
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 23-86

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STATE OF WEST VIRGINIA,

Respondent,

v.

GAVIN BLAINE SMITH,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the January 24, 2023, Order
Circuit Court of Kanawha County
Case No. 22-F-130

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INTRODUCTION

Respondent State of West Virginia submits this brief in opposition to Gavin Smith's ("Petitioner") Brief filed in the above-styled appeal. Petitioner's appeal is based on little more than conjecture. Petitioner claims that advising the jury that he would be considered for parole after having served 15 years in prison if convicted of first degree murder caused them to be so tainted that he is entitled to a reversal of his conviction. Petitioner presents this argument, despite the record containing overwhelming evidence in support of his guilt, including the fact that he shot and killed his entire family execution-style while some slept, and while another family member hid under a bed. Petitioner cannot show error in the jury instruction under West Virginia law, and certainly cannot show prejudice, as Petitioner would undoubtedly have been convicted of first degree murder regardless of this instruction. As Petitioner has failed to demonstrate the existence of reversible error, the circuit court's order denying habeas relief should be affirmed.

ASSIGNMENT OF ERROR

Petitioner argues a single assignment of error: whether the circuit court erred by instructing jurors that if they voted for the most serious degree of homicide, it would sentence Petitioner to parole eligibility after fifteen years. Pet'r's Br. 1.

STATEMENT OF THE CASE

In December 2020, Petitioner was a 16-year-old who had been banned from seeing or speaking with his girlfriend. App. 375. Tired of being told what to do, Petitioner chose to shoot his mother Risa Saunders, and stepfather Daniel Long in the head while they slept, then turned the gun on his 12-year-old brother, Gage Ripley; Petitioner then found his 3-year-old brother Jameson Long hiding under a bed, lifted the mattress, and shot the toddler through the head as well. App.

418; 538-42; 544-45. Petitioner then left the residence and fled to the home where his teenage girlfriend was staying. App. 390.

In a March 2022 transfer hearing following Petitioner's arrest, the circuit court found probable cause to transfer Petitioner to adult criminal jurisdiction. App. 92. Petitioner was indicted in the May 2022 term of court on eight felony counts: four counts of murder and four counts of use and presentation of a firearm in the commission of a felony. App. 943-46.

Trial began on December 5, 2022. App. 193. Timothy Saunders, Petitioner's grandfather, testified that he talked to his daughter Risa daily, but had not heard from her from December 8, 2020 through December 13, 2020. App. 296-97. On December 13, he went to Risa's home and found Risa, Gage, and Dan dead. App. 300-02. He looked for Petitioner and Jameson but could not find them in the home. App. 302.

Prior to the murders, Saunders had been assisting the family with home remodeling and was around them frequently. App. 303. Petitioner and Gage would help. App. 304. Saunders testified that Dan treated all the children the same although only Jameson was his biological son. App. 307-08. Saunders described Risa as a good mother who put her children first. App. 310. Neither parent worked. App. 323. Saunders noted that there were locks on the freezer, pantry, and refrigerator, but that this was to try to control the amount of food Gage ate as he tended to overeat. App. 312-13, 331-32. Saunders never saw any of the boys physically disciplined by Risa or Dan. App. 314. Petitioner had no contact with his father. App. 322.

Saunders testified that Petitioner had run away at least seven times in the past. App. 318-19. Petitioner ran away because he was not allowed to see Walker. App. 319. He would either go to Walker's home or to his great-grandfather's home. App. 319. Petitioner was often tasked with

caring for Jameson, who was a toddler. App. 324. The children were not allowed to go anywhere except to Saunders' home or their great-grandfather's home. App. 324.

Sergeant Paxton Lively was the first officer on scene and spoke with Saunders, then entered the home where he found Risa, Dan, and Gage all dead. App. 336-37. He then found Jameson's body under a bed in his room. App. 337-38. Petitioner could not be found. App. 339.

Detective Robert Alford testified that through his investigation he named Petitioner as a person of interest. App. 341. Det. Alford went to Walker's home where he was advised that Walker was at her grandmother's home. App. 341-42. Walker was questioned and indicated she did not know where Petitioner was; she appeared nervous during the conversation. App. 342-43. Det. Alford then searched the house and found Petitioner in a third floor bedroom behind a dresser. App. 343-45. Petitioner was detained. App. 346. Further investigation showed that Petitioner had ridden his bicycle from his home to Walker's home on December 9, 2020, as he appeared on surveillance footage. App. 351-56.

Rebecca Walker testified that she was in a relationship with Petitioner for about eight months before the shootings. App. 368. When Petitioner met Walker's family he told her father he wanted to have babies with Walker, then Petitioner refused to leave the home when asked by Walker's father. App. 373-74. After that interaction, Petitioner was no longer allowed in Walker's home. App. 374-75. Petitioner told Walker he was not allowed to see her anymore either. App. 375. Walker and Petitioner continued to communicate via phone but Walker got her phone taken away. App. 408. Walker then started using an Ipad her grandmother owned to communicate with Petitioner. App. 409. Petitioner was not supposed to use his phone to talk to Walker so he somehow obtained another phone that he secretly used. App. 409-10. The two met up against their parents'

