

## IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, EX REL.,  
CHARLES L. MITTER,

PETITIONER,

vs.

// CIVIL ACTION NO: 10-C-10

DAVID BALLARD, WARDEN,

RESPONDENT.

**ORDER DENYING WRIT OF HABEAS CORPUS  
FOLLOWING OMNIBUS HEARING**

On or about January 14, 2010, the Petitioner filed his Petition for Writ of Habeas Corpus in the Circuit Court of Preston County, pursuant to Losh v McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981). On or about January 14, 2010, a Checklist of Grounds for Post-Conviction Habeas Corpus Relief was filed. By Order entered January 15, 2010, the Petitioner was appointed counsel, Attorney Melissa Giggenbach. The parties appeared on April 27, 2010, for an Omnibus Evidentiary Hearing where both the Petitioner and the Respondent were given a full opportunity to be heard.

Upon examination of the Petition, and upon full review of the evidence presented by the Petitioner in support of his claims for relief, this Court finds that:

1. The Petitioner appeared by counsel Melissa Giggenbach, and Respondent appeared by counsel, Melvin C. Snyder III, Prosecuting Attorney of Preston County.
2. This is the third petition filed by Petitioner for a Writ of Habeas Corpus. Prior Petitions were filed in Civil Action Nos. 93-C-19 and 05-C-56.
3. In his Petition, the Petitioner raises the following grounds for relief, concerning both state and federal rights:
  - a. Failure to call previous habeas counsel, James L. Flanigan at the Second Omnibus Hearing held January 5, 2007.
  - b. Failure to notify client [Charles L. Mitter] of the denial of the Second Habeas.
  - c. Failure to notify client [Charles L. Mitter] of Right to Petition for Appeal.

4. The Court hereby incorporates by reference its Findings of Fact and Conclusions of Law as set forth in its Opinion Letter dated July 27, 2010, and filed in the official court file for Civil Action No. 10-C-10, as if set forth verbatim herein. In accordance with these findings, it is hereby

**ORDERED** that the Writ of Habeas Corpus sought by the Petitioner is hereby **DENIED** and the Petitioner's Petition for Writ of Habeas Corpus is **DISMISSED** from the docket of this Court, and it is further

**ORDERED** that this Order constitutes a final judgment and the Petitioner has the right to appeal the Court's ruling to the West Virginia Supreme Court of Appeals. In the event Petitioner does appeal this matter, the Court continues his present counsel's appointment for such appeal; and it is further

**ORDERED** that the Circuit Clerk shall send a certified copy of this Order to Melissa Giggenbach, counsel for the Petitioner; and to Melvin C. Snyder III, counsel for the Respondent.

*2 copies  
5/10/27*

To the ruling of the Court, the Petitioner is saved his objections and exceptions.

**ENTER** this 27<sup>th</sup> day of July, 2010

*Lawrence S. Miller, Jr.*  
Lawrence S. Miller, Jr., JUDGE

**ENTERED** this 27<sup>th</sup> day of July, 2010

*Betsy Castle*  
Betsy Castle, CLERK  
*Shawntel Gamba*, Deputy

A TRUE COPY:

ATTEST: S/BETSY CASTLE  
CLERK OF THE CIRCUIT COURT  
By *Shawntel Gamba* Deputy

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, EX REL.,  
CHARLES L. MITTER,

PETITIONER,

vs.

// CIVIL ACTION NO: 10-C-10

DAVID BALLARD, WARDEN,

RESPONDENT.

**ORDER REGARDING PETITIONER'S MOTION  
FOR RELIEF FROM JUDGMENT**

By Order entered July 27, 2010, the Court denied the Petitioner's Third Petition for Writ of Habeas Corpus for the reasons set forth in an Opinion Letter of the Court dated July 27, 2010, which is hereby incorporated by reference. On or about August 9, 2010, the Petitioner filed a Motion for Alternation or Judgment or Relief From Judgment. The Motion, *inter alia*, requests the Court to consider additional evidence with respect to ineffective assistance of Second Habeas Counsel, Timothy Houston. The Court, having read said motion notes that it was the intent of the Court, in its Opinion Letter to find and conclude that the Petitioner failed to meet the second ground of the Strickland Test. The Court adheres to this finding and does accordingly

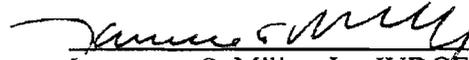
ORDER that the Petitioner's Motion for Alternation of Judgment or Relief from Judgment be and is hereby denied.

To the ruling of the Court the Petitioner is saved his objections and exceptions.

It is further **ORDERED** that the Circuit Clerk shall send a certified copy of this Order to Melissa Giggenbach, counsel for the Petitioner; and to Melvin C. Snyder III, counsel for the Respondent.

2 copies  
SID 8/27/10

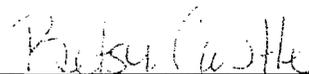
ENTER this 27<sup>th</sup> day of August, 2010

  
Lawrance S. Miller, Jr., JUDGE

ENTERED this 27<sup>th</sup> day of August, 2010

A TRUE COPY:

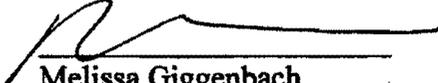
ATTEST: S/BETSY CASTLE  
CLERK OF THE CIRCUIT COURT  


  
Betsy Castle, CLERK  
  
Melissa Giggenbach, Deputy

**Certificate of Service**

I, Melissa Giggenbach, certify that I served a true and accurate copy of the foregoing Petitioner's Petition for Appeal via First Class Mail on November 19, 2010 upon the following:

Melvin Snyder  
Preston County Prosecuting Attorney  
106 W. Main S  
Kingwood, WV 26537



Melissa Giggenbach  
Counsel for Petitioner,  
Charles L. Mitter  
W.Va. State Bar No. 8036  
P.O. Box 4206  
Morgantown, WV 26504