

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Thomas Ferguson,
Petitioner Below, Petitioner

v.) No. 23-285 (Berkeley County CC-02-2018-C-414)

Donald Ames, Superintendent,
Mt. Olive Correctional Complex and
Catie Wilkes Delligatti,
Respondents Below, Respondents

MEMORANDUM DECISION

The petitioner Thomas Ferguson appeals the Circuit Court of Berkeley County’s April 17, 2023, order denying his petition for a writ of habeas corpus.¹ The petitioner argues that his trial counsel, as well as his appellate counsel, provided ineffective assistance. 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).

A grand jury returned a three-count indictment against the petitioner, charging him with one count of first-degree robbery and two counts of second-degree robbery. The petitioner’s trial commenced on December 6, 2016. At the conclusion of the petitioner’s three-day trial, the jury found him guilty of second-degree robbery, a lesser included offense of the first-degree robbery charge, and the two second-degree robbery charges. On February 9, 2017, the circuit court sentenced the petitioner to five to eighteen years of imprisonment for each of his three second-degree robbery convictions. The circuit court ordered the sentences to run consecutively, for an effective sentence of fifteen to fifty-four years. This Court affirmed the circuit court’s February 16, 2017, sentencing order on March 12, 2018. *See State v. Ferguson*, No. 17-0209, 2018 WL 1255006 (W. Va. Mar. 12, 2018) (memorandum decision).

In June 2020, the petitioner, represented by counsel, filed an amended petition for a writ of habeas corpus. The petitioner listed four grounds for relief: (1) ineffective assistance of trial counsel; (2) ineffective assistance of appellate counsel; (3) various grounds under *Losh v. McKenzie*, 166 W. Va. 762, 277 S.E.2d 606 (1981); and (4) the cumulative weight of all of the

¹ The petitioner is represented by counsel J. Mark Sutton. The respondents appear 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.

noted errors within his trial and appellate proceedings violated his due process rights.² By order entered May 3, 2023, the circuit court denied the petition. 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.

ISSUED: September 10, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

² The circuit court found that the petitioner is not entitled to relief under a theory of cumulative error, since no error was sufficiently shown.