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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Anthony Adkins,
Petitioner Below, Petitioner

v.) No. 24-375 (Cabell County CC-06-2022-C-279)

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

MEMORANDUM DECISION

Petitioner Anthony Adkins appeals the May 28, 2024, order of the Circuit Court of Cabell County denying the petitioner's amended petition for a writ of habeas corpus.[1] The petitioner argues that the circuit court erred in denying habeas relief. 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 October 2017, the petitioner was indicted on one count of first-degree murder. Prior to trial, the petitioner rejected the State's plea offer consisting of the petitioner pleading guilty to second-degree murder in exchange for the State "limit[ing] its argument for imprisonment for 30 years." The petitioner proceeded to trial, and the jury found him guilty of first-degree murder and declined to recommend mercy. The circuit court sentenced the petitioner to a life term of incarceration without the possibility of parole. This Court affirmed the petitioner's conviction in *State v. Adkins*, No. 19-0864, 2021 WL 4935746 (W. Va. Oct. 13, 2021) (memorandum decision), concluding, inter alia, that "[t]he evidence is sufficient to prove the existence of petitioner's criminal agency as a cause of [the victim]'s death" after he participated in the severe beating of the victim. *Id.* at *7.

[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 Senior Assistant Attorney General Michele Duncan Bishop. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

The petitioner filed a petition for a writ of habeas corpus in August 2022. Subsequently, the petitioner filed an amended habeas petition and a *Losh* checklist.[2] The circuit court held an evidentiary hearing in January 2024, and the petitioner presented claims of ineffective assistance of trial counsel (including allegedly mistaken advice of counsel regarding probation or parole eligibility) and mental competency at the time of the crime. After hearing testimony from the petitioner and his trial counsel, the circuit court denied the amended habeas petition in a May 28, 2024, order. The circuit court rejected all of the petitioner's ineffective assistance of counsel claims. In finding no merit to the petitioner's arguments regarding his rejection of the State's plea offer, the circuit court concluded that trial counsel's statements that he advised the petitioner that he could be sentenced to a life term of incarceration without the possibility of parole if convicted of first-degree murder was more credible than the petitioner's testimony that counsel advised him incorrectly about the maximum possible sentence.[3] The circuit court found that the petitioner's claim that trial counsel gave mistaken advice about probation or parole eligibility was without merit "for the [same] reasons" the court gave in rejecting the claim about the petitioner's refusing the State's plea offer. In addition, the circuit court rejected the petitioner's claim that he was not mentally competent at the time of the crime, finding that issue to be waived because it was capable of being raised "during his trial and on direct appeal [in *Adkins*]." The court further found that he could not prevail on an ineffective assistance claim regarding his purported mental incompetency defense. While the petitioner asked the circuit court to also evaluate the cumulative effect of trial counsel's alleged deficiencies, the circuit court determined that the cumulative error doctrine did not apply because the court found merit in none of the ineffective assistance claims and "[c]umulative error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors." *State v. Knuckles*, 196 W. Va. 416, 426, 473 S.E.2d 131, 141 (1996). The petitioner now appeals the circuit court's denial of the amended habeas petition. 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

[2] The checklist of grounds typically used in habeas corpus proceedings, usually referred to as the *Losh* checklist, originates from our decision in *Losh v. McKenzie*, 166 W. Va. 762, 768-70, 277 S.E.2d 606, 611-12 (1981), wherein we set forth the most common grounds for habeas relief.

[3] "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." *State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995). Furthermore, "[i]n [habeas] cases where there is a conflict of evidence between defense counsel and the defendant, the circuit court's findings will usually be upheld." *State ex rel. Daniel v. Legursky*, 195 W. Va. 314, 327, 465 S.E.2d 416, 429 (1995).

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: 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