

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

**Edgar W. Friedrichs, Jr.,
Petitioner Below, Petitioner**

vs) **No. 11-0564** (Fayette County 10-C-93)

**David Ballard, Warden,
Respondent Below, Respondent**

FILED

June 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Edgar W. Friedrichs, Jr., by counsel, Jeffery T. Mauzy, appeals from the Fayette County Circuit Court's order entered on August 3, 2010, that denied his pro se petition for post-conviction habeas corpus relief without an evidentiary hearing. The State of West Virginia, by counsel, Thomas W. Rodd, has filed its response on behalf of Respondent, Warden David Ballard. Petitioner filed a reply.

On January 30, 2002, petitioner was convicted by a jury on one count of first degree sexual abuse and three counts of sexual abuse by a custodian. Petitioner's direct appeal from his criminal convictions was refused by the Court. Petitioner filed his pro se petition for a writ of habeas corpus in circuit court on April 1, 2010. Petitioner appeals the denial of his habeas petition and argues that the circuit court erred in failing to hold an evidentiary hearing; in denying his motion to appoint habeas counsel; and in failing to address ten of the twenty-three grounds for relief raised in his habeas petition. Petitioner seeks a reversal of the circuit court's decision and a remand for further proceedings.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented 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 in regard to petitioner's first two assignments of error – the circuit court's decision not to hold an evidentiary hearing and its denial of petitioner's motion for appointment of habeas counsel. Therefore, those two issues will be disposed of in this memorandum decision as contemplated under Rule 21 of the Revised Rules of Appellate Procedure. Regarding petitioner's third assignment of error – that the circuit court failed to rule on ten of petitioner's grounds for relief, we remand this case for further proceedings.

“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).

In regard to the circuit court's decision not to hold an evidentiary hearing and its denial of petitioner's motion to appoint counsel, we have stated that,

“[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.”
Syllabus Point 1, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973).

Syl. Pt. 2, *White v. Haines*, 215 W.Va. 698, 601 S.E.2d 18 (2004). In its August 3, 2010, order, the circuit court noted that it had reviewed the complete contents of the court file, the habeas petition, the underlying criminal case file, the trial transcripts, and the transcripts of all pre-trial and post-trial hearings. The circuit court added that it had presided over the jury trial in petitioner's underlying criminal case and was thoroughly familiar with the case. Accordingly, with the above-stated standard in mind, we cannot say that the circuit court abused its discretion in denying petitioner's motion for appointment of habeas counsel or in choosing to rule on petitioner's habeas petition absent an evidentiary hearing.

In regard to petitioner's third assignment of error – that the circuit court failed to rule on ten of the twenty-three grounds for relief raised in his habeas petition – we remand solely in that regard. The circuit court's August 3, 2010, does indeed address only thirteen of petitioner's twenty-three grounds for relief. That said, the order in regard to those thirteen issues is extremely thorough, well-reasoned, and supported by the law and the record. Therefore, we believe it likely that, for whatever reason, the circuit court did not receive the last twenty-five pages of the petition which contain the discussion of the ten grounds that were not addressed.

For the foregoing reasons, we affirm the circuit court's August 3, 2010, order and remand the case to the circuit court with instructions to rule on the remaining ten issues.

For the foregoing reasons, we affirm in part and remand in part.

Affirmed in part and remanded in part.

ISSUED: June 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Thomas E. McHugh

DISQUALIFIED:

Justice Margaret L. Workman

NOT PARTICIPATING:

Justice Brent D. Benjamin