

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Jeffrey L. Finley,
Petitioner Below, Petitioner

v.) No. 24-303 (Cabell County CC-06-2021-C-459)

Jonathan Frame, Superintendent,
Mount Olive Correctional Complex and Jail,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Jeffrey L. Finley appeals the April 22, 2024, order of the Circuit Court of Cabell County denying the remaining grounds for relief from the petitioner’s fourth petition for a writ of habeas corpus.¹ The order appealed from here was entered by the circuit following this Court’s remand in *Finley v. Ames* (“*Finley IIP*”), No. 22-0245, 2023 WL 3071344 (W. Va. Apr. 25, 2023) (memorandum decision), for the circuit court to make findings on the extent to which West Virginia Code § 53-4A-1 (2021) allowed the petitioner to raise previously adjudicated and/or waived habeas claims involving forensic scientific evidence. The petitioner argues that the circuit court erred in denying his claims based upon forensic scientific evidence as, according to him, the State’s DNA expert committed errors. 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).

Following this Court’s decision in *State v. Finley* (“*Finley I*”), 219 W. Va. 747, 639 S.E.2d 839 (2006), the petitioner was resentenced to a life term of incarceration, with the possibility of parole, for his conviction of first-degree murder and to two terms of ten to twenty-five years of incarceration for his conviction of two counts of second-degree sexual assault. Subsequently, at an omnibus habeas corpus hearing,² the petitioner’s trial counsel testified that he consulted an independent DNA expert, who “determined that the State’s DNA expert had done the DNA testing ‘right’ and ‘saw no problems with [the State’s] procedures.’” *Finley v. Terry* (“*Finley II*”), No. 17-0084, 2018 WL 2750893, at *5 (W. Va. June 8, 2018) (memorandum decision). Accordingly, trial counsel “made the tactical decision not to have the DNA independently re-tested due to the possibility that such testing would confirm, rather than contradict, the State’s findings, which could then have been used against [the] petitioner at trial.” *Id.* Also, the petitioner declined to have

¹ The petitioner appears by counsel Eric Anderson. The respondent appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

² The petitioner’s omnibus hearing occurred in his third habeas proceeding.

post-conviction DNA testing performed pursuant to West Virginia Code § 15-2B-14 and, on appeal in *Finley II*, failed to develop his argument that the State's DNA testing consumed the entire sample found on the victim's body. *Id.* at *5 n.2. In *Finley II*, this Court affirmed the circuit court's denial of petitioner's amended petition in his third habeas proceeding. *Id.* at *9.

In *Finley III*, this Court partially affirmed and partially reversed the denial of the petitioner's fourth habeas petition and remanded the case for the circuit court to make findings on the extent to which West Virginia Code § 53-4A-1 (2021) allowed the petitioner to raise previously adjudicated and/or waived habeas claims involving forensic scientific evidence. 2023 WL 3071344, at *4. In remanding the case, we noted that one of the requirements that West Virginia Code § 53-4A-1 (2021) imposes is that there must be "a reasonable probability there would be a different outcome at trial." *Id.* at *3 (quoting W. Va. Code § 53-4A-1(b)(1) (2021) regarding previously adjudicated claims and W. Va. Code § 53-4A-1(c) (2021) regarding previously waived claims). Upon remand, the court found that there was no reasonable probability of a different outcome at trial due to (1) the petitioner's trial counsel's testimony in the *Finley II* habeas proceeding that an independent DNA expert stated there were no problems with the State's procedures, and independent testing would possibly confirm, rather than contradict, the State's findings; (2) the petitioner's decision in *Finley II* not to have post-conviction DNA testing performed pursuant to West Virginia Code § 15-2B-14; and (3) the petitioner's failure to develop the argument on appeal in *Finley II* that the State exhausted the entire sample located on the victim's body with its DNA testing. The circuit court observed that the petitioner's last claim actually involved the State's handling of the DNA evidence rather than the DNA evidence itself, and there was "[no] forensic scientific evidence that could undermine the [DNA] evidence presented at trial." Therefore, the circuit court denied the remaining grounds for relief from the petitioner's fourth habeas petition. The petitioner now appeals the circuit court's April 22, 2024, order. 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: August 25, 2026

CONCURRED IN BY:

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