

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

**Craig S. Swick,
Petitioner Below, Petitioner**

vs.) No. 11-0824 (Mineral County 99-C-44)

**Howard Painter, Warden, Mt. Olive
Correctional Complex, Respondent Below,
Respondent**

FILED

October 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Craig S. Swick, pro se, appeals the April 26, 2011, order of the Circuit Court of Mineral County denying his petition for a writ of habeas corpus and also denying his request for documents from his underlying criminal case. The respondent warden, by Laura Young, his attorney, timely 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, 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In September of 1993, petitioner was indicted by the Grand Jury of Mineral County on one count of first degree murder. It was alleged that on August 23, 1993, petitioner and Billy Joe Hottle robbed a convenience store, and murdered the store clerk, in Keyser, West Virginia.¹ Petitioner was originally tried on October 3, 1994. The jury hung, and the circuit court declared a mistrial. A new trial was subsequently held, where petitioner was convicted of first degree murder under the felony murder rule. Petitioner filed a motion for a new trial, which the circuit court denied on July 17, 1995. Petitioner appealed to this Court, which refused his petition on November 26, 1996.

On April 27, 1999, petitioner filed a petition for a writ of habeas corpus. According to petitioner, on July 11, 2001, the circuit court granted a motion to have substitute habeas counsel

¹ This crime was part of a larger crime spree involving petitioner and Mr. Hottle. In separate proceedings, petitioner was convicted of breaking and entering, grand larceny, and first degree murder in Grant County. In Fayette County, petitioner was convicted of kidnapping.

appointed. Counsel then filed a motion for an extension of time to file a supplemental habeas petition and brief, which motion was granted. Petitioner asserts, however, that after the circuit court granted counsel's motion, no further activity occurred in his habeas case until August 30, 2010.

On August 30, 2010, petitioner, pro se, requested copies of the docket sheets from his habeas case, No. 99-C-44, and his underlying criminal case, No. 93-F-54. The circuit clerk sent petitioner the docket sheets. Petitioner asserts that on September 13, 2010, he made a request for specific documents from both cases but that the circuit clerk sent him only documents from his habeas case, not his criminal case.

On April 26, 2011, the circuit court entered an order in response to petitioner's request for documents from his criminal case, No. 93-F-54. The circuit court denied petitioner's habeas petition and further ordered that "the [Circuit] Clerk shall not provide Petitioner his requested information in Case No. 93-F-54." The circuit court stated its reasoning as follows:

The Court, in response to [p]etitioner's recent request for information, reviewed Case No. 99-C-44, and has determined that [petitioner]'s Petition for Habeas Corpus appears to be based upon his Petition for Appeal, which the West Virginia Supreme Court denied in November, 1996.^[2] Petitioner states (12) separate grounds for error; however, none of these grounds are constitutionally based.^[3] As such, this Court is dismissing [petitioner]'s Petition for Habeas Corpus for failure to state any constitutional grounds as points of error. Further, because [p]etitioner has had an appeal and because the Court is dismissing his Habeas Petition, the Court is denying [petitioner]'s request for documentation in Case No. 93-F-54.

On appeal, petitioner argues that the circuit court erred in summarily denying his habeas petition and also erred in denying his request for documents from his underlying criminal case. Petitioner argues

² This Court has reviewed petitioner's petition for appeal from his direct appeal and finds that the circuit court was correct that petitioner's habeas petition closely tracks it.

³ Petitioner's twelve grounds for relief were the following: (1) insufficiency of evidence; (2) denial of change of venue; (3) lack of chain of custody evidence; (4) introduction of evidence of collateral crimes; (5) failure to dismiss a juror for cause; (6) improper prosecutorial comments during opening statements; (7) introduction of gruesome pictures; (8) introduction of certain letters between petitioner and Mr. Hottle; (9) introduction of petitioner's statement to police officer; (10) failure to declare a mistrial when medical examiner changed his testimony at second trial; (11) failure to declare a mistrial when the prosecutor made prejudicial and inflammatory remarks during closing arguments; and (12) failure to declare a mistrial when the prosecutor made statements not based upon the evidence.

that the circuit court did not make findings of fact and conclusions of law on each ground for relief petitioner raised in his petition and that at least some of his grounds were of constitutional magnitude. Petitioner further argues that if the circuit court wanted to summarily deny his petition, the court should have done so pursuant to Rule 4(c) of the West Virginia Rules Governing Post-Conviction Habeas Proceedings, which would have allowed petitioner the opportunity to re-file his petition with more factual detail.

In response, the respondent warden argues that none of petitioner's grounds were of constitutional magnitude and, therefore, he was not entitled to habeas review. *See* Syl. Pt. 4, *State ex rel. McMannis v. Mohn*, 163 W.Va. 129, 254 S.E.2d 805 (1979) ("A habeas corpus proceeding is not a substitute for a writ of error in that ordinary trial error not involving constitutional violations will not be reviewed."), *cert. denied*, 464 U.S. 831, 104 S.Ct. 110, 78 L.Ed.2d 112 (1983). The respondent warden argues that petitioner offers no independent argument for his contention that he is entitled to documents from his underlying criminal case and, accordingly, that the circuit court also did not err in denying the request.

The standard of review for the circuit court's denial of petitioner's habeas petition is set forth in Syllabus Point One, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006):

In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a *de novo* review.

After careful consideration, this Court concludes that the circuit court did not abuse its discretion in denying petitioner's petition and in also denying petitioner's request for documents from his underlying criminal case.

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: October 19, 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