

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**State of West Virginia,**  
**Respondent, Plaintiff Below**

**v.) Nos. 24-576, 24-578, and 24-579** (Fayette County CC-10-2015-F-59)

**Robert I. Brown Jr.,**  
**Petitioner, Defendant Below,**

**MEMORANDUM DECISION**

Petitioner Robert I. Brown Jr. appeals three orders from the Circuit Court of Fayette County, which were entered on or around September 5, 2024.<sup>1</sup> On appeal, the petitioner argues that the circuit court erred in denying (1) his motion to dismiss his criminal indictment, (2) his motion to exhume the deceased victim’s body and to appoint a medical pathologist to examine the body, and (3) his motion to obtain a complete record of his criminal case file. 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).

On November 13, 2014, the petitioner shot and killed Jamaal Calhoun inside the petitioner’s home. During subsequent questioning by law enforcement officers, the petitioner confessed that he had shot Mr. Calhoun, but claimed it was done in self-defense. However, the evidence demonstrated that the petitioner shot Mr. Calhoun eleven times with two different pistols, and the petitioner confessed that after he observed that Mr. Calhoun was still moving, he retrieved a shotgun and fired the gun into the back of Mr. Calhoun’s head. *See State v. Brown*, No. 18-0339, 2020 WL 6051305, at \*1 (W. Va. Oct. 13, 2020) (memorandum decision). Thereafter, the petitioner was indicted for second-degree murder. On the morning of trial, the petitioner accepted an *Alford/Kennedy*<sup>2</sup> plea, wherein he pled guilty to the second-degree murder charge. *Id.* at \*2. On March 31, 2017, the circuit court sentenced the petitioner to forty years of incarceration. The petitioner subsequently appealed his conviction and sentence, which were affirmed by this Court.

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<sup>1</sup> The petitioner is self-represented. The State of West Virginia is represented by Attorney General John B. McCuskey and Assistant Attorney General William E. Longwell.

<sup>2</sup> *See* Syl. Pt. 1, *Kennedy v. Frazier*, 178 W. Va. 10, 357 S.E.2d 43 (1987) (“An accused may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even though he is unwilling to admit participation in the crime, if he intelligently concludes that his interests require a guilty plea and the record supports the conclusion that a jury could convict him.”); *North Carolina v. Alford*, 400 U.S. 25, 37 (1970) (same).

*Id.* at \*3. The petitioner later filed a petition for a writ of habeas corpus in circuit court, which remains pending.

Despite the pending habeas proceeding, the petitioner filed three self-represented motions in his closed underlying criminal case. The first motion requested a copy of his criminal case file. The second motion requested the exhumation of the deceased victim's body and requested that the court appoint and pay for an independent expert forensic pathologist to examine the body. The last motion requested that the petitioner's indictment be vacated or dismissed, arguing that the State failed to present evidence of the petitioner's self-defense claim to the grand jury. On or about September 5, 2024, the circuit court entered three orders denying the petitioner's motions on their merits. Regarding the petitioner's motion requesting a copy of his case file, the court found that the petitioner was presumably attempting to obtain a copy of his file in support of his habeas petition and that by filing the motion in his closed criminal case, the petitioner was attempting to circumvent the discovery rules and limitations that apply to habeas proceedings. Regarding the motion to exhume the victim's body and appoint an expert forensic pathologist, the court found that the petitioner failed to meet his burden of establishing that the disinterment of the victim's body was "plainly necessary and essential to justice and fairness of trial" as required by *State v. McKenzie*, 197 W. Va. 429, 442, 475 S.E.2d 521, 534 (1996). The circuit court noted that the petitioner provided "no reason of substance, no necessity, and no justification for disturbing the victim" apart from seeking evidence of self-defense, which had been waived by his entering a guilty plea. Lastly, regarding the motion to dismiss the indictment, the court found that the petitioner waived the issue based, in part, on his failure to timely raise this issue prior to entering into his plea agreement. The court also noted that the State had no obligation to provide evidence of self-defense to the grand jury. Thereafter, the petitioner filed three separate appeals (one for each of the circuit court's orders), which were consolidated by order entered on April 29, 2025.<sup>3</sup>

We first address the petitioner's claim that the court erred in denying the petitioner's motion to dismiss the indictment. According to the circuit court's order, the petitioner argued that the State fraudulently obtained the indictment by failing to provide complete or accurate testimony to the grand jury, particularly as it related to his claim of self-defense.

"This Court's standard of review concerning a motion to dismiss an indictment is, generally, *de novo*." Syl. Pt. 1, in part, *State v. Grimes*, 226 W. Va. 411, 701 S.E.2d 449 (2009). On review, we find that the circuit court did not err in denying the petitioner's motion to dismiss the indictment. While the petitioner argues that the State erred by not presenting evidence of self-defense to the grand jury, this Court has previously found such contentions to be without merit. See *State v. Miller*, 197 W. Va. 588, 596 n.5, 476 S.E.2d 535, 543 n.5 (1996) (stating that a rule requiring prosecutors to present exculpatory evidence to grand juries "would alter the grand jury's historical role, transforming it from an accusatory to an adjudicatory body" (quoting *United States v. Williams*, 504 U.S. 36 (1992))). Accordingly, the State was not required to present evidence pertaining to the petitioner's self-defense claim to the grand jury.

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<sup>3</sup> The petitioner failed to attach any of his circuit court motions in the appendix of any of his three appeals, and his briefs on appeal fail to provide a general explanation of the motions. As such, we are forced to glean what the petitioner argued in his motions from the circuit court's orders.

Moreover, we note that the petitioner did not object to the procurement of his indictment prior to entering into his plea agreement, and, as such, effectively waived his right to raise this issue on appeal. Pursuant to 12(b)(2) of the West Virginia Rules of Criminal Procedure, defendants must raise any “[d]efenses and objections based on defects in the indictment or information” prior to trial, unless the alleged defect involves jurisdictional issues or the failure to charge an offense. “Failure by a party to raise defenses or objections or to make requests which must be made 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). Said another way, “if a defect in a charging instrument does not involve jurisdiction or result in a failure to charge an offense, a defendant must raise the issue prior to trial or the defect will be deemed waived absent a showing of good cause for failing to timely raise the issue.” Syl. Pt. 2, in part, *State v. Tommy Y., Jr.*, 219 W. Va. 530, 637 S.E.2d 628 (2006).

Here, the petitioner freely and voluntarily entered his *Kennedy/Alford* plea to second-degree murder and was properly sentenced in accordance with his plea agreement, which was affirmed by this Court on direct appeal. Accordingly, the petitioner is not entitled to relief from the court’s order denying his post-conviction motion to dismiss the indictment given that he failed to raise this issue prior to entering into his plea agreement. Therefore, we affirm the circuit court’s order denying the petitioner’s motion to rescind or dismiss the indictment.

We next address the petitioner’s claim that the circuit court erred in denying his motion requesting to exhume the victim’s body and appoint a medical pathologist to examine the body. According to the petitioner, the exhumation and examination of the deceased victim’s body is justified, as the examination may provide evidence to support the petitioner’s claim of self-defense. We disagree.

This Court has recognized that when dealing with exhumation of bodies for evidentiary purposes, circuit courts should only permit such actions when it is “*plainly necessary and essential to the justice and fairness of trial*, and is a matter in the discretion of the court, and its refusal to make such order is, as a rule, not reviewable as cause for reversal.” *McKenzie*, 197 W. Va. at 432, 475 S.E.2d at 524, Syl. Pt. 4, in part (citation omitted) (emphasis added). Here, we cannot find that the circuit court abused its discretion in denying the petitioner’s motion to exhume the victim’s body, particularly given that the petitioner entered a valid plea agreement. As noted by the circuit court, by pleading guilty, the petitioner waived his ability to raise self-defense as an affirmative defense during trial. *See State v. Greene*, 196 W. Va. 500, 505, 473 S.E.2d 921, 926 (1996) (Cleckley, J. concurring) (“If any principle is well settled in this State, it is that, in the absence of special circumstances, a guilty plea waives all antecedent constitutional and statutory violations save those with jurisdictional consequences.”); *see also State v. Legg*, 207 W. Va. 686, 690 n.7, 536 S.E.2d 110, 114 n.7 (2000) (“When a defendant unconditionally and voluntarily pleads guilty to an offense, the defendant generally waives nonjurisdictional objections to a circuit court’s rulings, and therefore cannot appeal those questions to a higher court. Claims of nonjurisdictional defects in the proceedings . . . generally will not survive a plea bargain.” (citing *Tollett v. Henderson*, 411 U.S. 258 (1973))). Moreover, apart from his untimely claim of self-defense, the petitioner has failed to otherwise justify disinterment or the appointment of an independent pathologist to evaluate the victim’s body. This is especially true given that an autopsy of the

victim's body had already been performed by the West Virginia Medical Examiner's Office, and multiple witnesses from the Medical Examiner's Office were prepared to testify at trial. As such, we find no abuse of discretion in the court's decision to deny the petitioner's motion to exhume the victim's body, as the basis for his motion—to find evidence of self-defense—has been waived by the entry of his guilty plea, and the petitioner cannot show that the disinterment of the deceased victim's body is “plainly necessary and essential to justice and fairness of trial.”

Lastly, we address to the petitioner's claim that the circuit court erred in denying the petitioner's motion requesting a copy of his criminal case file. In his brief on appeal, the petitioner appears to assert that he was entitled to the entire record of his case for the purposes of an appeal because he is indigent.

We have previously held that “[u]pon request, an indigent defendant in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record.” Syl. Pt. 1, *Call v. McKenzie*, 159 W. Va. 191, 220 S.E.2d 665, (1975). However, this rule is “not without limitation.” *State ex rel. Tackett v. Poling*, 243 W. Va. 266, 271, 843 S.E.2d 518, 523 (2020). Here, the petitioner filed a self-represented motion requesting a copy of his criminal case file in his closed criminal case, and, because the petitioner had already filed a direct appeal to this Court, the circuit court presumed that the petitioner was seeking a copy of his case file to support his habeas proceedings. As such, the circuit court denied the motion, finding that the petitioner was attempting to circumvent the rules pertaining to discovery under the West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings by seeking the case file under the closed criminal case. Under the specific circumstances of this case, we find no error in the circuit court's decision. Should the petitioner need to obtain discovery pertaining to his habeas proceedings, he should do so by complying with Rule 7 of the West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings, and by filing the appropriate requests in his pending habeas case.

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