

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

**State ex rel. Donald Lee Taylor,
Petitioner Below, Petitioner**

vs) **No. 11-1565** (Randolph County 11-C-138)

**Marvin Plumley, Warden,
Respondent Below, Respondent**

FILED

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

MEMORANDUM DECISION

This appeal with accompanying record, filed pro se by Petitioner Taylor, arises from the Circuit Court of Randolph County, wherein petitioner's petition for writ of habeas corpus was dismissed by order entered on October 17, 2011. Respondent Warden Plumley¹, by counsel Charles Houdyschell Jr., filed a response in support of the circuit court's decision. Petitioner has filed a reply.

This 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 August of 1987, petitioner began serving his sentence of ten years to life in prison. In July of 2011, petitioner was found to have sent letters to a prison nurse at her home, requesting that she send him ultram and neurontin. Accordingly, he was cited for three violations, two for compromising an employee and one for trafficking. Petitioner was consequently placed on punitive segregation for sixty days. During this time, petitioner filed a petition for writ of habeas corpus in circuit court, arguing that respondent erred in his findings that petitioner had committed these violations. The habeas court dismissed petitioner's petition for writ of habeas corpus, based upon his failure to state a claim upon which relief could be granted. Petitioner appeals.

On appeal, petitioner argues that the circuit court abused its discretion by entering an arbitrary order not based in law or fact, deliberately misquoting petitioner's facts and evidence, failing to appoint counsel, refusing and failing to decide petitioner's claims upon the merits, and failing and refusing to grant petitioner the relief to which he is entitled. Respondent contends that the circuit court did not abuse its discretion in dismissing petitioner's petition as part of the pre-

¹ Pursuant to Rule 41(c) of the West Virginia Rules of Appellate Procedure, we have replaced the respondent party's name with Warden Marvin Plumley. The initial respondent on appeal, Adrian Hoke, is no longer Warden of Huttonsville Correctional Center.

service of process screening. Respondent also adds that he was never properly served with petitioner's original filing in circuit court.

This Court reviews appeals of circuit court orders denying habeas corpus relief under the following standard:

"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." Syllabus point 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).

Syl. Pt. 1, *State ex rel. Franklin v. McBride*, 226 W.Va. 375, 701 S.E.2d 97 (2009).

Our review of the record reflects no clear error or abuse of discretion by the circuit court. Having reviewed the circuit court's "Order" entered on October 17, 2011, we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions as to the assignment of error raised in this appeal. The Clerk is directed to attach a copy of the circuit court's order to this memorandum decision.

For the foregoing reasons, we affirm the circuit court's order.

Affirmed.

ISSUED: November 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

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

DONALD LEE TAYLOR,

Petitioner,

vs.

11-C-138

ADRIAN HOKE, Warden,

Respondent.

ORDER

On September 16, 2011, the Petitioner, Donald Lee Taylor, an inmate at the Huttonsville Correctional Center (HCC), filed a conditions of confinement action before this Court. The Petitioner alleges he was unfairly placed in punitive segregation while housed at the HCC in July of 2011 and is being unfairly denied his parole hearing at the HCC, in violation of his right to liberty.

The Petitioner indicates that his regularly scheduled parole hearing, set for April 2011, was deferred pending approval of a home plan. While awaiting approval, the Petitioner was placed in segregation as a result of three violation of the internal policies of the HCC. The Petition and the supporting documents from HCC staff indicate that such violations stemmed from improper communications sent from the Petitioner to a medical staff member at the HCC.

It is the information of the Court that the Petitioner's punitive segregation ended on or about September 5, 2011. The filings of the Petitioner give support to such assertion, as Exhibits 1, 2 & 3 indicate that the Petitioner's punitive segregation ended on or about September 5, 2011, provided no other infractions occurred within that time period.

The Petitioner's own filings indicate that the HCC abided by its internal operating procedures when dealing with the Petitioner's violation of the policies at the HCC. The Court notes that the administrative ruling and actions taken by the HCC in this matter are well within the

authority of a West Virginia Division of Corrections (WVDOC) facility. Absent some compelling reason, the Court will not interfere with the internal procedures at the HCC or any other Division of Corrections facility. The Court is not at liberty to pick apart each and every decision made by a WVDOC facility regarding safety and fair discipline of its inmates.

In regards to the Petitioner's allegations that he is being denied a parole hearing, the Court notes that information obtained through the WVDOC website indicate that the Petitioner will be granted a parole hearing on or about April of 2012. Based on the aforementioned facts, the Court is of the opinion that the Petitioner is not being denied a parole hearing.

The Court also notes that the revocation of privileges are a direct result of the Petitioner's actions. The Court is fully aware that the Petitioner filed an almost identical action in 2008, alleging the same basic claims. The Court summarily dismissed such action. The WVDOC policies seek to provide consequences for the actions of inmates within the WVDOC facilities. This Court firmly believes that this Petition is an attempt by the Petitioner to circumvent the policies of the WVDOC. It appears to the Court that the Petitioner systematically conducts himself in violation of the rules and policies at the HCC and expects such actions to go unchecked. Absent some compelling reason, this Court will not now or in the future substitute its judgment for the judgment of the administration in the WVDOC with regards to internal operating procedures.

In light of the foregoing, the Court hereby ORDERS that the Petitioner's conditions of confinement action be DISMISSED for failure to state a claim upon which relief can be granted. The Clerk of this Court shall REMOVE this matter from the Court's active docket.

The Clerk of this Court is also directed to assess the Petitioner costs for the filing of this action as provided for under *W.Va. Code* § 25-1A-2 and *W.Va. Code* § 25-1A-3.

The Clerk of this Court shall forward copies of this Order to the Petitioner and Respondent.

Enter this 17th day of October, 2011.


JUDGE JAYMIE GODWIN WILFONG

cc: Taylor
Holtz

ENTERED

OCT 17 2011

ORDER BOOK
NUMBER _____ PAGE _____
PHILIP D. RIGGLEMAN, CLERK

A TRUE COPY:
ATTEST:
PHILIP D. RIGGLEMAN
CLERK OF THE CIRCUIT COURT
BY Chavell DEPUTY