

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 22-793 (Lincoln County 18-F-116)

Edward Jeffers,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Edward Jeffers appeals his conviction, as set forth in the Circuit Court of Lincoln County’s September 23, 2022, sentencing order, for first-degree murder.¹ The petitioner asserts that he is entitled to a new trial due to the State’s failure to produce several hearing transcripts, which he claims prevents him from appealing his conviction. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s conviction is appropriate. *See* W. Va. R. App. P. 21(c).

In December 2017, the petitioner stabbed and killed his wife. He was subsequently indicted in September 2018 on one count of first-degree murder. Following a jury trial, the petitioner was convicted of first-degree murder. During the bifurcated penalty phase, the jury recommended that he receive a sentence of life without mercy. The circuit court’s order memorializing this sentence was issued on September 23, 2022.

On October 17, 2022, the petitioner timely filed a notice of appeal with this Court and listed one assignment of error related to whether the circuit court erred in denying the petitioner’s motion for a change of venue. Also, in the notice of appeal, the petitioner requested eighteen various transcripts covering hearings from his arraignment to sentencing. After this Court granted several extensions at the petitioner’s request due to the delays in transcribing the hearings, the petitioner filed a motion for a de novo trial in December 2023, arguing that he was entitled to a new trial because he had not been provided with all of the requested transcripts. On January 17, 2024, this Court issued an order indicating that eight of the eighteen transcripts requested by the petitioner had not yet been prepared and filed. Accordingly, this Court remanded the case to the circuit court “to determine whether the requested transcripts are available for preparation or unavailable.”

¹ The petitioner appears by counsel Gary A. Collias, and respondent appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease Proper. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

On February 20, 2024, the petitioner filed in this Court a renewed motion for a de novo trial. The following day, the circuit court entered an order to address the status of the eight transcripts. The court indicated that three transcripts did not exist since hearings were ultimately not held on those days due to continuances. A transcript of one hearing was improperly labeled as a jury trial and was, instead, a status conference. As to the remaining four transcripts, the court indicated that following contact with the court reporter, the transcripts remained in active preparation and would be delivered to this Court upon completion.

On June 6, 2024, the four outstanding transcripts were filed. Accordingly, on September 24, 2024, this Court refused the petitioner's renewed motion for a de novo trial and noticed its intent to dismiss the case if the petitioner did not perfect the appeal on or before October 10, 2024. The petitioner then perfected his appeal, which we now review.

The petitioner filed his brief and, in his sole assignment of error, he argues that the circuit court and/or this Court mistakenly concluded that all requested transcripts had been produced and that, as such, he is entitled to a new trial due to the State's failure to produce the transcripts.² *See* Syl. Pt. 2, *State ex rel. Kisner v. Fox*, 165 W. Va. 123, 267 S.E.2d 451 (1980) ("The failure of the State to provide a transcript of a criminal proceeding for the purpose of appeal, absent extraordinary dereliction on the part of the State, will not result in the release of the defendant; however, the defendant will have the option of appealing on the basis of a reconstructed record or of receiving a new trial.").³ The petitioner claims that although there are some orders from the hearings with missing transcripts, they contain only the information the court believed was important at the hearings and do not summarize everything that would have taken place. The petitioner contends that without reading transcripts of these hearings, it is impossible to know whether an error occurred. According to the petitioner, the missing transcripts prevent this Court from fully considering petitioner's conviction, and he is entitled to elect to receive a new trial given that he cannot effectively appeal his conviction. Assuming that the State has failed to produce the requested transcripts, we nevertheless conclude that the petitioner is not entitled to a new trial for the reasons set forth below.

The petitioner is correct that this Court has previously granted criminal defendants new trials in instances where trial transcripts are not available for appeal. While this Court has held that "all proceedings in the criminal trial are required to be reported," we have further held that "the failure to report all of the proceedings may not in all instances constitute reversible error." *See* Syl.

² Specifically, the petitioner contends there are seven outstanding transcripts, including a transcript of the petitioner's arraignment held on October 1, 2018, and transcripts from six pretrial hearings held on January 9, 2019; August 7, 2019; September 30, 2019; January 24, 2020; February 14, 2020; and March 23, 2021.

³ The petitioner's notice of appeal listed only one assignment of error, which pertained to the circuit court's denial of a motion to change venue. To the extent the petitioner claims that he was unable to effectively raise this issue on appeal, we note that the hearing in which the circuit court set forth a plan to address any change of venue after voir dire was transcribed and was in the petitioner's possession at the time the case was perfected, as was the transcript covering voir dire. Accordingly, the petitioner had the relevant transcripts pertaining to his motion to change venue in his possession but failed to argue this issue on appeal.

Pt. 8, in part, *State v. Brown*, 210 W. Va. 14, 552 S.E.2d 390 (2001) (quoting Syl. Pt. 5, *State v. Bolling*, 162 W. Va. 103, 246 S.E.2d 631 (1978)). We have explained that “[o]missions from a trial transcript warrant a new trial only if the missing portion of the transcript specifically prejudices a defendant’s appeal.” Syl. Pt. 8, *State v. Graham*, 208 W. Va. 463, 541 S.E.2d 341 (2000).

At the outset, we find the petitioner’s reliance on *Kisner* to be without merit because in *Kisner*, the entirety of the trial transcripts were missing. In contrast, here, the only transcripts the petitioner claims are missing are of pretrial hearings. These pretrial hearings covered issues like the substitution of counsel, continuances, potential conflicts of interest, and a motion to disqualify the prosecutor, among others, and orders containing findings of fact and conclusions of law were entered for all but one hearing.⁴ Rather than pinpoint any error that occurred during these pretrial hearings, the petitioner concedes that “there is no reason to believe that anything happened” and that it is “impossible to tell” whether any issues arose at the hearings. As such, the petitioner fails to make a specific showing of prejudice attributable to the missing transcripts, and his speculative assertion that the missing transcripts might reveal the existence of an error does not warrant a new trial. See *State v. Leslie G.*, No. 22-0210, 2023 WL 7299893 (W. Va. Nov. 6, 2023) (memorandum decision) (noting that in the case of missing portions of a transcript, a defendant “must identify possible appellate issues which, if meritorious, would otherwise warrant a new trial”). Moreover, we have previously held that

“[t]here is a presumption of regularity of court proceedings that remains until the contrary appears, and the burden is on the person who alleges such irregularity to show it affirmatively; and where an order of a court of record is merely silent upon any particular matter, it will be presumed, notwithstanding such silence, that such court performed its duty in every respect as required by law[.]” Syllabus, in part, *State ex rel. Smith v. Boles*, 150 W.Va. 1, 146 S.E.2d 585 (1965).

Syl. Pt. 2, *State v. J.S.*, 233 W. Va. 198, 757 S.E.2d 622 (2014). In the absence of the petitioner demonstrating with specificity how he was prejudiced by the missing pretrial transcripts, we will presume that the circuit court below performed its duty with regularity as required by law.

For the foregoing reasons, we affirm the petitioner’s conviction for first-degree murder and conclude that, because he has failed to establish any prejudice, he is not entitled to a new trial.

Affirmed.

ISSUED: June 26, 2025

CONCURRED IN BY:

Justice Elizabeth D. Walker
Justice Tim Armstead

⁴ The petitioner contends that a pretrial hearing was allegedly set for September 30, 2019. However, the docket sheet does not reflect that a hearing was ever held that day, and there is no order from this alleged hearing.

Justice C. Haley Bunn
Justice Charles S. Trump IV

DISSENTING:

Chief Justice William R. Wooton

Wooton, Chief 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.