

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

**Eric Paul Minda, Petitioner Below,
Petitioner**

vs) No. 12-0284 (Ohio County 06-C-92)

**David Ballard, Warden, Respondent Below,
Respondent**

FILED

April 16, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Eric Paul Minda, by counsel Richard H. Lorensen, appeals the January 26, 2012 order of the Circuit Court of Ohio County denying his petition for writ of habeas corpus. Respondent, by counsel, has filed a response, to which petitioner has filed a reply.¹

As more fully explained herein, the Court is of the opinion that the circuit court erred in denying the petition for writ of habeas corpus. Because the Court previously directed the circuit court to hold an omnibus evidentiary hearing on the petition for writ of habeas corpus, the decision of the Court is set forth in a memorandum decision rather than an opinion. Accordingly, this case satisfies the “limited circumstances” requirement of Rule 21(d) and it is appropriate for the Court to issue a memorandum decision rather than an opinion.

By order entered on March 22, 2006, the circuit court summarily denied petitioner’s pro se petition for writ of habeas corpus. Petitioner appealed the denial, and this Court granted petitioner relief by remanding the matter with direction to hold an omnibus hearing. After being appointed counsel, petitioner filed an amended petition for habeas relief. By order entered on August 31, 2007, the circuit court summarily dismissed one count of the petition alleging cruel and unusual punishment. Thereafter, the circuit court held an omnibus evidentiary hearing on the petition, after which the circuit court denied petitioner relief. On appeal, petitioner alleges that the circuit court erred in summarily dismissing the first count of his habeas petition and in denying him relief for ineffective assistance of counsel.

This Court has previously held that

[i]n 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.

¹ Pursuant to Rule 41(c) of the West Virginia Rules of Appellate Procedure, the name of the current public officer has been substituted as a respondent in this action.

Syl. Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006). Upon our review, and in light of this Court's prior order remanding this matter for the holding of an omnibus habeas corpus hearing, the Court finds that it was error for the circuit court to summarily dismiss Count I of the petition prior to the holding of the omnibus hearing. As such, the Court remands the matter for the holding of an omnibus hearing on all issues raised in petitioner's amended petition for writ of habeas corpus. Further, the Court directs the circuit court to reexamine petitioner's claim of ineffective assistance of counsel in light of the United States Supreme Court of Appeals' opinion in *Lafler v. Cooper*, 132 S.Ct. 1376 (2012).

For the foregoing reasons, we reverse the circuit court's January 26, 2012 order denying petitioner habeas relief and remand the matter for the holding of an omnibus hearing as to all issues raised in petitioner's amended petition for writ of habeas corpus.

Reversed and Remanded.

ISSUED: April 16, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II