

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

**State ex rel. Raymond J. Whitley,
Petitioner below, Petitioner**

vs) No. 101215 (Fayette County 05-C-11)

**James Rubenstein, Commissioner, West Virginia
Department of Corrections; Steve Canterbury,
Director of Regional Jails; John C. McKay,
Administrator, South Central Regional Jail,
Respondents below, Respondents**

FILED

February 25, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Raymond J. Whitley appeals the circuit court's March 12, 2010, Final Order denying petitioner's omnibus petition for post-conviction *habeas corpus* relief. The State filed a summary response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, 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.

At trial in 2003, a jury found petitioner guilty of First Degree Murder, with a recommendation of mercy, and Conspiracy to Commit a Felony. Thereafter, petitioner's trial counsel filed a direct petition for appeal that was filed twelve days late. This Court lodged the petition for appeal as untimely, but the case was nonetheless reviewed by this Court and the petition was refused on November 10, 2004.

In the instant *habeas* case, petitioner argues that he was denied his right to appeal because the direct petition for appeal was untimely. He further argues that

he received ineffective assistance of appellate counsel because of the untimely filing.¹ After an evidentiary hearing and the submission of a letter from Clerk of this Court, the circuit court denied the habeas petition. The circuit court found that the untimeliness of the petition for appeal was “either un-noticed or ignored by the Supreme Court, which proceeded to lawfully consider and refuse the petition for appeal after full consideration of its assignments of error, and the record as presented. . . .”

We find no error in the circuit court’s conclusion and hereby affirm.

Affirmed.

ISSUED: February 25, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh

¹ Petitioner also raised other issues in his *habeas* petition, but he does not appeal the circuit court’s denial of *habeas* relief on those issues.