FILED
July 30, 2025
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Respondent, Plaintiff below

v.) No. 23-621 (Cabell County 98-F-40)

Michael E. Brown,
Plaintiff, Defendant below

MEMORANDUM DECISION

Petitioner Michael E. Brown appeals the September 27, 2023, order from the Circuit Court of Cabell County denying his motion to dismiss his 1998 criminal indictment.[1] 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 decision is appropriate. *See* W. Va. R. App. P. 21(c).

The petitioner was convicted on two counts of first-degree murder in March 1999. *See State v. Brown*, 210 W. Va. 14, 552 S.E.2d 390 (2001). His conviction was subsequently affirmed on appeal, *see id.*, and his repeated attempts at seeking habeas corpus relief have been unsuccessful. *See Coleman v. Brown*, 229 W. Va. 227, 728 S.E.2d 111 (2012); *Brown v. Coleman*, No. 14-0134, 2014 WL 6607517 (W. Va. Nov. 21, 2014) (memorandum decision); *Brown v. Ames*, No. 21-0084, 2022 WL 1693755 (W. Va. May 26, 2022) (memorandum decision); *Brown v. Straughn*, No. 22-899, 2024 WL 313787 (W. Va. Jan. 25, 2024) (memorandum decision).

On September 21, 2023, the petitioner filed a "Motion to Rescind and Dismiss Improperly Procured Indictment," alleging that "fabricated evidence and fraudulent testimony" were presented to the grand jury to procure his indictment. The petitioner attached excerpts of two witnesses' testimony alongside his motion, an excerpt of the trial testimony of the State's witness Michael Mount[2] and an excerpt of deposition testimony.[3] The circuit court denied this motion by order on

[1] The petitioner is self-represented. 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.

[2] It is not entirely clear from the record, but it appears that this excerpt testimony is Michael Mount's original trial testimony.

[3] This deposition was taken on December 30, 2011, in connection with one of the petitioner's prior habeas corpus matters. It is unclear from the record whether this deposition was sealed as confidential, but the witness's identity is not necessary for our decision of the case.

September 27, 2023, finding that the petitioner presented "no credible evidence that the indictment was fraudulently obtained," that the petitioner has had multiple appeals to litigate this decades-old indictment, and that this issue should have been raised "before the trial, not a quarter of a century later." It is from this order that the petitioner now appeals.

On appeal, the petitioner first contends that the circuit court erred by titling the order denying his motion to dismiss under the wrong case style. We have previously held that "[a] clerical error in the entry of a judgment . . . will not render such docket entry void, where it appears that the matter contained in the entry . . . is sufficient to fully inform an interested party of the facts necessary for his protection." Syl. Pt. 14, *Cunningham v. Birch River Lumber Co.*, 89 W. Va. 326, 109 S.E. 251 (1921). It is undisputed that the petitioner received this order, and that the order was filed in the proper case file. As such, we find that the petitioner suffered no harm or delay from this clerical error, and therefore, this assignment of error is without merit.

Next, the petitioner argues that the circuit court abused its discretion by refusing to dismiss the indictment. The petitioner's argument is confusing and convoluted; however, from what we can discern, the petitioner appears to allege that Mr. Mount and another witness for the State, Mr. Matthew Fortner, presented conflicting testimony before the grand jury and at trial regarding another individual's involvement in the murders, and that this differing testimony constituted "fabricated [or false] evidence and perjured testimony" that went uncorrected by the State.

"This Court's standard of review concerning a motion to dismiss an indictment is, generally, *de novo*." Syl. Pt. 1, *State v. Grimes*, 226 W. Va. 411, 701 S.E.2d 449 (2009). Generally, "[c]hallenges to an indictment based on irregularities during grand jury deliberations must be raised under Rule 12(b)(2) of the West Virginia Rules of Criminal Procedure prior to trial." Syl. Pt. 4, *State v. Bongalis*, 180 W. Va. 584, 378 S.E.2d 449 (1989).

It is undisputed that the petitioner failed to raise this issue regarding the grand jury proceedings prior to the trial in this matter.[4] Pursuant to Rule 12(b)(2) of the West Virginia Rules of Criminal Procedure regarding "Pretrial Motions,"

> [a]ny defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised *prior to trial*:
>
> . . . .
>
> (2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings)[.]

[4] In fact, the petitioner first raised this alleged error almost twenty-five years after his original conviction and twelve years after the deposition testimony he contends supports his argument.

(Emphasis added.)

Failure by a party to raise such Rule 12(b)(2) objection prior to trial "may constitute waiver thereof, but the court for cause shown should grant relief from the waiver." W. Va. R. Crim. P. 12(f). Furthermore, "[e]xcept for willful, intentional fraud the law of this State does not permit the court to go behind an indictment to inquire into the evidence considered by the grand jury, either to determine its legality or its sufficiency." Syl. Pt. 1, *Barker v. Fox*, 160 W. Va. 749, 238 S.E.2d 235 (1977).

Although the petitioner alleges that the testimony of Mr. Mount and Mr. Fortner conflicted at the grand jury and at trial, and that this conflicting testimony constitutes "willful intentional fraud" that went uncorrected by the State, we note that the petitioner has failed to adequately brief this issue on appeal. *See* W. Va. R. App. P. 10(c)(7).[5] The petitioner has failed to provide or cite to the alleged conflicting testimony that Mr. Fortner and Mr. Mount provided to the grand jury. Further, the extent of the petitioner's relevant exhibits consists of a three-page excerpt of Mr. Mount's trial testimony, and the deposition testimony of a confidential witness. However, neither allow this Court to review the alleged conflicting testimony given by either Mr. Mount or Mr. Fortner to the grand jury. As noted by the circuit court, the petitioner's motion to dismiss the indictment provided no "credible evidence that the indictment was fraudulently obtained." Therefore, we find that because the petitioner has failed to make a showing of willful and intentional fraud, he has waived this issue for failure to provide "cause shown [for this Court to] grant relief from the waiver." W. Va. R. Crim. P. 12(f).[6]

Additionally, "[e]ven if [the grand jury testimony of Mr. Mount and Mr. Fortner] was materially false, [the] petitioner was convicted by a petit jury beyond a reasonable doubt so any error in his grand jury proceeding is harmless." *State v. Nelson*, No. 21-0797, 2023 WL 2785797, at *4 (W. Va. Apr. 5, 2023) (memorandum decision). "[T]he petit jury's verdict of guilty beyond a reasonable doubt demonstrates *a fortiori* that there was probable cause to charge the defendant[] with the offenses for which [he was] convicted." *Id*. (quoting *United States v. Mechanik*, 475 U.S. 66, 67 (1986)). Therefore, "the petit jury's verdict renders harmless the petitioner's unsupported claim that [Mr. Mount] gave materially false statement[s]" at the grand jury proceedings. *Nelson*, 2023 WL 2785797, at *4. *See also State ex rel. State v. Hummel*, 247 W. Va. 225, 233, 878 S.E.2d

[5] Pursuant to West Virginia Rule of Appellate Procedure 10(c)(7), a petitioner's argument must contain "appropriate and specific citations to the record on appeal[.]"

[6] To the extent that the petitioner is also alleging that the testimony of Mr. Mount and Mr. Fortner conflicted at trial, and that this conflicting testimony constitutes "willful intentional fraud" that went uncorrected by the State, his argument likewise fails. The testimony upon which he relies merely reflects alleged conflicting testimony from two witnesses, which presents a credibility issue for a jury to resolve. As this Court stated in the petitioner's direct appeal, "[a]n appellate court must . . . credit all . . . credibility assessments that the jury might have drawn in favor of the prosecution . . . . Credibility determinations are for a jury and not an appellate court." *Brown*, 210 W. Va. at 27, 552 S.E.2d at 403 (citing Syl. Pt. 3, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995)).

720, 728 (2021) ("We have long held that once a trial is had, an error in the grand jury proceedings is cured[.]").

In the petitioner's remaining assignments of error, he claims that the circuit court erred by refusing his motion to dismiss the indictment without holding a hearing, and without making findings of fact and conclusions of law. We conclude that these arguments are without merit. Because the petitioner has failed to make a showing of willful and intentional fraud by the State in obtaining the petitioner's indictment, he is not entitled to a hearing on this issue. *See* Syl. Pt. 3, *State ex rel. Pinson v. Maynard*, 181 W. Va. 662, 383 S.E.2d 844 (1989) (citation omitted) ("Once the defendant establishes a *prima facie* case of willful, intentional fraud in obtaining an indictment he is entitled to a hearing with compulsory process."). Furthermore, this Court has determined that the purpose of issuing findings of fact and conclusions of law is "to permit meaningful appellate review." *State v. Redman*, 213 W. Va. 175, 178, 578 S.E.2d 369, 372 (2003). When the record below is sufficiently developed and establishes that a petitioner's claims are without merit, a final order that does not specifically set forth detailed factual and legal findings does not necessitate remand. *See Hogan v. Ames*, No. 18-0493, 2019 WL 4165286, at *4 (W. Va. Sept. 3, 2019) (holding that a circuit court's order need not include detailed factual and legal findings when it is clear from the record that a petitioner's claims are without merit.) The circuit court's order was sufficient for appellate review given that the petitioner's claims regarding his indictment are waived under Rules 12(b) and 12(f) of the West Virginia Rules of Criminal Procedure. Therefore, we find that the petitioner is entitled to no relief in this regard.

Lastly, we remind the petitioner that in his most recently decided appeal, this Court stated that the petitioner "has exhausted all avenues for review of his 1999 conviction, the attendant sentence, and his efforts to secure post-conviction relief" in West Virginia courts. *Brown*, 2024 WL 313787, at *2.

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