

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

**Jackie Lee Riffle Sr.,
Petitioner Below, Petitioner**

FILED

July 3, 2012

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

vs.) No. 11-1033 (Ritchie County 11-P-4)

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

MEMORANDUM DECISION

Petitioner Jackie Lee Riffle Sr., pro se, appeals the June 24, 2011, order of the Circuit Court of Ritchie County denying his petition for a writ of habeas corpus without a hearing. The respondent warden, by Laura Young, his attorney, filed a 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.

Petitioner was sentenced on January 9, 2009, after pleading guilty to one count of child abuse by a parent, guardian, custodian, or other person of trust and one count of sexual abuse in the first degree. The circuit court sentenced petitioner to ten to twenty years for child abuse by a parent, guardian, custodian, or other person of trust and to one to five years for first degree sexual abuse, to be served consecutively. Petitioner's counsel filed a motion to have the circuit court reconsider his sentence. The circuit court held a hearing on the motion and then denied it by order entered June 26, 2009. There was no direct appeal in petitioner's criminal case.

On December 10, 2009, petitioner filed, pro se, his first petition for a writ of habeas corpus. On February 12, 2010, the circuit court denied the petition stating that petitioner raised two grounds for relief. The first ground was the failure of petitioner's counsel to file an appeal, but the circuit court pointed out that petitioner freely pled guilty, gave a factual basis for his admission of guilt, and was well represented. The circuit court further pointed out that at no time prior to the habeas petition did petitioner ever indicate that he wished to appeal, and by then, his appeal time had run.

Petitioner's other ground for relief was that he was denied of a copy of all of his records, but the

circuit court held that the failure to obtain records is not a proper basis for a habeas petition.¹ Furthermore, the circuit court justified its refusal to hold an omnibus hearing by stating that "[t]he decision as to whether to grant relief, deny relief, or to hold an evidentiary hearing on factual issues, if any exist is a matter of discretion with the courts of West Virginia (quoting *Ravnell v. Coiner*, 320 F.Supp. 1117, 1124 (N.D. W.Va. 1970))." The circuit court concluded that petitioner's petition contained only a plain recitation of facts and did not entitle him to a hearing.

Petitioner filed, pro se, his second petition for a writ of habeas corpus on February 24, 2011, making various facial and as-applied challenges to the constitutionality of West Virginia Code § 61-8D-5, which provides for the offense of child abuse by a parent, guardian, custodian, or other person of trust. The circuit court denied petitioner's petition by order entered June 24, 2011. The circuit court ruled as follows:

[Petitioner] filed a lengthy (57 page) Petition, in which he raises several assignments of error; the exact number of which is undetermined as he uses both numerical and alphabetical systems of chronology and the Court is unsure whether [petitioner] intended the alphabetical points to be categorized as sub-headings. Regardless of the chronology [petitioner] employed, most of his assignments of error raise the issue that the statutes [petitioner] was convicted under are unconstitutional due to vagueness in the statutory text, "elementally redundant, class operation as a Bill of Attainder, and disparative [sic] and disproportionate by sentencing"

"As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited" *Kolender v. Lawson*, 461 U.S. 352 at 357, 103 S.Ct. 1855 at 1858[, 75 L.Ed.2d 903 at 909] (1983). The statutes under which [petitioner] was convicted define the criminal offenses with sufficient definiteness that an ordinary person, such as the Petitioner, could understand that the conduct was prohibited. [Petitioner] understood the charges well enough to enter into a plea agreement, whereupon on the record he indicated he understood such charges and was pleading guilty to them freely, knowingly, and voluntarily.

¹ Subsequent to the denial of his first habeas petition, petitioner filed an original jurisdiction petition in this Court seeking to compel the production of certain documents in the custody of the circuit clerk. This Court refused petitioner's petition on November 17, 2010.

The Court does not find any of [petitioner]'s other contentions to [be] meritorious enough to address. Accordingly, for the foregoing

reasons [the] Circuit Court finds the petition contains an incomprehensible recitation of grounds without a sufficient factual foundation, therefore [petitioner] is detained by lawful authority; and, the Court **ORDERS** that [petitioner]'s Petition be **DENIED** on all grounds and **STRICKEN** from the Court's docket, without the necessity of an evidentiary hearing.

The standard for this Court's review of the circuit court's order denying 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.

On appeal, petitioner argues that the circuit court's order was inadequate in that it did not contain specific findings of fact and conclusions of law on each and every sub-ground of his claim that West Virginia Code § 61-8D-5 is unconstitutional. Petitioner further argues that the circuit court erred in not appointing him habeas counsel and in not affording him an omnibus hearing. The respondent warden argues that petitioner's many arguments that West Virginia Code § 61-8D-5 is unconstitutional lack merit and cites to Syllabus Point One, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973), which holds that "[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." After careful consideration, this Court concludes that the circuit court did not abuse its discretion in denying petitioner's petition.

For the foregoing reasons, we find no error in the decision of the circuit court and its June 24, 2011, order denying petitioner's petition for a writ of habeas corpus is affirmed.

Affirmed.

ISSUED: July 3, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

NOT PARTICIPATING:

Justice Brent D. Benjamin