

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

**Richard Booth, Jr.,
Petitioner Below, Petitioner**

vs.) No. 11-0085 (Ohio County 10-C-315)

**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 Richard Booth, Jr. appeals the circuit court's order denying his petition for a writ of habeas corpus, in which the circuit court rejected his argument that his eighty year sentence for first degree robbery was disproportionate. The circuit court did not address his two other grounds for relief. 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 record and the written arguments contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case 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 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 petitioner's direct appeal, *State v. Booth*, 224 W.Va. 307, 313, 685 S.E.2d 701 (2009) (*per curiam*), *cert. denied*, __ U.S. __, 130 S.Ct. 2365, 176 L.Ed.2d 573 (2010), he argued that "the sentence of eighty years violates both state and federal constitutional law because the time period is impermissibly harsh and disproportionate to the underlying facts." This Court affirmed petitioner's sentence finding that "the sentence imposed to be in line with other sentences upheld by this Court" and concluding that "we do not find that his sentence is disproportionate to the sentences received by his codefendants." 224 W.Va. at 315-16, 685 S.E.2d at 709-10. Based upon the prior opinion, the Court finds no error in the circuit court's determination that petitioner's arguments concerning disproportionality lack merit.

In addition to the argument of disproportionate sentencing, the Court notes that petitioner raised as additional grounds for habeas corpus relief: (1) that his guilty plea was involuntary and (2) that trial counsel provided ineffective assistance. The circuit court's order reflects that the court appeared to be under the impression that petitioner's claim of disproportionality was his "only one assignment of error" and did not address these issues. Petitioner argues that the circuit court failed to make findings of fact and conclusions on his two other grounds for habeas relief. In Syllabus Point One, *State of West Virginia ex rel. Watson v. Hill*, 200 W.Va. 201, 488 S.E.2d 476 (1997), this Court held the following:

West Virginia Code section 53-4A-7(c) (1994) requires a circuit court denying or granting relief in a habeas corpus proceeding to make specific findings of fact and conclusions of law relating to each contention advanced by the petitioner, and to state the grounds upon which the matter was determined.

Therefore, the case should be remanded to the circuit court pursuant to *Hill* for findings of fact and conclusions of law on petitioner's second and third grounds for habeas relief.

For the foregoing reasons, we affirm in part, finding no error in the circuit court's determination that petitioner's claim of disproportionality is without merit, but remand for findings of fact and conclusions of law on petitioner's second and third grounds for habeas corpus relief.

Affirmed in part, Remanded.

ISSUED: June 8, 2012

CONCURRED IN BY:

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

DISSENTED IN BY:

Justice Brent D. Benjamin