

FILED

April 14, 2003

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

Davis, J., dissenting:

In this proceeding the majority opinion granted the petitioner, William Crupe, habeas corpus relief for the purpose of resentencing. For the reasons stated below, I dissent.

The Petitioner Did Not Request Habeas Relief for Resentencing

The majority opinion concluded that Mr. Crupe presented “essentially four issues for our assessment: failure to obtain a transcript in a timely fashion; the State’s failure to disclose evidence regarding a witness; allegedly insufficient evidence of the crime of sexual assault; and improper selection of the petit jury.”¹ The majority opinion correctly found that none of these issues were properly before the Court in a habeas proceeding, therefore no relief could be granted on the issues raised in the petition.

Accordingly, the majority opinion should have simply denied the writ. Instead of denying the writ, however, the majority opinion *sua sponte* determined that the writ should be issued commanding the trial court to resentence Mr. Crupe for appeal purposes.

¹There was a fifth issue raised by Mr. Crupe which the majority opinion indirectly addressed. Mr. Crupe argued that he was denied the right to appeal the underlying conviction. This issue has no merit. The trial court extended the time period for appeal so that Mr. Crupe would be able to file his appeal.

In this proceeding, Mr. Crupe did not ask this Court to issue a writ directing the trial court to resentence him. Our cases have indicated that “a defendant who fails to raise any issue . . . proceeds at his or her peril even when the issue is of a constitutional dimension.” *State v. Greene*, 196 W. Va. 500, 505, 473 S.E.2d 921, 926 (1996) (Cleckley, J., concurring). *See also State v. Lockhart*, 208 W. Va. 622, 627 n.4, 542 S.E.2d 443, 448 n.4 (2000) (“Assignments of error that are not briefed are deemed waived.”); *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) (“Although we liberally construe briefs in determining issues presented for review, issues which are not raised . . . are not considered[.]”). The majority opinion violates our time honored rule that prohibits review of and relief for matters that have not been properly raised.

In my review of the record in this case, it has become quite obvious why Mr. Crupe did not ask this Court to issue the writ requiring resentencing. Mr. Crupe initially filed a petition for habeas relief in the trial court. By order entered November 28, 2001, the trial court granted Mr. Crupe habeas relief in part. The relief granted in the habeas proceeding by the trial court was as follows: “Accordingly, the Court shall schedule a hearing to re-sentence the Petitioner, if he so desires, so as to give him an additional four months for appeal.”

The habeas relief granted by the trial court is the exact same relief the majority opinion purports to award Mr. Crupe. It is simply illogical to issue the writ purporting to grant

the same relief that has already been granted by the trial court.

For this reason, then, I respectfully dissent.