

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

**Edward Jones,
Petitioner Below, Petitioner**

vs.) No. 11-0396 (Taylor County 07-C-39)

**Adrian Hoke, Warden, Huttonsville
Correctional Center, Respondent Below,
Respondent**

FILED
September 4, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Edward Jones, pro se, appeals the January 27, 2011 order of the Circuit Court of Taylor County denying his petition for a writ of habeas corpus because it had been rendered moot by his release on parole. The respondent warden, by Barbara H. Allen, his attorney, filed a summary response, to which petitioner filed a reply.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record 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 record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

For the purposes of this appeal, the respondent warden accepts petitioner's recitation of the relevant facts:

- On January 19, 1996, petitioner was convicted of two counts of malicious wounding under West Virginia Code § 61-2-9(a) and was sentenced to an aggregate term of four to twenty years in the state penitentiary.
- Petitioner filed a prior petition for a writ of habeas corpus on April 18, 2007, in Civil Action No. 07-C-39, which was denied and apparently not appealed.
- On January 20, 2011, petitioner filed his instant habeas petition, which was given the same civil action number as his 2007 petition.
- Petitioner was released on parole on January 24, 2011.

- On January 27, 2011, the circuit court dismissed petitioner's instant petition because "[it] is now **MOOT**."

Petitioner now appeals the circuit court's dismissal of his instant petition, noting that the issue of whether a habeas petition is rendered moot because of the inmate's release on parole has not been authoritatively decided by this Court.¹ See *State ex rel. McCabe v. Seifert*, 220 W.Va. 79, 85, 640 S.E.2d 142, 148 (2006) (declining the State's invitation to decide the issue).

In Syllabus Point One of *McCabe*, this Court reiterated the following principle: "'Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court.' Syl. pt. 1, *State ex rel. Lilly v. Carter*, 63 W.Va. 684, 60 S.E. 873 (1908)." Petitioner argues that he remains "[a] person convicted of a crime and incarcerated under sentence of imprisonment thereof" under West Virginia Code § 53-4A-1(a), the West Virginia post-conviction habeas corpus statute, while he is on parole. Petitioner asserts that a parolee suffers restraints upon his liberty not imposed upon members of the general public. Petitioner argues that moreover, it was his status at the time he filed his petition that determined the circuit court's jurisdiction. The respondent warden maintains that habeas relief is available under the post-conviction habeas corpus statute only to those, who are actually "incarcerated." The respondent warden notes that in *McCabe*, this Court dismissed as moot a habeas petitioner's appeal when he was released on parole. After careful consideration of the parties' arguments, this Court concludes that the circuit court did not err in dismissing petitioner's habeas petition as moot.

For the foregoing reasons, we find no error in the decision of the circuit court and its January 27, 2011 order denying petitioner's petition for a writ of habeas corpus because it had been rendered moot is affirmed.

Affirmed.

ISSUED: September 4, 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

¹ In his brief, petitioner notes that he filed an original jurisdiction habeas petition in this Court, which was identical to his instant petition in No. 07-C-39, that was also dismissed "as moot, in light of the fact that petitioner was paroled on January 24, 2011."