

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

**James H. Farris,
Petitioner Below, Petitioner**

vs) **No. 12-1094** (Jefferson County 09-C-342)

**David Ballard, Warden, Mount Olive Correctional Complex,
Respondent Below, Respondent**

FILED

June 10, 2013

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

MEMORANDUM DECISION

Petitioner James H. Farris's appeal, filed by counsel Christopher Prezioso, arises from the Circuit Court of Jefferson County, wherein petitioner's petition for writ of habeas corpus was denied by order entered on August 23, 2012. Respondent David Ballard, Warden, by counsel Brandon C.H. Sims, filed a response in support of the circuit court's decision. Petitioner thereafter submitted 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 Rules of Appellate Procedure.

In 1996, a jury convicted petitioner on four counts of second degree sexual assault. He was sentenced to thirty to seventy-five years in prison. Petitioner thereafter filed two petitions for writ of post-conviction habeas corpus. The first was denied in 2000. The second was also denied, from which petitioner brings the instant appeal.

Petitioner argues that the circuit court erred in refusing to hold an omnibus evidentiary hearing on his second petition when he argued that (1) his trial counsel was deficient, (2) there was an improper conspiracy to convict him, (3) he was incompetent during his trial proceedings, and (4) his sentence violates the Eighth Amendment of the United States Constitution. Respondent contends that the circuit court committed no error in denying habeas corpus relief. Respondent argues that petitioner's arguments were either raised and addressed in his first habeas corpus petition, were waived in his first petition, or are not reviewable issues.

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).

We also bear in mind the following:

A prior omnibus habeas corpus hearing is *res judicata* as to all matters raised and as to all matters known or which with reasonable diligence could have been known; however, an applicant may still petition the court on the following grounds: ineffective assistance of counsel at the omnibus habeas corpus hearing; newly discovered evidence; or, a change in the law, favorable to the applicant, which may be applied retroactively.

Syl. Pt. 4, *Losh v. McKenzie*, 166 W.Va. 762, 277 S.E.2d 606 (1981).

Our review of the record uncovers no error or abuse of discretion by the circuit court in denying habeas corpus relief to petitioner. Petitioner either waived his claims or did not raise any new arguments concerning ineffective assistance of habeas counsel, newly discovered evidence, or a change in the law that would retroactively apply in his favor as directed by aforementioned Syllabus Point Four of *Losh v. McKenzie*, *supra*. The record provides that petitioner has not raised any grounds in his second habeas corpus petition that warrant relief. Under these circumstances, the circuit court properly denied petitioner’s second habeas corpus petition.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 10, 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