

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

**William R. Ward,
Petitioner Below, Petitioner**

vs.) No. 101620 (Fayette County 10-C-170)

**Evelyn Seifert, Warden, Northern Correctional Facility,
Respondent Below, Respondent**

FILED

December 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner William R. Ward appeals the September 17, 2010 order of the Circuit Court of Fayette County denying his petition for a writ of habeas corpus without a hearing. Petitioner argues, *inter alia*, that trial counsel was ineffective and that his sentence is unconstitutionally excessive. The instant appeal was timely filed by the petitioner with the entire record being designated on appeal. The Court has carefully reviewed the record and the written arguments contained in the petition, and the case is mature for consideration.

This matter has been treated and considered under the Revised Rules of Appellate Procedure. 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.

Petitioner was indicted in January of 2005 on two counts of first degree sexual assault, two counts of incest, and two counts of sexual abuse by a parent, guardian, or custodian. The alleged victim was his granddaughter, S.H., who was born in 1995.

Petitioner's first trial ended in a mistrial. Petitioner did not appear for the second, and final, day of his retrial and was later apprehended by federal authorities in southern West Virginia. The trial continued without him. The jury found petitioner guilty on all charges. Petitioner was subsequently sentenced to fifteen to thirty-five years on each of the first degree sexual assault convictions, five to fifteen years on each of the incest convictions, and ten to twenty years on each of the sexual abuse by a parent, guardian, or custodian convictions. With the exception of one of the incest sentences, the sentences were set to run consecutively for a total effective sentence of fifty-five to 125 years. Petitioner was re-sentenced in October of 2008 for purposes of appeal. This Court

refused to hear the appeal by an order entered June 3, 2009. Among the issues raised was whether trial counsel was ineffective.

On June 28, 2010, petitioner filed a petition of a writ of habeas corpus raising various issues. In denying petitioner's habeas petition without an evidentiary hearing, the circuit court noted the following:

The Court presided in every proceeding in the Petitioner's underlying case, from arraignment, through two jury trials and sentencing, and with the knowledge and experience gained through presiding in all of the aforementioned, this Court has carefully read and considered the Petitioner's request for post-conviction relief as set forth in the entire contents of the above-styled case file.

(emphasis added).

As to the issues petitioner raised in his habeas petition, the circuit court found as follows:

. . . Subsequent to the aforementioned arrest [following petitioner's failure to appear], and further appearances in Court, including sentencing, the Petitioner never raised any issues concerning his competency to proceed in the underlying criminal case.[*]

Throughout the Petitioner's jury trials and sentencing, he was, in the Court's opinion, fairly and effectively represented by effective trial counsel.

The mere allegation that appellate counsel was ineffective basically because appellate counsel was unsuccessful in the appellate process is without merit.

The sentences imposed by the Court were, under the law and the facts of the case, then and now lawful and appropriate sentences.

Furthermore, the circuit court noted that "the evidence, at trial was clearly sufficient for the jury to find the Petitioner guilty beyond a reasonable doubt." Accordingly, the circuit court found that none

* Of further relevance to this issue, the circuit court noted that "[a]t no time during the Petitioner's underlying criminal case did he or any of his counsel ever raise the issue of the Petitioner's mental competency, and the Petitioner always appeared to be alert, responsive and well aware of his surroundings and the important criminal proceedings."

of the allegations contained in petitioner's petition rise to the level of probable cause necessitating the issuance of the writ.

On appeal, petitioner alleges that trial counsel was ineffective and that his sentence is unconstitutionally excessive. Petitioner alleges that an evidentiary hearing is necessary to properly adjudicate his claim of ineffective assistance of counsel. Petitioner further alleges that the circuit court should be reversed and that habeas counsel should be appointed, asserting that the aid of counsel is necessary to properly inform the circuit court of his claim that he was mentally incompetent to stand trial.

"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). After careful consideration, the Court concludes that the circuit court properly denied petitioner's petition for a writ of habeas corpus.

For the foregoing reasons, we find no error in the decision of the circuit court and affirm its order denying petitioner's petition for a writ of habeas corpus.

Affirmed.

ISSUED: December 7, 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