

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

**Kevin C. Hamill,**  
**Petitioner Below, Petitioner**

v.) **No. 22-0420** (Berkeley County CC-02-2020-C-281)

**Josh Ward, Interim Superintendent,**  
**Mount Olive Correctional Complex,**  
**Respondent Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Kevin C. Hamill appeals the order of the Circuit Court of Berkeley County, entered on May 5, 2022, denying his supplemental amended petition for a writ of habeas corpus.<sup>1</sup> Upon our review, we determine that oral argument is unnecessary and that a memorandum decision is appropriate. *See* W. Va. R. App. P. 21.

Mr. Hamill is imprisoned for life without mercy following his convictions of felony murder, burglary, grand larceny, conspiracy to commit robbery, and being a prohibited person in possession of a firearm. We affirmed his conviction on direct appeal in *State v. Hamill*, Nos. 18-0624 and 18-0628, 2020 WL 261733 (W. Va. Jan. 17, 2020) (memorandum decision). In late 2020, Mr. Hamill filed a petition for a writ of habeas corpus with the circuit court. The circuit court appointed him counsel, and counsel filed an amended petition (and then a supplemental amended petition) that asserted numerous grounds for relief. The circuit court denied the petition.<sup>2</sup>

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<sup>1</sup> Mr. Hamill appears by counsel Jason T. Gain. Respondent Josh Ward appears by Attorney General Patrick Morrissey and Deputy Attorney General Andrea Nease Proper. Since the filing of this case, the superintendent of Mount Olive Correctional Complex has changed, and the interim superintendent is now Josh Ward. Accordingly, the Court has made the necessary substitution of parties pursuant to Rule 41(c) of the West Virginia Rules of Appellate Procedure.

<sup>2</sup> The circuit court did not conduct an evidentiary hearing prior to denying Mr. Hamill's petition. A hearing was not necessary under the facts presented in this case. We have explained:

It is evident from a reading of W. Va. Code § 53-4A-7(a) that a petitioner for habeas corpus relief 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. Indeed, where the allegations in the petition are completely without substance or merit, the statute requires no hearing at all and empowers the court to deny relief summarily. *Thomas v. Leverette*, W. Va., 239 S.E.2d 500 (1977); *Purdue v. Coiner*, 156 W. Va. 467, 194 S.E.2d 657 (1973). A hearing is

On appeal, petitioner asserts two assignments of error. He argues that the circuit court erred in denying him relief for ineffective assistance of counsel, first, because his trial counsel failed to subpoena a witness called “Natalie,” and, second, because trial counsel failed to request a jury instruction for petit larceny as a lesser included offense of felony murder stemming from robbery, because his theory of defense was that he did not intend to rob his victim.

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).

Each of Mr. Hamill’s assignments of error is predicated on his assertion that he was given ineffective assistance of counsel.

In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.

Syl. Pt. 5, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995). Mr. Hamill’s allegations do not require further review under this standard. We agree with the circuit court’s finding that Mr. Hamill’s reference to “Natalie” was conclusory at best, and that he failed to adequately proffer the testimony she would have given or how it might have changed the outcome of his trial. Mr. Hamill fails even to allege that he discussed “Natalie” with his trial counsel at any point. We further agree with the circuit court that there was sufficient evidence to support a criminal conviction for felony murder based in robbery and it, therefore, would have been inappropriate for the circuit court to instruct the jury about petit larceny. It cannot be said, then, that counsel’s performance was deficient for failure to request an instruction on the lesser included offense.

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required only “[i]f it appears to the court . . . that there is probable cause to believe that the petitioner may be entitled to some relief and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived.” Even in such circumstances, there is no requirement that a full evidentiary hearing be conducted. This statute requires only that “the court shall promptly hold a hearing and/or take evidence on the contention or contentions and grounds (in fact or law) advanced.”

*Gibson v. Dale*, 173 W. Va. 681, 688, 319 S.E.2d 806, 812-13 (1984).

For the reasons fully detailed in the circuit court’s May 5, 2022, “Order Denying Supplemental Amended Petition for Habeas Corpus,” we find that the circuit court adequately addressed Mr. Hamill’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:** March 20, 2024

**CONCURRED IN BY:**

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