

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

**State ex rel. Wesley Michael May
Petitioner below, Petitioner**

vs) No. 11-0176 (Berkeley County 06-C-25)

**Thomas McBride, Warden
Respondent below, Respondent**

FILED
May 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Wesley Michael May appeals the circuit court's order denying his *habeas corpus* petition without an evidentiary hearing, alleging fourteen assignments of error. A timely summary response was filed by Respondent Thomas McBride, Warden. Petitioner seeks a reversal of the circuit court's decision, a vacation of his conviction, and a remand to the circuit court for a new trial.

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.

Petitioner was accused of sexual abuse by his daughter in 2001, and a search warrant was executed on his home. Officers took possession of several items, including a computer, and obtained a statement from petitioner after he was given *Miranda* warnings. Petitioner was then indicted by a grand jury on three counts of sexual abuse of a minor by a parent or guardian; one count of possession of material visually portraying a minor engaged in sexually explicit conduct; and one count of displaying obscene matter to a minor. Two lengthy pretrial hearings were held regarding various matters, including several suppression issues, the State's notice of intent to use 404(b) evidence, and petitioner's motion to dismiss. Petitioner was convicted of two counts of sexual abuse and one count of possession of material visually portraying a minor engaged in sexually explicit conduct on October 3, 2003.

Petitioner was sentenced to ten to twenty years on each of the sexual abuse charges and two years on the possession of child pornography charge, with all three sentences to run consecutively.

Petitioner appealed to this Court, and his appeal was refused in September 2004. He later filed a Petition for Writ of *Habeas Corpus* in the circuit court, alleging multiple issues. On September 15, 2010, the circuit court issued a twenty-seven page order denying the Petition for Writ of *Habeas Corpus* without a hearing.

Petitioner now appeals from the denial of his *habeas corpus* petition below. “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’s first assignment of error is that the circuit court erred in denying his Petition for *Habeas Corpus* without an evidentiary hearing, as there was probable cause to believe that Petitioner was entitled to at least some of the relief requested. “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. 2, *State ex rel. Watson v. Hill*, 200 W.Va. 201, 488 S.E.2d 476 (1997). The Court finds no error in the circuit court’s decision to deny the petition for writ of *habeas corpus* without a hearing.

Regarding the other thirteen assignments of error alleged by the petitioner, the Court has carefully considered the merits of these arguments as set forth in his petition for appeal and in the response of the State, and it has reviewed the appellate record. Finding no error in the denial of *habeas corpus* relief, the Court affirms the decision of the circuit court and fully incorporates and adopts, herein, the circuit court’s detailed order dated September 15, 2010. The Clerk of Court is directed to attach a copy of the same hereto.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: May 16, 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