

FILED
July 30, 2025

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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Jeffrey Stewart,
Petitioner Below, Petitioner

v.) No. 23-612 (Nicholas County CC-34-2019-C-36 & CC-34-2020-C-1)

Shelby Searls, Superintendent,
Huttonsville Correctional Center,¹
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Jeffrey Stewart appeals the September 12, 2023, order of the Circuit Court of Nicholas County denying his second petition for a writ of habeas corpus.² The petitioner argues that he was provided ineffective assistance of counsel in his prior habeas proceeding. 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).

In 2004, a jury convicted the petitioner of two counts of second-degree murder: the State alleged the petitioner shot one victim twice, and the jury convicted the petitioner of the other victim's murder under the concerted action principle. *See* Syl. Pt. 7, *State v. Foster*, 221 W. Va. 629, 656 S.E.2d 74 (2007).³ The circuit court sentenced the petitioner to two consecutive terms of forty years of incarceration, and this Court refused the petitioner's criminal appeal in January 2006.

The petitioner filed his first habeas petition in December 2009. Following a series of substitutions of counsel, the circuit court appointed Attorney D. Adrian Hoosier II as habeas counsel in December 2010 and held an omnibus hearing in May 2013. The petitioner, his trial counsel, and a forensics expert retained by the petitioner testified at the hearing. Thereafter, the

¹ The current superintendent has been substituted as the respondent. *See* W. Va. R. App. P. 41(c).

² The petitioner appears by counsel Andrew J. Katz, and the 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.

³ The petitioner's codefendants were Eric Allen Foster and Matt Bush. *Id.* at 634, 656 S.E.2d at 79.

circuit court denied the petitioner's first habeas petition in a decision that this Court affirmed in *Stewart v. Ballard*, No. 14-0300, 2015 WL 570147 (W. Va. Feb. 9, 2015) (memorandum decision).

In 2019 and 2020, the petitioner filed two habeas petitions that the circuit court consolidated into one case. The petitioner alleged that Attorney Hoosier provided ineffective assistance of counsel in his first habeas proceeding. The circuit court held an evidentiary hearing in December 2021, at which both the petitioner and Attorney Hoosier testified. By order entered on September 12, 2023, the circuit court denied the petitioner's second habeas petition, crediting Attorney Hoosier's testimony that he implemented a reasonable strategy based upon the forensics expert's opinions regarding the evidence gathering and the chain of custody. As the circuit court noted, Attorney Hoosier stated that the fact that the petitioner testified at trial that he intended to shoot at both of the men that he and his codefendants ultimately killed "carried a lot of weight in the denial of the [first] habeas [petition]." ⁴ 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.

⁴ In finding that the ineffective assistance of habeas counsel claim lacked merit, the circuit court also rejected the petitioner's argument that Attorney Hoosier should have filed a motion for the disqualification of Margaret L. Workman, who was Chief Justice when this Court affirmed the denial of his first habeas petition in *Stewart*. *See Williams v. Pennsylvania*, 579 U.S. 1, 14 (2016) (holding that "an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote"). While in private practice, Justice Workman represented the petitioner's codefendant Eric Allen Foster in Mr. Foster's criminal appeal. *Foster*, 221 W. Va. at 633, 656 S.E.2d at 78. At the December 2021 hearing, the petitioner acknowledged that Justice Workman did not represent Mr. Foster at trial because another attorney represented Mr. Foster at that stage of Mr. Foster's criminal case. In addition, this Court noted in *Foster* that each of the three codefendants was tried separately. *Id.* at 634, 656 S.E.2d at 79. The petitioner further acknowledged during his testimony that the reason Justice Workman recused herself from participating in the consideration of Mr. Foster's habeas appeals—but not from participating in the consideration of the petitioner's first habeas appeal in *Stewart*—was because, as she was Mr. Foster's criminal appellate attorney, her performance as such could have been the subject of Mr. Foster's habeas appeals, which was not true of the petitioner's first habeas appeal. As the circuit court found, Justice Workman "did not represent the [p]etitioner in any proceeding." This fact distinguishes the petitioner's case from the situation the Supreme Court faced in *Williams* where the Chief Justice of the Pennsylvania Supreme Court (in his former capacity as District Attorney) made a critical decision in the underlying criminal proceeding in *Williams* by approving the decision to seek the death penalty in that case. 579 U.S. at 11. Therefore, the circuit court did not err in rejecting the petitioner's claim that Attorney Hoosier was ineffective in representing the petitioner in his first habeas proceeding by not seeking Justice Workman's disqualification from participating in *Stewart* because *Williams* does not apply to the facts of the petitioner's case.

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.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV