

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

**Stanley Demere,
Petitioner Below, Petitioner**

vs.) **No. 12-0145** (Pendleton County 10-C-2)

**David Ballard, Warden, Mount Olive Correctional Center
Respondent Below, Respondent**

FILED

March 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner, Stanley Demere, by counsel Jessica M. Baker, appeals from the “Order Denying Petitioner’s Amended Second Petition for Post-Conviction Habeas Corpus Relief” entered by the Circuit Court of Pendleton County on October 12, 2010. Respondent, David Ballard, Warden of Mount Olive Correctional Complex, appears by counsel, Laura Young.

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 Rules of Appellate Procedure.

Petitioner was convicted of first degree murder and sentenced to life without mercy. Petitioner filed a direct appeal to this Court, which was refused. On June 7, 2007, petitioner filed his first petition for habeas corpus relief asserting eleven grounds for relief. The circuit court denied the petition for habeas corpus relief after an evidentiary hearing. On June 3, 2009, this Court refused petitioner’s appeal of the circuit court’s order denying habeas corpus relief¹. Next, petitioner filed a petition for habeas corpus relief in the United States District Court for the Northern District of West Virginia asserting nine grounds for relief, which was held in abeyance pending resolution of unexhausted federal claims at the State level. On March 18, 2010, and June 28, 2010, Petitioner filed a pro se second petition for habeas corpus relief and an amended second petition for habeas corpus relief asserting four grounds for relief, including ineffective assistance of prior habeas corpus counsel for failing to raise federal constitutional rights. On October 12, 2010, the circuit court denied petitioner’s amended second petition for habeas corpus relief stating, “if a federal right was presented, then the [c]ourt did consider such federal issues in making its decision.”

This Court reviews appeals of circuit court orders denying habeas corpus relief under the following standard:

¹ This Court refused petitioner’s habeas corpus appeal, No. 090677.

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.

Syl. Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).

Petitioner argues prior habeas corpus counsel failed to raise federal constitutional rights as grounds for habeas corpus relief. Petitioner also argues that the circuit court failed to acknowledge and specifically find that petitioner's federal rights were not violated by trial counsel in the first habeas corpus order. The respondent argues only ineffective assistance of prior habeas corpus counsel is proper in this case as other issues were fully adjudicated or waived. The respondent argues petitioner has failed to offer any evidence to support the conclusory statement that previous counsel failed to raise allegations of petitioner's federal constitutional rights. The respondent argues the instant order clarifies that "the [c]ourt did consider such federal issues in making its decision." This Court finds that the order shows that the circuit court considered federal issues in making its first habeas ruling. Therefore, we find no merit in this assignment of error because we find no error in the finding that prior habeas counsel was not ineffective

For the foregoing reasons, we find no error in the decision of the circuit court and the denial of petitioner's petition for writ of habeas corpus is affirmed.

Affirmed.

ISSUED: March 12, 2013

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Brent D. Benjamin
Justice Menis E. Ketchum