

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Ryan L. Henson,
Petitioner Below, Petitioner

v.) No. 24-123 (Berkeley County CC-02-2023-C-396)

Curtis Dixon, Superintendent,
Mount Olive Correctional Center and Jail,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Ryan L. Henson appeals the Circuit Court of Berkeley County's January 30, 2024, order, arguing that the court erred in dismissing his petition for a writ of habeas corpus in which he raised a claim of ineffective assistance of habeas counsel.¹ 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.

In 2016, the petitioner and two codefendants were each convicted of one count of burglary, three counts of first-degree robbery, three counts of assault during the commission of a felony, and one count of conspiracy following a 2015 home invasion in which they beat Robert Basore and his two adult sons and stole Mr. Basore's property. The petitioner filed a direct appeal, and we reversed the circuit court's sentencing order with respect to two of the three first-degree robbery convictions, finding that these convictions violated double jeopardy when the State proved that only Mr. Basore's property was taken. *State v. Henson*, 239 W. Va. 898, 903, 806 S.E.2d 822, 827 (2017). On remand, the circuit court entered a corrected sentencing order sentencing the petitioner to eighty years of incarceration for a single first-degree robbery conviction, one to fifteen years of incarceration for burglary, two to ten years for each assault during the commission of a felony conviction, and one to five years for conspiracy. The sentences were to be served consecutively. *State v. Henson*, No. 18-0336, 2019 WL 2246769, at *2 (W. Va. May 19, 2019) (memorandum decision). Thereafter, the petitioner filed a motion pursuant to West Virginia Rule of Criminal Procedure 35(b) requesting a reduction of sentence. The circuit court denied the petitioner's

¹ The petitioner is self-represented. 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. Additionally, the Court has automatically substituted the name of the current Superintendent of Mount Olive Correctional Center and Jail as the respondent. *See* W. Va. R. App. P. 41(c).

motion; the petitioner appealed the order denying his Rule 35(b) motion to this Court, which we affirmed. *Id.* at *2-3.

While the appeal of the denial of the petitioner's Rule 35(b) motion was still pending, the petitioner filed a self-represented petition for a writ of habeas corpus in the circuit court, which was dismissed as premature. Following the disposition of the appeal, the petitioner filed a second petition for a writ of habeas corpus, arguing ineffective assistance of trial counsel and improper statements made by the State during closing arguments. The habeas court appointed counsel for the petitioner, who filed an amended petition and submitted a completed *Losh* checklist.² The circuit court held an omnibus hearing, during which six witnesses testified, including the petitioner and the petitioner's trial counsel. By order entered on December 23, 2021, the court denied the petition for a writ of habeas corpus. The petitioner appealed, and this Court affirmed the habeas court's order. *See Henson v. Ames*, No. 22-0059, 2023 WL 245349 (W. Va. Jan. 18, 2023) (memorandum decision).

On October 4, 2023, the petitioner, self-represented, filed another petition for a writ of habeas corpus, claiming that habeas counsel's assistance was ineffective because he failed to present evidence during the omnibus hearing regarding all claims raised in both his second self-represented petition and the amended petition filed by counsel. The petitioner also argued that his habeas counsel was ineffective in appealing the order denying him habeas relief. Finally, the petitioner claimed that the circuit court erred in refusing to recuse the prosecutor and openly criticizing defense counsel in front of the jury and further claimed that the State knowingly presented perjured testimony, committed discovery violations, and failed to preserve evidence. By order entered on January 30, 2024, the habeas court dismissed the petitioner's petition for a writ of habeas corpus, without appointing counsel or conducting an omnibus hearing, finding that examination of the petition clearly demonstrated that the petitioner was not entitled to relief. 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).

On appeal, the petitioner argues that the habeas court erred in denying his petition for a writ of habeas corpus when his prior petitions and the record clearly demonstrated that the petitioner's habeas counsel provided ineffective assistance. The petitioner specifically claims that habeas counsel failed to present evidence at the omnibus hearing of all claims raised in the petitions, essentially abandoning these claims without the petitioner's permission. The petitioner also asserts that habeas counsel provided ineffective assistance on appeal, claiming that the brief produced was deficient.

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) (quoting Syl. Pt. 2, *Perdue v. Coiner*, 156 W. Va. 467, 194 S.E.2d 657

² The *Losh* checklist originates from our decision in *Losh v. McKenzie*, 166 W. Va. 762, 277 S.E.2d 606 (1981), wherein the Court set forth the most common grounds for habeas relief.

(1973)) (“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.”). 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 22, 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