

FILED

2019 AUG -7 PM 2:26
IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

BRIAN EMERSON DEMENT,
Petitioner,

J.E. HOOD
CIRCUIT CLERK
CABELL CO. WV

VS

CIVIL ACTION NO. 18-C-441
Judge Alfred E. Ferguson

KAREN PSZCZOLKOWSKI, WARDEN,
NORTHERN CORRECTIONAL FACILITY,
Respondent.

ORDER

On the 1st day of May, 2019, this matter came on for hearing before the Honorable Judge Alfred E. Ferguson, Judge of the Circuit Court of Cabell County, West Virginia for hearing on Petitioner's Writ of Habeas Corpus Ad Subjiciendum. The Petitioner appeared in person and by Gregory Swygart and Abraham Saad, his attorneys; the Respondent was represented by Thomas M. Plymale, Special Prosecuting Attorney.

Thereupon, the Court, upon consideration of the entire record and pleadings introduced and filed herein and upon the arguments and representations of counsel, held that the relief requested by Petitioner was hereby DENIED.

The Court held that the Petitioner was not entitled to have his conviction vacated, nor was he entitled to a new trial or other relief. In addition to the record set forth above, the Court cited Petitioner's confessions, including confessions to family members outside of police custody, sworn testimony by the Petitioner in the trials of co-defendant's, and sworn testimony at the entry of his plea as basis for his decision.

The Court further held that based on the foregoing considerations, the newly discovered DNA results would not likely provide a different result at a new trial in light of the Petitioner's sworn testimony, guilty plea, and other incriminating statements and upon consideration that such evidence was not the basis of Petitioner's conviction

The Court also held that Petitioner's conviction is not a "manifest injustice" as contemplated by State v. Olish, 164 WV 712, 266 S.E. 2nd 712 (W.Va. 1980) and there is no evidence that the multiple confessions of the Petitioner were "false confessions" in light of the fact that Petitioner first confessed to family members outside of police custody and that subsequent custodial and testimonial statements were largely consistent with Petitioner's initial voluntary, non-custodial confession.

In the case of State v. Black, 227 WV 297, 708 S.E. 2nd 491 (W.Va. 2010), the defendant being one of the co-defendant's in the Petitioner's Indictment, the West Virginia Supreme Court of Appeals held that the refusal by the trial court to exclude the testimony of a forensic psychiatrist's expert testimony consisting of general testimony regarding false confessions was proper in that such testimony would be confusing to the jury and such testimony was unreliable. The admissibility of testimony by an expert witness is a matter within the sound discretion of the trial court and will not be reversed unless it is clearly wrong.

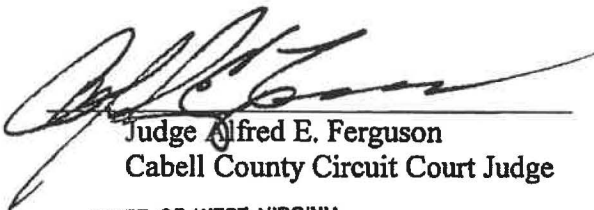
The Court declined to rule on Petitioner's Motion in Limine and Motion to Exclude Parole Statements in light of the rulings herein.

The Court declined Petitioner's Motion to Appoint a Special Prosecutor to investigate another suspect herein, in that it would be the duty of the Cabell County Prosecuting Attorney's Office to undertake and supervise such an investigation.

Accordingly, it is hereby ORDERED that Petitioner's Petition for Writ of Habeas Corpus Ad Subjiciendum is hereby DENIED; that the Court held in abeyance any ruling on Petitioner's Motion in Limine /Motion to Exclude Parole Hearing Statements; and Petitioner's Motion to Appoint a Special Prosecutor to investigate another suspect is hereby DENIED.

This is entered NUNC PRO TUNC as of May 1, 2019.

The Clerk of this Court shall cause a true copy of this Order to be provided to Thomas Plymale, Special Prosecuting Attorney, Gregory Swygart and Abraham Saad, counsel for Petitioner.




Judge Alfred E. Ferguson
Cabell County Circuit Court Judge

STATE OF WEST VIRGINIA
COUNTY OF CABELL

I, JEFFREY E. HOOD, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT ENTERED ON AUG 07 2019

GIVEN UNDER MY HAND AND SEAL OF SAID COURT

THIS AUG 07 2019



CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA