STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
January 25, 2024
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Jeremiah Max Brown Jr.,
Petitioner Below, Petitioner

vs.) No. 22-738 (Hardy County 22-C-3)

Shelby Searls, Superintendent,
Huttonsville Correctional Center,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Jeremiah Max Brown Jr. appeals the Circuit Court of Hardy County's August 12, 2022, order denying his petition for a writ of habeas corpus.[1] Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).

In 2017, law enforcement launched an investigation into petitioner following reports that he committed sexual crimes against minors. These reports included allegations of sexual contact and that petitioner, through cell phone messaging applications, sent pictures of his penis, engaged in conversations of a sexual nature, and attempted to coordinate in-person meetings for sexual contact. Accordingly, in February 2017, Corporal Charles Hartman sought a warrant to search petitioner's home to seize "[a]ny material, digital file or printed, electronic device, including digital software and applications" associated with the commission of third-degree sexual assault and solicitation of a minor via computer, "including any mobile cellular phones, laptops, tablets and computers." The warrant issued, and petitioner represented below that he "became compliant and gave the cell phone to Corporal Hartman."[2] The property receipt following execution of the search warrant inventories receipt of petitioner's cell phone and another electronic device.

[1] Petitioner appears by counsel Jeremy B. Cooper, and respondent appears by Attorney General Patrick Morrisey and Assistant Attorney General Mary Beth Niday.

[2] Corporal Hartman's report indicates that he asked petitioner for his phone at a convenience store before the search warrant was executed at petitioner's home. Petitioner reportedly "put it behind his back momentarily" but then handed it to the officer.

Following this seizure, Corporal Hartman sought a warrant authorizing a search of the phone's digital content. Corporal Hartman's supporting affidavit recited that execution of the prior search warrant yielded petitioner's phone and another electronic device and that petitioner had since provided a "full confession," which included petitioner's acknowledgement that the seized devices could contain conversations with five minor victims. The ensuing warrant authorized seizure of "[a]ny digital files, to include but not limited to [various digital content], and other communications sent between the suspect named in this search warrant and the victims identified in this search warrant, or any other person who may be established as a minor victim of a crime"; "[a]ny evidence of the crime identified in this search warrant, in the form of digital files contained upon the suspect's personal digital media storage devices"; and "[a]ny and all digital files, to include but not limited to, [various digital content] which are evidence of the crime stated herein, or any crimes against persons, or the State of West Virginia."

The grand jury returned an eleven-count indictment charging petitioner with various sex crimes in 2018. He filed a motion to suppress evidence, which the circuit court denied.[3] Petitioner and the State then entered into a plea agreement, pursuant to which petitioner pled no contest to one count of sexual abuse by a custodian, two counts of third-degree sexual assault, and two counts of soliciting a minor via computer. The State dismissed the remaining charges. The circuit court, finding that petitioner's plea was "freely, voluntarily, and knowingly made," accepted the plea and later sentenced petitioner to the statutorily prescribed terms of incarceration, ordered to run concurrently.[4]

Petitioner filed a petition for a writ of habeas corpus in the circuit court. Of relevance to this appeal, petitioner claimed that he was denied effective assistance of counsel because trial counsel failed to adequately argue (1) that the two warrants described above were overly broad and (2) that Corporal Hartman improperly used the first warrant by intimating that it authorized seizure of petitioner's phone when, according to petitioner, it authorized seizure of only the phone's contents. Petitioner argued that this ineffective assistance rendered his plea involuntary. Petitioner further claimed that Corporal Hartman's alleged misrepresentation caused him to fear that his phone's incriminating contents would be discovered imminently, which in turn caused him to confess. Petitioner argued that his confession was, therefore, coerced and involuntary.

The circuit court denied petitioner's petition for a writ of habeas corpus by order entered August 12, 2022, without holding a hearing. The court determined that a hearing was unnecessary because each of petitioner's claims was belied by the record, and the court concluded that the warrants provided sufficient particularity; that petitioner's confession was voluntary, as he was advised of—and waived—his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966); and that the transcript of petitioner's plea hearing showed that his plea was voluntarily entered. Petitioner now appeals from the order denying him habeas relief, and in our review of that order, "[w]e review

[3] Neither the motion to suppress nor the order denying it were made part of the appendix record, but petitioner represents that he sought to suppress his confession, and respondent does not dispute that representation.

[4] Petitioner filed but later withdrew his appeal to this Court from the circuit court's sentencing order.

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." Syl. Pt. 1, in part, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006).

Petitioner raises a single assignment of error on appeal, claiming that the court erred in resolving his ineffective assistance of counsel claim without holding an evidentiary hearing. Petitioner maintains that Corporal Hartman misrepresented the first warrant, resulting in a coerced confession, and that both warrants lacked the requisite particularity, especially in the use of broad phrasing such as "any and all data, including but not limited to . . . ." Then, petitioner argues that he was "induced into the plea by the prospect of going to trial and facing evidence" that should have been suppressed. He contends that a hearing was necessary to create a record that included petitioner's "state of mind," law enforcement's "investigative activities," and trial counsel's "strategic purposes."

Petitioner's claim rises and falls with an evaluation of the first warrant issued below. Petitioner correctly notes that "[a] search warrant must particularly describe the place to be searched and the things or persons to be seized." Syl. Pt. 3, in part, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996). But "where detailed particularity is impossible, generic language is permissible if it particularizes the types of items to be seized," and the relevant inquiry in assessing whether the particularity requirement has been met is "whether an executing officer reading the description in the warrant would reasonably know what items are to be seized." *Id.* The first warrant authorized the seizure of "mobile cellular phones," clearly imparting sufficient particularity to allow the officer to know that petitioner's phone was to be seized. Where the warrant clearly authorized seizure of the phone, there can be no claim that Corporal Hartman misrepresented its scope.[5] And because there was no misrepresentation, petitioner's claim that his ensuing confession was coerced necessarily fails. As a further consequence, petitioner's ineffective assistance of counsel and attendant involuntary plea claims fail.[6] Because these determinations

[5] Because petitioner's misrepresentation argument fails to get off the ground, we need not evaluate the "totality of all the surrounding circumstances" in determining the voluntariness of petitioner's ensuing confession. Syl. Pt. 7, in part, *State v. Farley*, 192 W. Va. 247, 452 S.E.2d 50 (1994).

[6] In other words, because the warrant was sufficiently particular as to the phone, trial counsel did not render ineffective assistance in failing to adequately argue otherwise, nor would the result of the underlying proceedings have been different had trial counsel adequately advanced a meritless argument. *See* Syl. Pt. 5, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995) (establishing that to succeed on an ineffective assistance of counsel claim, a habeas petitioner must establish that "[c]ounsel's performance was deficient under an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different").

Furthermore, because the description of petitioner's cell phone was sufficiently particular, and it was the officer's receipt of his phone that led petitioner to confess, we need not analyze other language in the warrants. That analysis would be purely academic where there is no contention that any evidence was seized pursuant to other provisions, let alone used against him

could readily be made from the record before the circuit court, a hearing was not necessary. A habeas petitioner "is not entitled, as a matter of right, to a full evidentiary hearing in every proceeding instituted under the provisions of the post-conviction habeas corpus act." *Gibson v. Dale*, 173 W. Va. 681, 688, 319 S.E.2d 806, 813 (1984) (citation omitted). To the contrary,

> [i]f the facts were sufficiently developed at or before trial so that the court can rule on the issue presented without further factual development, the court may, in its discretion, decline to conduct an evidentiary hearing during the habeas proceeding and may rule on the merits of the issues by reference to the facts demonstrated on the record.

Id. at 689, 319 S.E.2d at 814. Petitioner's claim needed no further factual development; rather, it could be—and properly was—resolved by reference to the record below, so the court did not abuse its discretion in denying petitioner habeas relief without affording him a hearing.

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

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in any way. *See State v. Gray*, No. 22-0082, 2023 WL 4030074, *11 (W. Va. June 15, 2023)(memorandum decision) (finding "any alleged lack of particularity" in warrants "irrelevant" and the attendant claimed suppression issue "wholly theoretical" where "no evidence seized pursuant to those warrants was entered into evidence"). Indeed, in presenting a factual basis for petitioner's no contest plea, the State represented that the evidence it would present against petitioner at trial consisted of testimony from his victims and from Corporal Hartman, "who would testify that [petitioner] admitted to each and every single count set forth in the indictment."