va. Code § 53-4A-2; *Losh v. McKenzie*, 166 W. Va. 762, 771 (1981). “When a circuit court, in its discretion, chooses to dismiss a habeas corpus allegation because the petition does not provide adequate facts to allow the circuit court to make a ‘fair adjudication of the matter,’ the dismissal is without prejudice.” *Markley v. Coleman*, 215 W. Va. 729, 734 (2004), *see* R. Hab. Corp. 4(c). However, rather than dismissing without prejudice the court may “summarily deny unsupported claims that are randomly selected from the list of grounds,” laid out in *Losh v. McKenzie*. *Losh v. McKenzie*, 166 W. Va. 762, 771 (1981); *Markley v. Coleman*, 215 W. Va. 729, 733 (2004).

In addition to a review on the merits, the Court must determine if the contentions raised by the petitioner have been previously and finally adjudicated or waived. “West Virginia Code § 53-4A-1(b) (1981) states that an issue is ‘previously and finally adjudicated’ when, at some point, there has been ‘a decision on the merits thereof after a full and fair hearing thereon’ with the right to appeal such decision having been exhausted or waived, ‘unless said decision upon the merits is clearly wrong.’” *Smith v. Hedrick*, 181 W. Va. 394, 395 (1989). But, a “rejection of a petition for appeal is not a decision on the merits precluding all future consideration on the issues raised therein . . .” *Syl. Pt. 1, Smith v. Hedrick*, 181 W. Va. 394 (1989). However, “there is a rebuttable presumption that petitioner intelligently and knowingly waived any contention or ground in fact or law relied on in support of his petition for habeas corpus which he could have advanced on direct appeal but which he failed to so advance.” *Syl. Pt. 1, Ford v. Coiner*, 156 W. Va. 362 (1972). In addition, any grounds not raised in the petition for habeas corpus are deemed waived. *Losh v. McKenzie*, 166 W. Va. 762 (1981).

Furthermore, the underlying criminal case in this matter involves a guilty plea voluntarily taken by Petitioner. The Petitioner’s prior guilty plea limits his petition for habeas relief solely

to the competency of counsel's advice regarding the guilty plea. *Losh v. McKenzie*, 166 W. Va. 762, 277 W.E.2d 606, 611 (1981). When reviewing an allegation of a guilty plea induced by incompetent advice, the Court must use the following standard:

“Before a guilty plea will be set aside based on the fact that the defendant was incompetently advised, it must be shown that (1) counsel did act incompetently; (2) the incompetency must relate to a matter which would have substantially affected the fact-finding process if the case had proceeded to trial; (3) the guilty plea must be motivated by this error.” *State v. Sims*, 162 W. Va. 212, 248 S.E.2d 834, 837-39 (1978).

Without the setting aside of a guilty plea under this standard, an individual's challenges under habeas are limited. Upon a guilty plea, a person waives any non-jurisdictional defects as to his criminal case. *State v. Legg*, 207 W. Va. 686, 536 S.E.2d 110, 114 (2000).

The Court in reviewing the petition, answer, affidavits, exhibits, and all other relevant documentary evidence finds that Petitioner has failed to raise a claim under which he is entitled to habeas corpus relief, and furthermore there is no need for additional fact-finding through and evidentiary hearing. The Court below will specifically address the claims raised by Petitioner in support of the Court's finding denying the relief requested in the Petition for Writ of Habeas Corpus.

I. Claims for Ineffective Assistance of Counsel

There are multiple claims of ineffective assistance of counsel raised in Petitioner's Amended Petition, all of which involve the actions or inactions of trial counsel Thomas Stanley. Both the Sixth Amendment to the Constitution of the United States and Article III, §14 of the Constitution of West Virginia assure not only the assistance of counsel in a criminal proceeding but that a defendant should receive “competent and effective assistance of counsel.” *State ex rel.*

Strogen v. Trent, 196 W. Va. 148, 152 (1996). In order to evaluate whether a defendant has received competent and effective assistance from their counsel West Virginia has adopted the two pronged test established by the United State Supreme Court in *Strickland v. Washington*. In order to prevail on a claim of ineffective assistance of counsel a petitioner under the two-prong test must show: “(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.” *Syl. Pt. 5, State v. Miller*, 194 W. Va. 3 (1995) (referencing *Strickland v. Washington*, 466 U.S. 668 (1984)). “In reviewing counsel’s performance, courts must apply an objective standard and determine whether, in light of all the circumstances, the indentified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel’s strategic decisions. Thus, a reviewing court asks whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue.” *Syl. Pt. 6, State v. Miller*, 194 W. Va. 3 (1995); *Syl. Pt 2, State ex rel. Strogen v. Trent*, 196 W. Va. 148, 152 (1996). Under a consistent policy shown by the West Virginia Supreme Court of Appeals and the United States Supreme Court the analysis under ineffective assistance of counsel “must be highly deferential and prohibiting ‘intensive scrutiny of counsel and rigid requirements for acceptable assistance.’” *State v. Miller*, 194 W. Va. 3, 16 (1995) (citing *Strickland v. Washington*, 466 U.S. 668, 689-90 (1984)). One key area, or the “fulcrum,” for this analysis is counsel’s investigation of the case, therefore while judicial scrutiny must be highly deferential, “counsel must at a minimum conduct a reasonable investigation enabling him or her to make informed decisions about how best to represent criminal clients.” *Syl. Pt. 3, State ex rel. Strogen v. Trent*, 196 W. Va. 148, 152 (1996).

Furthermore, since this habeas petition involves a plea in the underlying criminal case, the Petitioner must show:

“Before a guilty plea will be set aside based on the fact that the defendant was incompetently advised, it must be shown that (1) counsel did act incompetently; (2) the incompetency must relate to a matter which would have substantially affected the fact-finding process if the case had proceeded to trial; (3) the guilty plea must be motivated by this error.” *State v. Sims*, 162 W. Va. 212, 248 S.E.2d 834, 837-39 (1978).

The Court has reviewed Petitioner’s claims of ineffective assistance of counsel and finds that there is no reason to set aside the guilty plea in this case. There is no showing of incompetence on the part of Petitioner’s trial counsel, therefore there is no showing of any effect on the fact-finding process or how Petitioner’s plea was motivated by some error; because there is no proof of any error on the part of trial counsel. The Court will address the specific claims raised by Petitioner and explain further the finding that there was no ineffective assistance of counsel that would lead to a set aside of the guilty plea.

A. Plea

The first claim, or claim A, under Petitioner’s Amended Petition for Writ of Habeas Corpus, includes allegations that Petitioner’s trial counsel did not effectively represent him at the plea hearing and that he unduly coerced Petitioner to accept the plea. Petitioner argues that he would have otherwise sought a full trial on the merits. Beyond Petitioner’s bald allegations there is no factual support showing undue coercion. Furthermore, Petitioner does not point out any particular manner in which his trial counsel was ineffective. In fact, Petitioner’s trial counsel was able to work out a plea in which three charges were dismissed by the State. Specificity is required in habeas petitions, and without any specific allegations or factual support to Petitioner’s claim, the Court finds no support for Petitioner’s claim of ineffective assistance of

counsel. Also, “there is a strong presumption in favor of the regularity of court proceedings and the burden is on the person who alleges irregularity to show affirmatively that such irregularity existed.” *Syl Pt. 2, State ex rel. Scott v. Boles*, 150 W. Va. 453 (1966). During Petitioner’s plea colloquy the judge asked Petitioner, “[h]as any person promised or suggested that you would be treated any differently other than in the plea agreement to get you to plead guilty today?” Hearing Transcript, September 23, 2005, p. 17-18. The judge also asked, “[h]as any person used any threats, force, pressure or intimidation to get you to plead guilty to these charges?” *Id.* To both of these question, Petitioner answer, “no sir.” *Id.* The Court has been provided no specific proof to question the regularity of these proceedings and has no reason to question Petitioner’s own answer to a direct question from the Court. Therefore, the Court finds that no evidentiary hearing is necessary, and that it is clear that Petitioner is not entitled to relief on this claim.

B. No Investigation as to Mental State at Time of the Alleged Crime

Petitioner in both claim C and D of the Amended Petition for Writ of Habeas Corpus implies that a proper investigation as to his mental capacity and the availability of mental defenses was not conducted by his counsel. This implicitly argues that his trial counsel was ineffective, leading Petitioner to improperly take a plea agreement. This claim fails because Petitioner fails to show that, “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Syl. Pt. 5, State v. Miller*, 194 W. Va. 3 (1995) (referencing *Strickland v. Washington*, 466 U.S. 668 (1984)). Specificity is required in habeas pleadings, and in this case there is nothing beyond Petitioner’s generic claims that he lacked mental capacity and was in the improper mental state at the time of the crime. Petitioner does not allege how his mental state was diminished at the time of the crime, but simply says that the facts of the case clearly show a diminished mental capacity.

While the Court agrees that committing a crime is a wrong decision and shows improper judgment, that alone is not enough to support a mental defense. Furthermore, a love for Christmas carols and clumsiness with a handgun do not by definition show that Petitioner could have raised a mental defense. Petitioner does not point to any mental treatment prior to the commission of the crime or evaluations done while incarcerated that would cause this Court to believe that the results of the proceedings would have been any different if a mental evaluation were conducted. Since the claim raised by Petitioner is clearly without merit, there is no need for an evidentiary hearing on this matter.

C. Unfair Pretrial Publicity

Petitioner asserts, as claim E in the Amended Petition for Writ of Habeas Corpus, that his trial counsel did not properly investigate the effect of unfair pre-trial publicity on his right to a fair trial. Petitioner cites his “right to a trial by impartial, objective jury . . . [as] a fundamental right guaranteed by the Sixth and Fourteenth Amendments of the United State Constitution and Article III Section 14 of the West Virginia Constitution” *Syl. Pt. 4, State v. Preacher*, 167 W. Va. 540 (1981). This claim by Petitioner is completely irrelevant, since he chose to accept a plea agreement. Trial counsel had not reached the point in the proceedings when he needed to request a transfer of venue or seek further protections in regards to Petitioner’s right to a fair trial by an impartial jury. Petitioner can not show prejudice, because no trial was had in this case. Instead, Petitioner took advantage of reduced charges in a plea agreement. Therefore, unfair pre-trial publicity, and its potential effect on a jury, has no bearing on Petitioner’s rights in this case. It is clear, without the need for an evidentiary hearing, that Petitioner is not entitled to relief on this claim.

II. Competency to Understand Guilty Plea

Petitioner also argues to set aside his guilty plea because he lacked the competency to plead guilty. The “test for competency to plead guilty to a criminal charge is the same as the test for mental competency to stand trial.” *State ex rel. Kessick v. BrodenKircher*, 170 W. Va. 331 (1984). “To be competent to stand trial, a Defendant must exhibit a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational, as well as factual, understanding of the proceeding against him.” *State v. Hatfield*, 206 W. Va. 125, 522 S.E.2d 416 (Per Curiam) (1999). Petitioner asserts that he did not have the right mental capacity to fully understand the consequences of his guilty plea. Once again, specificity is required in habeas proceedings; and Petitioner’s claim here lacks any support or specific allegations pertaining to Petitioner’s capacity. Petitioner was asked at his plea hearing if he had “ever been treated for any form of mental illness?” Hearing Transcript, September 23, 2005, p. 7.

Petitioner said “no sir,” as well as stating that he was not under the influence of any medication, drug, or alcohol at the time of the proceedings. *Id.* Without even the least bit of specificity as to Petitioner’s mental deficiency or any factual support from Petitioner’s past or treatment while incarcerated suggesting mental incapacity, the Court can not now question the validity of the court proceedings based on Petitioner’s bald allegations. There is no need for an evidentiary hearing on this matter, because it is clear that Petitioner is not entitled to relief under this claim.

III. Remaining Non-Jurisdictional Claims in Petitioner’s Pro Se Habeas Petition

The underlying criminal case involved in this habeas proceeding involves a guilty plea. Therefore, Petitioner’s rights on appeal and under these habeas proceedings are “severely limited,” and Petitioner was even advised of that possibility during his plea colloquy. *See* Hearing Transcript, September 23, 2005, p. 10-11. Without the setting aside of a guilty plea, an

individual's challenges under habeas are limited. Upon a guilty plea, a person waives any non-jurisdictional defects as to his criminal case. *State v. Legg*, 207 W. Va. 686, 536 S.E.2d 110, 114 (2000). Therefore, the remaining claims raised in his petition have been waived. Furthermore, Petitioner never filed a direct appeal in this case. "[T]here is a rebuttable presumption that petitioner intelligently and knowingly waived any contention or ground in fact or law relied on in support of his petition for habeas corpus which he could have advanced on direct appeal but which he failed to so advance." *Syl. Pt. 1, Ford v. Coiner*, 156 W. Va. 362 (1972). Finally, there is no merit to the claims raised in Petitioner's pro se habeas petition, thus, even if not waived there would be no support for relief in this case.

IV. Losh List

Petitioner is not entitled to relief on any claims specifically waived in his *Losh* List, and Petitioner has a filed, signed, and verified *Losh* List in which he expressly waived forty-three grounds: 1-3, 5, 9-13, 16-18, 20, 22-23, 25-38, 40-49, 53. Furthermore, the Court may "summarily deny unsupported claims that are randomly selected from the list of grounds," laid out in *Losh v. McKenzie*. *Losh v. McKenzie*, 166 W. Va. 762, 771 (1981); *Markley v. Coleman*, 215 W. Va. 729, 733 (2004). Therefore, all the claims not waived in Petitioner's *Losh* List which are not supported by the arguments raised in the Amended Petition for Writ of Habeas Corpus and Petitioner's Pro Se Petition Under West Virginia Code 53-4A-1 for a Writ of Habeas Corpus, are hereby summarily denied.

Accordingly, the Court DENIES Petitioner's Petition for Writ of Habeas Corpus. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

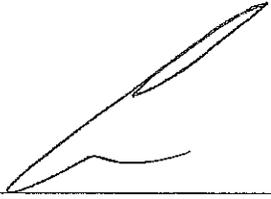
Therefore it is hereby ADJUDGED and ORDERED that as a FINAL ORDER Petitioner is not entitled to a Writ of Habeas Corpus, thus his Petition is hereby denied. Since this matter has

been fully reviewed and a final decision has been reached by this Court the Circuit Clerk is directed to remove this matter from the active civil docket.

The Court directs the Circuit Clerk to distribute attested copies of this order to the following counsels of record:

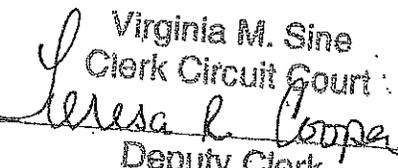
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CHRISTOPHER C. WILKES, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

A TRUE COPY
ATTEST

Virginia M. Sine
Clerk Circuit Court
By 
Deputy Clerk