

FILED
June 12, 2024

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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Carl Magee,
Petitioner Below, Petitioner

v.) **No. 22-0514** (Kanawha County 22-P-47)

Josh Ward, Interim Superintendent,
Mt. Olive Correctional Complex,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Carl Magee appeals the Circuit Court of Kanawha County’s June 21, 2022, order denying his petition for a writ of habeas corpus.¹ Here, the petitioner argues that the circuit court erred in denying him habeas relief without appointing him counsel or holding an omnibus hearing, made erroneous findings regarding the statute of limitations for filing a federal petition for a writ of habeas corpus, erred in finding that the trial court had not erred in failing to inform him of his post-conviction remedies, and erred in finding that his trial counsel was not ineffective. The petitioner also argues that the respondent failed to provide him with a copy of its response to his petition during the underlying proceedings, denying him the ability to object or reply to its allegations. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court’s order and remanding for further proceedings is appropriate, in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In 2017, the petitioner was arrested for dousing Rachele Jarrett with gasoline and setting her on fire and for breaking and entering a home. Ms. Jarrett was hospitalized and died from her injuries a few days later. The petitioner was indicted on several counts, including first-degree murder and burglary by breaking and entering. Following a three-day jury trial held in 2019, the petitioner was sentenced to consecutive terms of life incarceration, without mercy, for felony murder and not less than one nor more than fifteen years for burglary. The petitioner’s convictions were affirmed on direct appeal. *State v. Magee*, No. 19-0575, 2020 WL 4355717 (W. Va. July 30, 2020) (memorandum decision).

¹ The petitioner is self-represented. The respondent appears by Attorney General Patrick Morrissey and Assistant Attorney General Euva D. May. Since the filing of this case, the Superintendent of Mt. 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 of the West Virginia Rules of Appellate Procedure.

On February 7, 2022, the petitioner, self-represented, filed a petition for a writ of habeas corpus and listed several grounds for relief, including arguments pertaining to an allegedly defective indictment, suppression of evidence, failure of the trial court to inform him of the statute of limitations for filing a federal habeas claim, and ineffective assistance of counsel. In an order entered on February 10, 2022, the habeas court found that the petitioner's petition was sufficient for adjudication and that appointment of counsel was not necessary, and it directed the State to file an answer to the petition. The petitioner filed an "Objection and Motion to Reconsider" on February 24, 2022, in which he objected to the court's decision to proceed on his petition without appointing him counsel, stating that he needed counsel and an omnibus hearing to appropriately develop his ineffective assistance of counsel claim. By order dated April 12, 2022, the court denied the petitioner's motion.

Sometime thereafter, the State filed its answer with the court. This answer does not appear on the court's docket sheet, but the court acknowledged receipt in its May 31, 2022, letter advising the parties that no omnibus hearing would be held, as well as in its final order. On June 21, 2022, the circuit court issued the final order denying the petitioner habeas relief on all grounds raised. The petitioner now appeals.

When considering the appeal of a circuit court's habeas order, we review the final disposition for abuse of discretion and factual findings for clear error; questions of law are considered de novo. Syl. Pt. 1, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006). On appeal, the petitioner assigns as error the habeas court's denial of his habeas petition without appointing him counsel or holding an omnibus hearing on his claims, particularly with regard to his ineffective assistance of counsel claim.² Generally, the decision of whether to appoint counsel or hold an omnibus hearing is within the discretion of the circuit court. See Syl. Pt. 1, *Perdue v. Coiner*, 156 W. Va. 467, 194 S.E.2d 657 (1973) (holding that "[a] court having jurisdiction over habeas corpus proceedings may deny a petition for a writ of habeas corpus without a hearing and without appointing counsel for the petitioner if the petition, exhibits, affidavits or other documentary evidence filed therewith show to such court's satisfaction that the petitioner is entitled to no relief"). However, in *Gibson v. Dale*, 173 W. Va. 681, 688-89, 319 S.E.2d 806, 813 (1984), we stated that "[t]his discretion is not unlimited" and cautioned that "the court must be guided by the necessities of each particular case." For example, this Court has repeatedly explained that claims of ineffective assistance of counsel often require litigation in a collateral proceeding. See *Losh v. McKenzie*, 166 W. Va. 762, 765-67, 277 S.E.2d 606, 609-10 (1981) ("There are other issues, however, such as incompetency of counsel, . . . which will not have been raised or litigated in the underlying proceeding. . . . Those issues . . . of which [the petitioner] would have been unaware at trial, must be litigated in a collateral proceeding."); *Christopher Lee B. v. Ames*, No. 19-0060, 2021 WL 3833870, at *3 (W. Va. Aug. 27, 2021) (memorandum decision) (finding that the petitioner's allegations regarding ineffective assistance of counsel were sufficient to require a hearing); *Joseph S. v. Plumley*, No. 15-1137, 2016 WL 5338238 (W. Va. Sept. 23, 2016) (memorandum decision) (finding that the circuit court abused its discretion in not holding an omnibus hearing on the petitioner's ineffective assistance of counsel claim).

² The petitioner raised seven assignments of error in total. However, because we are vacating the order and remanding the matter to the habeas court for further proceedings, we need not address each assignment of error here.

Here, the petitioner argues that the court’s order directing the State to file an answer demonstrated that his claims held merit, otherwise, the court would have summarily dismissed his petition. He reasons, therefore, that the court should have appointed him counsel so that he could more adequately develop his claims and present evidence, “most of which would clearly lay outside the record.” Under the limited circumstances of this case, we agree and find that appointment of counsel was warranted. *See* Rule 6 of the R. Governing Post-Conviction Habeas Corpus Proc. in W. Va. (“Counsel may only be appointed if the petitioner qualifies for the appointment of counsel under Rule 3(a), and the court has determined that the petition was filed in good faith and that the appointment of counsel is warranted. If warranted, the court shall appoint counsel for the petitioner.”).

Accordingly, we conclude that the circuit court abused its discretion in refusing to appoint the petitioner counsel to assist with his habeas proceedings and in denying the petitioner the opportunity to develop his claims at an omnibus hearing. Therefore, we vacate the circuit court’s June 21, 2022, order denying the petitioner’s petition for a writ of habeas corpus and remand with instructions to appoint the petitioner counsel, giving leave to file an amended petition, and to hold an omnibus evidentiary hearing.

Vacated and remanded with directions.

ISSUED: June 12, 2024

CONCURRED IN BY:

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

DISSENTING:

Chief Justice Tim Armstead

Armstead, Justice, dissenting:

I dissent to the majority’s resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties’ briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.