

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

**Ronnie R., Petitioner**

vs) **No. 11-0640** (Mercer County08-C-398)

**David Ballard, Warden of Mount Olive  
Correctional Complex, Respondent**

**FILED**

April 16, 2012

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

**MEMORANDUM DECISION**

This appeal arises from the Circuit Court of Mercer County, wherein the petitioner's, Ronnie R.<sup>1</sup>, petition for writ of habeas corpus was denied by order entered on December 16, 2010. This appeal was timely perfected by the petitioner's counsel, Jerome F. McFadden, with the petitioner's appendix accompanying the petition. Respondent Ballard, by counsel Robert Goldberg, filed a response in support of the circuit court's decision.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix 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 appendix 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 of Appellate Procedure.

In 1992, the petitioner was convicted by a jury of six counts of sexual assault in the first degree, three counts of sexual assault in the third degree, and three counts of sexual abuse by a parent for sexually assaulting his son, who was six years old at the time of the abuse. Consequently, the petitioner was sentenced to serve fifteen to twenty-five years in the state penitentiary for counts one through six; one to five years in the state penitentiary for counts seven, eight, and nine; and one to five years in the state penitentiary for counts ten, eleven, and twelve. The circuit court ordered that the petitioner's sentences for counts one through six would run concurrently with each other, as would the petitioner's sentences for counts seven through twelve. Additionally, the petitioner's sentences for counts seven through twelve were ordered to run consecutively to his sentences for counts one through six. The petitioner thereafter petitioned for habeas relief in circuit court, which was denied. Upon appeal of this order denying him of habeas relief, this Court affirmed the circuit court's decision in *Ronnie R. v. Trent*, 194 W.Va. 364, 460 S.E.2d 499 (1995).

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<sup>1</sup> Because the victims in this matter were young children at the time of the offenses, we follow our traditional practice in cases involving sensitive facts and use only the last initials of the parties involved. See *State v. Edward Charles L.*, 183 W.Va. 641, 398 S.E.2d 123 (1990).

While incarcerated for his 1992 convictions, the petitioner was charged with one count of sexual assault in the first degree, three counts of conspiracy, one count of sexual abuse by a parent, and one count of parent procuring and allowing sexual abuse to be inflicted upon a child. These charges arose from an incident that allegedly occurred between the petitioner, the petitioner's girlfriend, and the girlfriend's daughter on an evening before the petitioner entered the penitentiary for his 1992 convictions. In 1996, the petitioner was convicted after a bench trial of one count of sexual assault in the first degree, for which the trial court sentenced the petitioner to serve fifteen to thirty-five years in the state penitentiary. The petitioner appealed this decision, arguing that he had not waived his right to a jury trial. On appeal, this Court affirmed the circuit court's decision.

In 2008, the petitioner filed the instant petition for habeas relief with the circuit court and the circuit court held an omnibus evidentiary hearing. Following this hearing, the circuit court denied habeas corpus relief in its order entered on December 16, 2010. The petitioner now appeals that order, alleging five assignments of error.

"In reviewing the challenges to 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).

With regard to the 1992 case, the petitioner seeks habeas relief for one assignment of error, arguing ineffective assistance of counsel. Petitioner argues that the habeas circuit court erred in finding that the issue was moot because it was "raised in the first habeas." In late 1996, the victim in that case, the petitioner's son, recanted his trial testimony in a letter submitted to the trial judge. Following this recantation, however, the petitioner's son recanted his recantation in a statement obtained by the West Virginia State Police. The petitioner's trial counsel moved for a new trial based on the victim's initial recantation. The trial court held a hearing on this motion and on February 27, 1997, the trial court denied this motion, based on the victim's testimony at the hearing that he "had not lied at trial and that his father had gotten him to send the letter, that being the basis for [petitioner's] motion." Consequently, the trial court concluded that there was no newly discovered evidence. In the instant circuit court order denying habeas relief, the circuit court found that this issue was moot because it was previously resolved at the petitioner's first habeas corpus proceeding. However, a review of the transcript of this proceeding and of the Court's 1995 decision on the petitioner's first habeas petition, indicates that it was a similar but different issue that was raised in the petitioner's first habeas proceeding. When this Court affirmed the circuit court's ruling in the petitioner's first petition for habeas relief, the evidence of the handwritten letter from the victim to the circuit court trial judge was not yet an issue. Therefore, the issue was not moot before the instant habeas circuit court. However, the Court finds that any error in this regard is harmless as upon review of the appendix accompanying the petitioner's appeal, the Court concludes that the petitioner's trial counsel did not provide ineffective assistance of counsel in his motion for a new trial. Under Syllabus Points Five of *State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995), ineffective assistance of counsel is reviewed as follows:

In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

Moreover, Syllabus Point 6 of *State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995), directs as follows:

In reviewing counsel's performance, courts must apply an objective standard and determine whether, in light of all the circumstances, the identified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel's strategic decisions. Thus, a reviewing court asks whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue.

A review of the appendix indicates that after the victim submitted his letter to the trial court recanting his trial testimony, the petitioner's trial counsel filed a motion for a new trial with the circuit court. In this motion, the petitioner's trial counsel argued that the victim's recantation met the criteria for newly discovered evidence under *State v. O'Donnell*, 189 W.Va. 628, 433 S.E.2d 566 (1993), to warrant a new trial. Trial counsel further argued that even though the victim later recanted this recantation, the veracity of this statement and the circumstances upon which it was taken are unknown. The circuit court denied this motion, finding that at the hearing on this motion, the victim "stated that he had not lied at the trial and that his father [the petitioner] had gotten him to send the letter, [which was] the basis for [this] motion." The Court finds that trial counsel was not ineffective in timely filing this motion and did not act deficiently in the petitioner's interests.

With regard to the 1996 case, the petitioner seeks habeas relief for four assignments of error. First, he argues ineffective assistance of trial counsel, for which he argues five issues: (1) failure to investigate letters, allegedly sent by the petitioner, to the petitioner's girlfriend and daughter; (2) failure to challenge the child victim's statements; (3) failure to effectively plea bargain; (4) failure to discuss with the petitioner his right to testify at trial; and (5) failure to obtain a copy of the taped statement by the child victim. Second, the petitioner argues that the trial court improperly admitted Rule 404(b) evidence, namely (1) the letters allegedly sent by the petitioner to the petitioner's girlfriend and daughter and (2) the petitioner's prior conviction from the 1992 trial. Third, the petitioner argues that he was denied of his right to a jury trial, rather than a bench trial. Lastly, the petitioner argues ineffective assistance of appellate counsel because his appellate counsel only argued the issue of the petitioner's waiver of a jury trial and did not raise the additional issues identified in the petitioner's instant habeas petition.

With regard to these remaining arguments of the petitioner's appeal of the circuit court order

denying his petition for writ of habeas corpus, which stem from the 1996 case, the Court has carefully considered the merits of each of the petitioner's arguments as set forth in his petition for appeal. Finding no error in the denial of habeas corpus relief, the Court fully incorporates and adopts the circuit court's detailed and well-reasoned "Order Denying Petitioner's Amended Petition for Writ of *Habeas Corpus*," entered December 16, 2010, as to these issues, and attaches the same hereto.

For the foregoing reasons, we affirm the circuit court decision.

Affirmed.

**ISSUED: April 16, 2012**

**CONCURRED IN BY:**

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