

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

FILED

**State of West Virginia ex rel.
Robert B. Joseph, Petitioner**

**April 2, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

vs.) No. 12-0006

**Honorable Carrie Webster, Judge of the
Circuit Court of Kanawha County, Respondent**

MEMORANDUM DECISION

In the original proceeding now before this Court, the petitioner, Robert B. Joseph, by counsel Matthew A. Victor, seeks a writ of mandamus against the respondent, the Honorable Carrie Webster, Judge of the Circuit Court of Kanawha County, to compel her to issue a final decision in a petition for post-conviction habeas corpus relief that has been submitted for decision since August 2011. Upon consideration of the petition, we conclude that the writ of mandamus should be granted.

The Court has considered the petition for writ of mandamus and the record presented by the petitioner. The facts and legal arguments are adequately set forth therein and the Court has previously decided that oral argument is not necessary to the decision in this case. The facts in this case are not complex and the case does not present a novel or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

On December 13, 2006 the petitioner in this action filed a *pro se* petition for post-conviction habeas corpus relief. The petition was summarily denied by the Honorable Irene Berger and the petitioner appealed to this Court. On March 4, 2008, this Court reversed Judge Berger's decision and remanded with directions to appoint counsel, conduct an omnibus hearing, and issue a final decision. Upon remand, the circuit court appointed counsel who later had to be relieved due to illness, and thereafter the petitioner's current counsel was appointed. On September 9, 2009 the petitioner filed an amended petition for post-conviction habeas corpus relief alleging numerous errors of a constitutional dimension.

In October 2009, Judge Berger was confirmed as a United States District Judge for the Southern District of West Virginia. On December 28, 2009, the Honorable Carrie Webster took the oath of office and assumed her position as a judge of the Circuit Court of Kanawha County following her appointment by Governor Joe Manchin III. Accordingly, the habeas corpus petition that is the subject of this mandamus action was assigned to Judge Webster.

No further activity on the case occurred in 2010, although petitioner's counsel wrote the circuit court on two occasions in 2010 to request a hearing and/or a decision. In January 2011 the petitioner filed a motion for a hearing and/or a decision on the merits. A status hearing was held on April 4, 2011. According to the docket sheet, the state's answer to the amended petition was filed the next day, on April 5, 2011.¹ A second hearing was held on July 20, 2011. According to the petitioner, the parties at that hearing advised the circuit court that the matter was mature for decision. On August 2, 2011, petitioner's counsel forwarded excerpts of the trial transcript to Judge Webster.

On January 3, 2012, the petitioner filed a petition for writ of mandamus seeking to compel Judge Webster to issue a final decision. On February 9, 2012, this Court issued a rule to show cause returnable March 27, 2012, unless sooner mooted by entry of a ruling on the petition for writ of habeas corpus. The Clerk of this Court contacted the circuit clerk's office this morning, and Judge Webster has still failed to issue an order disposing of the petitioner's habeas corpus petition.

Section 17 of Article III of the West Virginia Constitution provides that "justice shall be administered without sale, denial or delay." Furthermore, Canon 3B(8) of the West Virginia Code of Judicial Conduct provides that "[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly." This Court has also pointed out that "judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission." Syllabus point 1, in part, *State ex rel. Patterson v. Aldredge*, 173 W. Va. 446, 317 S.E.2d 805 (1984). The duty of judges to issue timely decisions is also clearly set forth in the West Virginia Trial Court Rules: "[T]he Supreme Court of Appeals has determined that the expeditious processing and timely disposition of cases by circuit courts are essential to the proper administration of justice. Accordingly, it

¹The state's answer to the amended petition includes a certificate of service indicating that it was filed in January 2010. However, the answer does not appear on the docket sheet in this case until fifteen months later – the day after the April 2011 status hearing. We note that the cover sheet of the state's answer has an incorrect case number, and therefore may have been mis-filed.

directs circuit courts and their officers to comply with these rules, which provide time standards for the processing of all cases except for those governed by statute or in which the circuit court finds, on the record, that extraordinary circumstances exist for exemption from these standards.” Trial Court Rule 16.01. *See also* Trial Court Rule 16.13(d) “It shall be the duty of circuit judges . . . to effectuate expeditious movement and timely disposition of all cases assigned to them. It shall further be the duty of such judicial officers to control their dockets and to control continuances by means of strict application of the Rules of Civil procedure, Rules of Criminal Procedure, and statutory time frame provisions governing continuances.”

The post-conviction remedy sought by the petitioner is specifically provided for in West Virginia Code § 53-4A-1 et seq., and is further guaranteed by West Virginia Constitution, Article III, § 4: “The privilege of the writ of habeas corpus shall not be suspended.” The Court’s prior remand order required that a final decision be entered, as set forth in Rule 9(c) of the Rules Governing Post-Conviction Remedies, which states that: “***The court shall draft a comprehensive order*** including: (1) findings as to whether a state and/or federal right was presented in each ground raised in the petition; (2) findings of fact and conclusions of law addressing each ground raised in the petition; (3) specific findings as to whether the petitioner was advised concerning his obligation to raise all grounds for post conviction relief in one proceeding; and (4) if the petitioner appeared pro se, specific findings as to whether the petitioner knowingly and intelligently waived his right to counsel.” (Emphasis added).

In this case, it has been over four years since this Court remanded this matter for appointment of counsel and final disposition. To be clear, most of the four-year delay in this case is not attributable to the respondent. However, the case has been pending since 2006 and has been fully submitted for decision since August 2, 2011. Accordingly, a final order in this matter is long overdue, and it is abundantly clear that the petitioner is entitled to the relief requested in this matter.

In granting such relief it is important to note that this Court cannot compel Judge Webster to rule in a particular manner. This Court held in Syllabus point 2 of *State ex rel. Patterson v. Aldredge*, *supra*:

“Mandamus will not lie to direct the manner in which a trial court should exercise its discretion with regard to an act either judicial or quasi-judicial, but a trial court, or other inferior tribunal, may be compelled to act in a case it unreasonably neglects or refuses to do so.” *State ex rel. Cackowska*

v. Knapp, 147 W. Va. 699, 130 S.E.2d 204 (1963).

Accordingly, it is ADJUDGED and ORDERED that a writ of mandamus be issued directing the respondent, the Honorable Carrie Webster, to render a decision on the amended petition for writ of habeas corpus filed below and currently pending in the Circuit Court of Kanawha County (Civil Action No 06-MISC-479) within fifteen days of the date of this Memorandum Decision.

Writ Granted.

ISSUED: April 2, 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