

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Warren H.,
Petitioner below, Petitioner

v.) No. 24-249 (Raleigh County CC-41-2022-C-107)

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

MEMORANDUM DECISION

Petitioner Warren H. appeals the April 3, 2024, order of the Circuit Court of Raleigh County denying his third petition for a writ of habeas corpus.¹ The petitioner argues that the circuit court erred in failing to provide its reasoning for denying his claim that he should be resentenced to a life term of incarceration with the possibility of parole for his kidnapping conviction.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion. For the reasons expressed below, the decision of the circuit court is vacated, and this case is remanded for the circuit court to enter an order addressing the petitioner's argument that his life sentence of incarceration without the possibility of parole for kidnapping is illegal, due to the jury being deadlocked as to whether the petitioner deserved mercy, to allow meaningful appellate review of that issue should the petitioner elect to file an appeal.

The petitioner, a friend of the eleven-year-old victim's family, threatened her with a knife and sexually assaulted her multiple times in her home while her mother was at work. The victim suffered two cuts on her mouth from the knife. Two of the victim's younger siblings were also in the home during the attack. The petitioner left the home the next morning, approximately ten minutes before the victim's mother was scheduled to come home from working the night shift. At trial, the victim identified the petitioner as her attacker. The jury found the petitioner guilty of two counts of first-degree sexual assault, battery, brandishing a deadly weapon, nighttime burglary,

¹ The petitioner is a self-represented litigant. The respondent appears by Attorney General John B. McCuskey and Assistant Attorney General Sandra M. Walls. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. Initials are used where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

and kidnapping.² However, the jury deadlocked over whether to make a recommendation for mercy, and the circuit court sentenced the petitioner to life without the possibility of parole, concluding that the default sentence under the kidnapping statute³ is a life term of incarceration without the possibility of parole, which could be reduced to a life sentence of incarceration with the possibility of parole only if the jury recommended mercy. The circuit court noted the petitioner's objection to its ruling.

At a sentencing hearing, the circuit court sentenced the petitioner to fifteen to thirty-five years of incarceration on each of the counts of first-degree sexual assault; six months of incarceration for battery; one year of incarceration for brandishing a deadly weapon; one to fifteen years of incarceration for nighttime burglary; and a life term of incarceration without the possibility of parole for kidnapping. The circuit court ordered the sentences on the first-degree sexual assault, battery, brandishing a deadly weapon, and nighttime burglary convictions to run consecutively to one another for an aggregate term of thirty-two and a half to eighty-five years in prison. The circuit court further ordered that those sentences would run consecutively to the petitioner's life sentence of incarceration without parole for kidnapping. This Court refused the petitioner's criminal appeal in May 2008, and a petition for a writ of certiorari was denied by the Supreme Court of the United States. [*Warren H.*] v. *West Virginia*, 555 U.S. 1032 (2008).

In the petitioner's first habeas corpus proceeding, the petitioner was appointed counsel and filed his amended petition for a writ of habeas corpus in August 2008. The circuit court held evidentiary hearings in June 2010 and November 2011 and then denied habeas relief in March 2012. In *Warren H. v. Ballard*, No. 12-0324, 2013 WL 1707675 (W. Va. Apr. 19, 2013) (memorandum decision), this Court affirmed, finding that "the circuit court did not abuse its discretion in denying the [first habeas] petition." *Id.* at *2. The Supreme Court of the United States denied certiorari. *Warren H. v. Ballard*, 571 U.S. 908 (2013). While the circuit court denied a second habeas petition, this Court dismissed the petitioner's appeal of that denial in October 2021.

The petitioner filed his third habeas petition in April 2022, asserting (1) the petitioner's sentences of fifteen to thirty-five years on each count of first-degree sexual assault are illegal due to the victim's age at the time of the assaults, and (2) the petitioner's life sentence of incarceration for kidnapping is illegal because the jury deadlocked as to whether the petitioner deserved mercy. In April 2024, the circuit court denied the third petition, rejecting the petitioner's initial claim by finding that the claim was capable of being raised in a prior proceeding and that the petitioner incorrectly calculated the victim's age.⁴ However, the circuit court did not address the petitioner's

² The jury found that bodily harm was inflicted and a concession was yielded during the kidnapping.

³ The version of the kidnapping statute, West Virginia Code § 61-2-14a, that applies to the petitioner's case is the statute the Legislature amended in 1999.

⁴ The petitioner conceded in his petition that the 1991 version of the first-degree sexual assault statute, West Virginia Code § 61-8B-3, applies to his case, and, in Syllabus Point 8 of *State ex rel. Morgan v. Trent*, 195 W. Va. 257, 465 S.E.2d 257 (1995), we held that "[t]he language of [West Virginia Code §] 61-8B-3(a)(2) (1991), that identifies the victim of sexual assault in the

remaining claim, that the default sentence for kidnapping under West Virginia Code § 61-2-14a (1999) is a life term of incarceration with the possibility of parole.

The petitioner now appeals the circuit court's April 3, 2024, order denying his third habeas petition. We have held that

West Virginia Code section 53-4A-7(c) (1994) requires a circuit court denying or granting relief in a habeas corpus proceeding to make specific findings of fact and conclusions of law relating to each contention advanced by the petitioner, and to state the grounds upon which the matter was determined.

Syl. Pt. 1, *State ex rel. Watson v. Hill*, 200 W. Va. 201, 488 S.E.2d 476 (1997).

On appeal, the petitioner argues that the circuit court erred in failing to provide its reasoning for denying his claim that he should be resentenced to a life term of incarceration with the possibility of parole for his kidnapping conviction due to the jury being deadlocked as to whether he deserved mercy. The respondent concedes that this case should be remanded to the circuit court for the entry of an order addressing the petitioner's argument that his life sentence of incarceration for kidnapping is illegal. We agree.

“[R]ulings issued by trial courts, as a rule, must contain the requisite findings of fact and conclusions of law ‘to permit meaningful appellate review.’” *State v. Redman*, 213 W. Va. 175, 178, 578 S.E.2d 369, 372 (2003) (quoting Syl. Pt. 3, *Fayette Cnty. Nat’l Bank v. Lilly*, 199 W. Va. 349, 484 S.E.2d 232 (1997), *overruled on other grounds by Sostaric v. Marshall*, 234 W. Va. 449, 766 S.E.2d 396 (2014)). The petitioner challenges the legality of his life sentence of incarceration without the possibility of parole for his kidnapping conviction. Rule 35(a) of the West Virginia Rules of Criminal Procedure provides, in pertinent part, that “[t]he court may correct an illegal sentence at any time.” Thus, the circuit court must make findings of fact and conclusions of law that will allow us to review the petitioner's life sentence without the possibility for parole in light of our decision in *State v. Reeder*, 248 W. Va. 346, 888 S.E.2d 846 (2023). In *Reeder*, we observed that we did not consider the petitioner's life sentence without the possibility for parole for kidnapping in our memorandum decision in *Warren H.* because no party raised that issue, and we further noted that memorandum decisions have limited precedential value. *Id.* at 350 n.13, 888 S.E.2d at 850 n.13 (quoting Syl. Pt. 5, *State v. McKinley*, 234 W. Va. 143, 764 S.E.2d 303 (2014)).⁵ Therefore, we vacate the circuit court's April 3, 2024, order, and remand this case for the circuit court to enter an order addressing the petitioner's argument that his life sentence of incarceration

first degree as a person ‘who is eleven years old or less’ applies to a person who is eleven years old, but who has not reached his or her twelfth birthday.” On appeal, the petitioner does not challenge the circuit court's rejection of his claim that his sentences of fifteen to thirty-five years on each count of first-degree sexual assault are illegal.

⁵ In Syllabus Point 5 of *Reeder*, this Court held that in a different context, when a jury in a first-degree murder trial cannot reach a verdict as to whether the defendant deserves mercy, the circuit court “must declare a mistrial and empanel a new jury to determine whether the defendant should receive mercy.” 248 W. Va. at 347, 888 S.E.2d at 847.

without the possibility of parole for kidnapping is illegal under West Virginia Code § 61-2-14a (1999), due to the jury being deadlocked as to whether the petitioner deserved mercy, to allow meaningful appellate review of that issue should the petitioner elect to file an appeal.

Vacated and Remanded with Directions.

ISSUED: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice James W. Flanigan

DISQUALIFIED:

Justice H. L. Kirkpatrick