

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**Carlos Tilley,
Petitioner Below, Petitioner**

v.) No. 25-252 (Marion County No. CC-24-2024-C-142)

**Tom Harlan, Superintendent,
Huttonsville Correctional Center and Jail,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Carlos Tilley appeals the Circuit Court of Marion County's February 6, 2025, order denying his petition for a writ of habeas corpus.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 summarily affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).

The petitioner was convicted in 2016 of one count of delivery of a controlled substance (crack cocaine) within 1,000 feet of a school and one count of conspiracy to commit a felony. The jury also found him guilty pursuant to a recidivist information. He was sentenced as a recidivist to life in prison with eligibility for parole, plus a concurrent term of one to five years of imprisonment. The petitioner filed a direct appeal to this Court, which affirmed the conviction and sentence. *See State v. Tilley (Tilley I)*, No. 17-0155, 2018 WL 3005946 (W. Va. June 15, 2018) (memorandum decision). He also filed an omnibus petition for writ of habeas corpus that was unsuccessful. *See Tilley v. Ames (Tilley II)*, No. 21-0644, 2022 WL 9923704 (W. Va. Oct. 17, 2022) (memorandum decision).

On September 9, 2024, the petitioner filed a petition under West Virginia Code § 53-4A-1 for habeas corpus relief, seeking to vacate his conviction upon the sole ground of ineffective

¹ The petitioner is a self-represented litigant. Because a new Superintendent of the Huttonsville Correctional Center and Jail was named while this appeal was pending, his name has been substituted as the respondent. The respondent appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease.

assistance of habeas counsel. This is the petitioner's third request for habeas relief.^{2,3} At trial, the petitioner was represented by counsel David DeMoss, and subsequently Jason Wingfield was appointed as counsel for the purpose of filing an appeal. In his current habeas petition, the petitioner noted several issues concerning Mr. DeMoss's representation at the trial for recidivism in Case No. 16-F-44 that he alleges his habeas counsel failed to include in the two previous habeas claims for ineffective assistance of counsel. The issues that the petitioner noted included: (1) misuse of challenges during voir dire; (2) certain comments made during the prosecutor's opening statement; (3) certain arguments not made during the petitioner's opening statement; (4) statements made by witnesses Marcus Weese and Doug Yost; (5) the jury instructions; and (6) comments made during the prosecutor's closing arguments. It is the petitioner's position that Mr. Wingfield's and Mr. DeMoss's failure to address the referenced issues in his direct appeal and first habeas petition demonstrated ineffective assistance of counsel.

At omnibus evidentiary hearings conducted in the petitioner's first habeas proceeding, on August 27, 2019, and September 28, 2020, the petitioner testified that Mr. DeMoss failed to adequately represent him in several ways, including not calling certain witnesses, not hiring a private investigator, not reviewing the grand jury transcript until the day of trial, failing to cross-examine the State's witnesses, and failing to object to statements made by the State.⁴ The petitioner did not mention trial counsel's alleged misuse of challenges during voir dire, failure to object to statements made by the prosecutor and the witnesses, or failure to note errors with the jury instructions. In ruling on the present petition, the circuit court found that those actions or inactions by trial counsel were known, or should have been known, to the petitioner at the time he filed his appeal and subsequent habeas petitions.

² The petitioner filed his first petition for habeas corpus relief on September 21, 2018, raising twelve grounds of error, which included ineffective assistance of counsel. The circuit court denied the petitioner's request for habeas relief by order entered on July 14, 2021. The petitioner appealed the decision to this Court, which affirmed the lower court's decision on October 20, 2022. *See Tilley II*, 2022 WL 9923704, at *2.

³ The petitioner filed his second request for habeas corpus relief on November 6, 2023, by raising the sole ground of ineffective assistance of habeas corpus counsel. The circuit court summarily denied the petition on January 11, 2024. In a memorandum decision entered on June 1, 2026, this Court vacated and remanded the case to the circuit court for failure to address petitioner's motion to amend his petition. *See Tilley v. Searls (Tilley III)*, No. 24-65, 2026 WL 1557120 (W. Va. June 1, 2026) (memorandum decision).

⁴ Pursuant to Syllabus Point 4 of *Losh v. McKenzie*, 166 W. Va. 762, 277 S.E.2d 606 (1981),

[a] prior omnibus habeas corpus hearing is res judicata as to all matters raised and as to all matters known or which with reasonable diligence could have been known; however, an applicant may still petition the court on the following grounds: ineffective assistance of counsel at the omnibus habeas corpus hearing; newly discovered evidence; or, a change in the law, favorable to the applicant, which may be applied retroactively.

On February 6, 2025, the circuit court dismissed the current habeas petition and found that the petitioner failed to raise the issues in his first and second habeas petitions, which contained adjudications on ineffective assistance of counsel. The circuit court further found that the petitioner was not entitled to a hearing, and that the petitioner is entitled “to only one post-conviction habeas corpus proceeding during which he must raise all grounds for relief which are known to him or which he could, with due diligence, discover.” Syl. Pt. 1, *Gibson v. Dale*, 173 W. Va. 681, 319 S.E.2d 806 (1984). The court determined that any errors made by the petitioner’s habeas counsel did not rise to a level that supports a claim of ineffective assistance of habeas counsel and that the petitioner failed to meet the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), for proving ineffective assistance of his habeas counsel.⁵ 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 the petitioner habeas relief.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: September 22, 2026

⁵ We previously have held:

In West Virginia courts, claims of ineffective assistance of counsel are governed by the two-pronged standard established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.

Syl. Pt. 5, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995).

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