

**State of West Virginia
Supreme Court of Appeals**

**Allen B. Johnson,
Petitioner**

vs) No. 101500 (Hancock County 10-P-32)

**William Fox, Warden,
Respondent**

FILED

February 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the circuit court's order of July 16, 2010, which denied Petitioner's second habeas corpus petition. The appeal was timely filed by the Petitioner *pro se*.

This Court has considered the party's brief 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 party's written brief and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review 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.

The Petitioner, Allen B. Johnson, argues that the circuit court erred in denying his petition without a hearing or appointing counsel. This Court has previously stated that if the claims encompassed in the habeas corpus petition fail to show that the Petitioner is entitled to habeas relief, then it is not necessary to appoint habeas counsel. *Mugnano v. Painter*, 212 W.Va. 831, 833, 575 S.E.2d 590, 592 (2002). The circuit court order dated July 16, 2010 states that Petitioner asserts ineffective assistance of counsel, double jeopardy in consecutive sentencing and an illegal sentence. The circuit court found that the habeas petition must be denied as Petitioner asserted these same issues in his prior habeas petition, and at the omnibus hearing held on June 30, 2005. The circuit court further found that Petitioner at that time was represented by counsel who did a "thorough job."

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 14, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum, II

Justice Thomas E. McHugh