

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

**FILED
January 25, 2024**

**Richard Lawson,
Petitioner Below, Petitioner**

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

vs.) **No. 22-749** (Kanawha County 21-P-309)

**Donnie Ames, Superintendent, Mt.
Olive Correctional Complex,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Richard Lawson appeals the order of the Circuit Court of Kanawha County, entered on September 13, 2022, denying his motion to alter or amend the circuit court’s earlier order that denied 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. Lawson is serving a term of life imprisonment for his jury conviction of first-degree murder; a term of two to twenty years for his conviction of arson; and terms of one to ten years for each of his convictions of five counts of forgery and five counts of uttering, all stemming from an incident in which petitioner and his co-defendant murdered their victim, stole multiple checks, and attempted to burn the victim’s residence to conceal their crimes. These sentences were ordered to run consecutively. Since his 1997 conviction, Mr. Lawson has filed a petition for direct appeal with this Court, which was refused; at least four petitions for a writ of habeas corpus with the circuit court (prior to the one underlying this action); and at least three federal petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See Lawson v. Terry*, No. 2:18-CV-00345, 2018 WL 8017468, at *1 (S.D. W. Va. Sept. 18, 2018). We most recently discussed the circumstances of Mr. Lawson’s incarceration in *Lawson v. Ballard*, No. 16-0537, 2017 WL 2230471, at *1 (W. Va. May 22, 2017) (memorandum decision). Of crucial note to the issues before us, Mr. Lawson was afforded counsel and an omnibus hearing when the petition initiating that civil action was filed with the circuit court.

In this appeal, Mr. Lawson challenges the circuit court’s denial of his most recent petition for a writ of habeas corpus subsequent to the court’s finding that it is barred by the doctrine of res judicata, and subsequent to the circuit court’s denial of his motion to alter or amend its final order. Mr. Lawson’s motion to alter or amend was filed with the circuit court pursuant to Rule 59(e) of

¹ Mr. Lawson is a self-represented litigant. Respondent Donnie Ames, the superintendent of the Mount Olive Correctional Complex, appears by Attorney General Patrick Morrissey and Assistant Attorney General William E. Longwell.

the West Virginia Rules of Civil Procedure², and our standard of review, therefore, “is the same standard that would apply to the underlying judgment upon which the motion is based and from which the appeal to this Court is filed.” Syl. Pt. 1, in part, *Wickland v. American Travellers Life Ins. Co.*, 204 W. Va. 430, 513 S.E.2d 657 (1998). Mr. Lawson effectively seeks the review of the denial of his petition for a writ of habeas corpus.

“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.”

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

Though Mr. Lawson’s claims in his most recent petition are numerous, it is apparent that each relates to asserted trial and sentencing error—all issues that were or could have been raised and addressed in prior petitions. It is further apparent that Mr. Lawson has exhausted all claims he may have and, contrary to his assertions on appeal, there are no further avenues available to him for challenging his conviction, sentence, or denials of habeas relief. We have explained:

A judgment denying relief in post-conviction habeas corpus is *res judicata* on questions of fact or law which have been fully and finally litigated and decided, and as to issues which with reasonable diligence should have been known but were not raised, and this occurs where there has been an omnibus habeas corpus hearing at which the applicant for habeas corpus was represented by counsel or appeared *pro se* having knowingly and intelligently waived his right to counsel.

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

[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.

Id. at 762-63, 277 S.E.2d at 608, Syl. Pt. 4.

² “A motion under Rule 59(e) of the West Virginia Rules of Civil Procedure should be granted where: (1) there is an intervening change in controlling law; (2) new evidence not previously available comes to light; (3) it becomes necessary to remedy a clear error of law or (4) to prevent obvious injustice.” Syl. Pt. 2, *Mey v. Pep Boys-Manny, Moe & Jack*, 228 W. Va. 48, 717 S.E.2d 235 (2011).

Mr. Lawson’s claims have been fully and finally litigated—or, if not raised, could have been with the exercise of reasonable diligence—and we underscore that all litigation related to this criminal conviction is complete.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

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

NOT PARTICIPATING:

Chief Justice Tim Armstead