

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

**Orville C. Massey, Jr.,
Petitioner Below, Petitioner**

vs.) No. 101617 (Fayette County 10-C-283(H))

**David Ballard, Warden, Mt. Olive Correctional
Complex, Respondent Below, Respondent**

FILED

June 8, 2012

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

MEMORANDUM DECISION

Petitioner Orville C. Massey, Jr. appeals the circuit court's order denying his petition for a writ of habeas corpus, in which he alleged ineffective assistance of counsel in his prior habeas proceeding. The instant appeal was timely filed by the pro se petitioner with the entire record being designated on appeal. The Court has carefully reviewed the written arguments contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present either a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

In 2001, petitioner was indicted on 240 counts of sexually assaulting and abusing his stepdaughter over a number of years during the 1970's. Prior to trial, the State dismissed the first thirty-four counts of the indictment since those events occurred while petitioner and his stepdaughter lived in Georgia. A jury subsequently found petitioner guilty of the remaining 206 counts.

Following his convictions, petitioner filed pro se a petition for a writ of habeas corpus on the basis that his trial counsel, J.B. Rees, failed to appeal his case. The circuit court dismissed the petition and re-sentenced him for the purpose of permitting him to take his appeal.

Petitioner later filed a petition for a writ of habeas corpus, on which the circuit court conducted an omnibus hearing where petitioner was represented by James Adkins. The circuit court heard "testimony of the witnesses on behalf of Petitioner and that of Petitioner and at the conclusion of the testimony heard argument of counsel regarding the issues raised by the Writ of Habeas Corpus." In its order denying habeas corpus relief, the circuit court made twenty-nine findings of fact in concluding that "all of the issues raised in the Omnibus Habeas Corpus Proceeding are without legal merit." Petitioner appealed the denial of habeas relief. This Court refused his appeal.

Petitioner filed this second petition for a writ of habeas corpus alleging that his habeas counsel Mr. Adkins did not provide him with effective assistance in the prior habeas proceeding. Petitioner also raised many of the same grounds for relief that the circuit court found to be without legal merit in the previous habeas proceeding. Petitioner's basic contention is that Mr. Adkins did not adequately raise and argue the grounds for relief on his behalf. The circuit court denied petitioner's instant habeas petition noting that petitioner's previous petition was refused by this Court and that he also has had a federal habeas petition denied by the United States District Court for the Southern District of West Virginia.

In denying petitioner's instant habeas petition, the circuit court held that "Petitioner herein is, by law, entitled to one omnibus habeas corpus hearing, and Petitioner herein has been afforded said omnibus habeas corpus hearing." Petitioner argues that he should be afforded a subsequent habeas corpus proceeding because his counsel did not provide him with effective assistance in the prior habeas proceeding. "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. 1, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973). The record already contains findings that in the prior habeas proceeding, petitioner's habeas counsel Mr. Adkins presented "[the] testimony of the witnesses on behalf of Petitioner and that of Petitioner" and that at the conclusion of the testimony, "argument of counsel [was heard] regarding the issues raised by the Writ of Habeas Corpus." Because petitioner's ineffective assistance of habeas counsel claim lacked substantial merit, the circuit court in the case sub justice did not err in denying petitioner's most recent habeas petition.

For the foregoing reasons, we find no error in the decision of the circuit court and the denial of petitioner's petition for a writ of habeas corpus is affirmed.

Affirmed.

ISSUED: June 8, 2012

CONCURRED IN BY:

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

NOT PARTICIPATING:

Justice Margaret L. Workman