

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Brent Radabaugh,
Petitioner Below, Petitioner

v.) No. 23-686 (Wood County No. CC-54-2017-P-124)

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

MEMORANDUM DECISION

The petitioner Brent Radabaugh appeals the Circuit Court of Wood County's November 3, 2023, order denying his petition for a writ of habeas corpus.¹ The petitioner argues that the circuit court erred in (1) admitting evidence under West Virginia Rules of Evidence 404(b) without first performing the requisite analysis under *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994); (2) admitting evidence of the petitioner's attempted suicide after the underlying crime was committed without performing the requisite analysis under *State v. Payne*, 167 W. Va. 252, 280 S.E.2d 72 (1981); (3) failing to find that trial counsel provided ineffective assistance of counsel; and (4) failing to adequately address the substantive constitutional issues presented in the proceedings. 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 indicted on September 10, 2010, for first-degree murder. During the course of the trial, the State introduced substantial evidence of other crimes or acts allegedly attributed to the petitioner, including evidence that the petitioner was a user of and/or addicted to illegal drugs. There were also allegations that the petitioner stole the decedent's car, and evidence introduced of the petitioner's suicide attempt that was made shortly after the alleged crime. Importantly, defense counsel failed to object to this evidence under Rule 404(b) or otherwise to request a hearing to determine its admissibility at trial. On August 17, 2012, the jury found the petitioner guilty of murder in the first degree and recommended mercy. On October 29, 2012, the trial court sentenced the petitioner to a term of life imprisonment with mercy. Trial counsel appealed the conviction to this Court on the trial court's admission of a gruesome photograph and the belief that the jury's verdict was against the manifest weight and sufficiency of the evidence. Based on the limited assignments of error presented, this Court affirmed the petitioner's conviction

¹ The petitioner is represented by counsel Natalie J. Sal. The respondent appears by Wood County Prosecuting Attorney Patrick Lefebure and Assistant Prosecuting Attorney Kevin Day.

on June 28, 2013. *See State v. Radabaugh*, No. 12-1461, 2013 WL 3283842 (W. Va. June 28, 2013) (memorandum decision).

On August 25, 2017, the petitioner filed a petition for a writ of habeas corpus alleging multiple errors and seeking a reversal of his conviction, or in the alternative, a new trial. Petitioner raised a number of issues, including the trial court's admission of certain evidence under Rule 404(b) without performing the requisite analysis under *McGinnis*², and defense counsel's failure to request a limiting instruction regarding the use of additional Rule 404(b) evidence without a *Payne* analysis.³ At the omnibus habeas hearing, the petitioner testified that he did not understand the rights he was giving up when he followed his counsel's advice to stipulate to the admission of statements that were subsequently harmful to him. After considering the evidence, testimony, and exhibits, the circuit court denied the petition for a writ of habeas corpus and entered a final judgment order on November 3, 2023. 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.⁴ Upon our review, we conclude that the petitioner has not satisfied his burden of demonstrating

² In *McGinnis*, this Court outlined the specific process by which the trial court is to analyze and determine the admissibility of Rule 404(b) evidence *in camera* prior to presentation to the jury.

After hearing the evidence and arguments of counsel, the trial court must be satisfied by a preponderance of the evidence that the acts or conduct occurred and that the defendant committed the acts. If the trial court does not find by a preponderance of the evidence that the acts or conduct was committed or that the defendant was the actor, the evidence should be excluded under Rule 404(b). If a sufficient showing has been made, the trial court must then determine the relevancy of the evidence under Rules 401 and 402 of the West Virginia Rules of Evidence and conduct the balancing required under Rule 403. If the trial court is then satisfied that the Rule 404(b) evidence is admissible, it should instruct the jury on the limited purpose for which such evidence has been admitted.

McGinnis, 193 W. Va. at 151, 455 S.E.2d at 520, Syl. Pt. 2, in part.

³ The petitioner contends that the majority of jurisdictions nationwide have treated evidence of attempted suicide in the same manner as flight evidence in terms of admissibility, as both would trigger a presumption of a guilty conscience. In *Payne*, this Court stated that, "in certain circumstances evidence of the flight of the defendant will be admissible in a criminal trial as evidence of the defendant's guilty conscience or knowledge." *See Payne*, 167 W. Va. at 254, 280 S.E.2d at 73, Syl. Pt. 6. However, prior to admitting such evidence, the trial judge, upon request by either the State or the defendant, "should hold an *in camera* hearing to determine whether the probative value of such evidence outweighs its possible prejudicial effect." *Id.* at 254, 280 S.E.2d at 73, Syl. Pt. 6, in part.

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

⁴ The petitioner contends that the circuit court failed to directly address the *McGinnis* and *Payne* issues with regard to the lack of a Rule 404(b) analysis. Instead, the circuit court discussed the matters in an analysis of allegations of ineffective assistance of counsel. This Court notes that the claims made by the petitioner could have been raised on direct appeal, and are therefore waived. In petitioning for habeas corpus relief, “there is a rebuttable presumption that petitioner intelligently and knowingly waived any contention or ground in fact or law relied on in support of his petition for habeas corpus which he could have advanced on direct appeal but which he failed to so advance.” Syl. Pt. 1, in part, *Ford v. Coiner*, 156 W. Va. 362, 196 S.E.2d 91 (1972). The circuit court ultimately found that the petitioner was adequately and competently represented at all stages of his case. The circuit court further found that none of the petitioner’s claims of constitutional error rise to a level of constitutional import to disturb the rulings by the trial court, and determined that trial counsel’s explanation for not requesting a limiting instruction to be plausible given the circumstances of the case.