FILED
November 5, 2026
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Terry L. Buxton,
Petitioner Below, Petitioner

v.) No. 24-334 (Wayne County CC-50-2017-C-111)

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

MEMORANDUM DECISION

Petitioner Terry L. Buxton appeals the March 26, 2024, order of the Circuit Court of Wayne County denying relief in his second habeas corpus proceeding.[1] The petitioner argues that the circuit court erred in denying habeas relief because he did not have effective assistance of counsel in his criminal proceeding, his criminal appeal, his first habeas proceeding, and his previous habeas appeal. 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).

In April 1993, a jury convicted the petitioner of first-degree murder in the death of his former wife and of malicious wounding of the man with whom she was having a relationship. The jury declined to recommend mercy. Therefore, the circuit court sentenced petitioner to a life term of incarceration without mercy on the murder conviction and two to ten years of incarceration on the malicious wounding conviction, with the sentences to run consecutively. In the petitioner's first habeas proceeding, an evidentiary hearing occurred in December 2013, during which the petitioner raised a claim of ineffective assistance of trial counsel. After the circuit court denied relief, the petitioner appealed in *Buxton v. Ballard*, No. 14-0648, 2015 WL 2364510 (W. Va. May 15, 2015) (memorandum decision). In *Buxton*, this Court affirmed the denial of habeas relief, rejecting the petitioner's claim of ineffective of trial counsel. The Court stated that "the record reveals that [the] petitioner was nothing short of a volatile powder-keg throughout the trial," and "[h]e refused to cooperate with counsel, filed his own motions, . . . and refused to recognize the very real possibility of a first[-]degree murder conviction." *Id.* at *4.

[1] The petitioner appears by counsel Juston H. Moore. The current superintendent of Mount Olive Correctional Complex and Jail has been substituted as the respondent. *See* W. Va. R. App. P. 41(c). 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. By order entered on January 2, 2025, this Court granted the petitioner's motion for leave to file a reply in this case as a self-represented litigant.

Subsequently, the petitioner initiated the instant habeas proceeding. The circuit court again appointed counsel and held an evidentiary hearing, in which the petitioner, the petitioner's daughter, and prior habeas counsel testified. In a March 26, 2024, order, the circuit court initially determined that all issues except for ineffective assistance of habeas counsel were barred by the doctrine of res judicata because they "are either questions of fact or law which have been fully and finally litigated and decided following an omnibus habeas corpus hearing or issues which, with reasonable diligence, should have been known to [the] [p]etitioner and his habeas counsel [in *Buxton*]."[2] Next, the circuit court found no merit to the petitioner's ineffective assistance of habeas counsel claim because the court accredited habeas counsel's testimony that she and her cocounsel provided effective assistance in *Buxton*. Finally, the circuit court found that even if habeas counsel's performance was deficient in some way, the petitioner failed to show "how the deficiency would warrant the relief requested." Therefore, the circuit court denied habeas relief. The petitioner now appeals the circuit court's March 26, 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.[3] 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.

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[2] The circuit court rejected the petitioner's assertion that he did not understand the court's warning in the prior habeas proceeding that he would be "forever barred" from re-raising fully litigated or waived claims given his response, "Yes, sir, I understand that." We decline to disturb that determination. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) ("An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.").

[3] Because the circuit court found that (1) all claims other than ineffective assistance of habeas counsel were barred by the doctrine of res judicata, (2) habeas counsel's performance was not deficient based upon counsel's testimony, and (3) even if there was deficient performance, it would not entitle the petitioner to habeas relief, the circuit court complied with Syllabus Point 1 of *State ex rel. Watson v. Hill*, 200 W. Va. 201, 488 S.E.2d 476 (1997), by making sufficient findings. To the extent that the petitioner argues that the circuit court was not provided with a complete record on which it could make sufficient findings (essentially alleging the ineffective assistance of habeas counsel in the instant proceeding), we decline to address that issue. *See Watts v. Ballard*, 238 W. Va. 730, 735 n.7, 798 S.E.2d 856, 861 n.7 (2017) ("[T]he preferred way of raising ineffective assistance of habeas counsel is to file a subsequent petition for a writ of habeas corpus raising the issue in the court below.") (internal quotations and citations omitted).

ISSUED: November 5, 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