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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Jeremy S.,
Petitioner Below, Petitioner

v.) No. 24-454 (Calhoun County CC-07-2022-C-3)

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

MEMORANDUM DECISION

Petitioner Jeremy S. appeals the July 1, 2024, order of the Circuit Court of Calhoun County denying his petition for a writ of habeas corpus.[1] The petitioner argues that the circuit court erred in denying the habeas petition without holding an evidentiary hearing. 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).

The petitioner was indicted for various counts of incest, third-degree sexual assault, and sexual abuse by a parent. The victim was the petitioner's minor daughter. The petitioner's first trial resulted in a hung jury. The second trial resulted in a conviction on nine counts. The petitioner appealed his convictions in *State v. Jeremy S.*, 243 W. Va. 523, 847 S.E.2d 125 (2020), alleging the following errors: (a) the first trial actually resulted in the petitioner's acquittal, (b) the first trial was wrongly continued over the petitioner's objection, (c) both trials were tainted by irrelevant, non-probative, and prejudicial evidence, (d) the second trial was tainted by a biased juror, and (e) two or more of these errors accumulated to the petitioner's prejudice. *Id.* at 527, 847 S.E.2d at 129. This Court rejected the petitioner's arguments and affirmed his convictions. *Id.* at 530-36, 847 S.E.2d at 132-38. The Supreme Court of the United States denied certiorari. 592 U.S. 1325 (2021).

In March 2022, the petitioner, by counsel, filed a petition for a writ of habeas corpus, a supporting memorandum, and a *Losh* checklist. The respondent both responded to the petition and

[1] The petitioner appears by counsel Jeremy B. Cooper. 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. Initials are used where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

filed a separate motion for summary judgment.[2] In his response to the summary judgment motion, the petitioner conceded that certain issues raised in his habeas petition were previously decided by this Court in *Jeremy S.* However, the petitioner also moved to file an amended habeas petition, "acknowledg[ing] that there are several issues raised in the *Losh* list for which no specific support has been adduced in the [p]etition." The circuit court held a hearing on the respondent's summary judgment motion in May 2022. By order entered on June 14, 2022, the circuit court partially granted the respondent's motion for summary judgment.[3] The petitioner's remaining grounds for relief were (1) suppression of helpful evidence by the prosecutor; (2) sufficiency of the evidence; (3) challenges to grand jury procedures; (4) falsification of a transcript; (5) State's knowing use of perjury; (6) improper communication between a sheriff's deputy and the jury before the petitioner's second trial; (7) credit for time served; and (8) ineffective assistance of trial counsel.

By order entered on July 1, 2024, the circuit court granted summary judgment to the respondent on the remainder of the petitioner's habeas claims, making a specific finding, pursuant to Rule 9(a) of the West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings, that an evidentiary hearing was not required to fully and fairly adjudicate the remaining grounds for relief. Initially, the circuit court denied relief on grounds one through five, observing that "mere recitation of [the] grounds [for habeas relief] without detailed factual support does not justify the issuance of a writ . . . [or] the holding of a hearing." *Losh v. McKenzie*, 166 W. Va. 762, 771, 277 S.E.2d 606, 612 (1981).[4] Similarly, the circuit court stated that the petitioner failed to offer even a scintilla of evidence to support his allegation that there was improper communication between a sheriff's deputy and the jury before his second trial.[5] Next, the circuit court found that the eighth ground for relief was contradicted by the record as the petitioner was given credit for 402 days previously served, and he failed to allege that calculation was wrong. Finally, the circuit court rejected the petitioner's ineffective assistance of trial counsel claim due to this Court's findings in *Jeremy S.*, which supported the circuit court's conclusion that even assuming that trial counsel was

[2] As summary judgment is provided for in the West Virginia Rules of Civil Procedure, we note that Rule 10 of the West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings allows for the Rules of Civil Procedure to be applied in habeas proceedings.

[3] The parties agreed that the respondent was entitled to summary judgment on the following issues: (a) denial of a speedy trial; (b) double jeopardy; (c) constitutional errors in evidentiary rulings; (d) jury instructions; and (e) prejudicial statements by the trial judge.

[4] The circuit court also denied the petitioner's motion to file an amended petition. As the circuit court noted, habeas petitioners have the obligation to allege facts that support their claims with particularity. *See Losh,* 166 W. Va. at 771, 277 S.E.2d at 612 ("[A] petition for a writ of habeas corpus filed pro se must specifically state in detail the underlying facts that support the claim."). While this Court in *Losh* stated that self-represented petitioners must also allege facts with particularity, in this case, the petitioner's counsel filed his initial habeas petition.

[5] "[T]he party opposing summary judgment must satisfy the burden of proof by offering more than a mere 'scintilla of evidence' and must produce evidence sufficient for [the finder of fact] to find in a nonmoving party's favor." *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 60, 459 S.E.2d 329, 337 (1995) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

deficient in some way (in fact, the circuit court found that trial counsel was not deficient), any alleged deficiency would not have changed the outcome of the second trial where he was convicted of multiple sex offenses against his minor daughter.[6] The petitioner now appeals the circuit court's July 1, 2024, order denying habeas relief. 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: 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

[6] For example, in *Jeremy S.*, this Court found that the petitioner "cannot seriously contend" that forensic evidence that both his sperm and his daughter's DNA were on the same blanket recovered from the petitioner's home was not at least probative of "the fact that [the] [p]etitioner had sexual intercourse with his daughter[.]" 243 W. Va. at 534, 847 S.E.2d at 136.