

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Robert Martin Barritt,
Petitioner Below, Petitioner

v.) No. 24-120 (Ohio County No. CC-35-2022-C-26)

Jonathan Frame, Superintendent,
Mt. Olive Correctional Complex,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Robert Martin Barritt appeals the February 9, 2024, order of the Circuit Court of Ohio County denying his sixth petition for a writ of habeas corpus.¹ The petitioner argues that his prior habeas counsels provided ineffective assistance in his previous habeas proceedings and failed to file appeals from the denial of his prior habeas petitions. 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 order is appropriate. *See* W. Va. R. App. P. 21(c).

The petitioner was convicted of first-degree murder in the Circuit Court of Ohio County and sentenced to a life term of incarceration without the possibility of parole. *Barritt v. Painter* (*Barritt I*), 215 W. Va. 120, 121, 595 S.E.2d 62, 63 (2004). In 1982, this Court refused the petitioner's criminal appeal. *Id.* The petitioner filed his first petition for a writ of habeas corpus in 1992. *Id.*² The circuit court denied the petitioner's first habeas petition; the petitioner appealed the circuit court's order; and this Court refused his appeal. *Id.* In 2001, the petitioner filed a second habeas petition, which the circuit court denied. *Id.* The petitioner appealed the denial of the second petition, which this Court also refused. *Id.* Thereafter, the petitioner filed a motion for reduction of sentence. *Id.* The circuit court denied the motion as untimely, and, in *Barritt I*, this Court affirmed. *Id.* at 122-23, 595 S.E.2d at 64-65. The petitioner filed his third habeas petition in 2003 and his fourth habeas petition in 2006, each of which the circuit court denied. In *Barritt v. State* (*Barritt II*), No. 21-0045, 2021 WL 3833726 (W. Va. Aug. 27, 2021) (memorandum decision),

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

² “[P]rior to 1992, [the petitioner] attempted to obtain relief from his state court conviction in the federal court system.” *Barritt v. State* (*Barritt II*), No. 21-0045, 2021 WL 3833726, at *1 n.1 (W. Va. Aug. 27, 2021) (memorandum decision).

this Court affirmed the circuit court’s denial of the petitioner’s fifth habeas petition as “allegations made without adequate factual support ‘do[] not justify the issuance of a writ . . . and the holding of a hearing.’” *Id.* at *2 (quoting *Losh v. McKenzie*, 166 W. Va. 762, 771, 277 S.E.2d 606, 612 (1981)).

In February 2022, the petitioner filed his sixth petition for a writ of habeas corpus,³ alleging that his prior habeas counsels provided ineffective assistance in his previous habeas proceedings and failed to file appeals from the denial of his prior habeas petitions. By order dated February 9, 2024, the circuit court denied the petitioner’s sixth habeas petition. The petitioner now appeals. We review the circuit court’s 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, in part, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006).

The circuit court thoroughly considered and addressed each of the petitioner’s claims. Upon our review, we conclude that the petitioner has not satisfied his burden of demonstrating error in the court’s rulings, and we find none. *See* Syl. Pt. 2, *Dement v. Pszczolkowski*, 245 W. Va. 564, 859 S.E.2d 732 (2021) (“On an appeal to this Court the appellant bears the burden of showing that there was error in the proceedings below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial court.” (quoting Syl. Pt. 2, *Perdue v. Coiner*, 156 W. Va. 467, 194 S.E.2d 657 (1973))). Accordingly, we find that the circuit court did not abuse its discretion in denying habeas relief.

For the foregoing reasons, we affirm.

Affirmed.

³ With his sixth habeas petition, the petitioner submitted a motion for the disqualification of Judge Michael J. Olejasz. The circuit court did not act on the disqualification motion before denying the sixth habeas petition. However, even if the failure to act on the motion was not in compliance with West Virginia Trial Court Rule 17.01(b), which governs disqualification motions, we have found that a failure to follow proper procedure under Rule 17.01(b) constitutes harmless error when there is insufficient evidence to warrant the judge’s disqualification. *See Shenandoah Sales & Serv., Inc. v. Assessor of Jefferson Cnty.*, 228 W. Va. 762, 773, 724 S.E.2d 733, 744 (2012). Based upon a review of the petitioner’s motion to disqualify Judge Olejasz, it appears that the petitioner seeks the judge’s disqualification because the judge also denied his fifth habeas petition. In *Barritt II*, this Court affirmed the denial of the fifth petition. 2021 WL 3833726, at *2. Therefore, any failure to comply with West Virginia Trial Court Rule 17.01(b) regarding the petitioner’s disqualification motion was harmless because the petitioner’s disagreement with Judge Olejasz’s ruling on his previous petition constitutes an insufficient basis on which to disqualify the judge. *See State v. Brown*, 177 W. Va. 633, 641, 355 S.E.2d 614, 622 (1987) (finding that there was no reason to question the trial judge’s impartiality and that the judge’s “rulings on the appellant’s pretrial motions had a reasonable basis in law”).

ISSUED: June 26, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump, IV