

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

**FILED
January 25, 2024**

**Reginald Kelly,
Petitioner Below, Petitioner**

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 22-0513** (Cabell County 21-C-20)

**Carl Aldridge, Superintendent,
Western Regional Jail and Correctional Facility,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Reginald Kelly appeals the order of the Circuit Court of Cabell County, entered on April 5, 2022, denying his petition for a writ of habeas corpus.¹ Upon our review, we determine that oral argument is unnecessary and that a memorandum decision is appropriate. *See* W. Va. R. App. Proc. 21.

Mr. Kelly is serving a term of two to ten years of imprisonment for his 2020 conviction of possession with intent to deliver fentanyl pursuant to his entry of a *Kennedy* plea.² In exchange for his plea, the State agreed not to seek a recidivist enhancement. Mr. Kelly did not appeal his sentence. He did, however, file a petition for a writ of habeas corpus with the circuit court in January 2021, which was amended in July 2021, after the court appointed counsel to represent Mr. Kelly. The sole ground that Mr. Kelly asserted for relief was that he received ineffective assistance of trial counsel. The circuit court afforded Mr. Kelly an omnibus hearing in February 2022, but he presented no evidence in support of his petition. The circuit court denied Mr. Kelly’s petition by order entered on April 5, 2022.

“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

¹ Mr. Kelly is a self-represented litigant. Respondent Carl Aldridge, Superintendent of the Western Regional Jail, appears by Attorney General Patrick Morrissey and Assistant Attorney General Ronald T. Goudy.

² Petitioner’s plea was entered pursuant to *Kennedy v. Frazier*, 178 W. Va. 10, 12, 357 S.E.2d 43, 45 (1987) (recognizing that, under *North Carolina v. Alford*, 400 U.S. 25 (1970), “[a]n accused may voluntarily, knowingly and understandingly consent to the imposition of a prison sentence even though he is unwilling to admit participation in the crime, if he intelligently concludes that his interests require a guilty plea and the record supports the conclusion that a jury could convict him”).

clearly erroneous standard; and questions of law are subject to a *de novo* review.” Syl. Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).

On appeal, Mr. Kelly continues to assert that he received ineffective assistance of trial counsel. His arguments, however, mirror those made to—and addressed by—the circuit court. We perceive no novel arguments in Mr. Kelly’s brief on appeal. Having reviewed the circuit court’s April 5, 2022, “Order Denying Petition for Habeas Corpus Relief,” we find that the circuit court adequately addressed petitioner’s arguments. Accordingly, we conclude that the circuit court did not abuse its discretion in denying habeas relief.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn