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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Michelle McCracken,
Petitioner Below, Petitioner

v.) No. 24-468 (Marshall County CC-25-2016-C-211)

J.D. Sallaz, Superintendent,
Lakin Correctional Center and Jail,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Michelle McCracken appeals the July 19, 2024, order of the Circuit Court of Marshall County denying her amended petition for a writ of habeas corpus.[1] The petitioner argues that the circuit court erred in denying habeas relief because her trial counsel provided ineffective assistance by not seeking to have the opinion of the State's fire investigative expert, David Campbell, excluded at trial. 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).

A jury convicted the petitioner of one count of first-degree arson and three counts of felony murder. The victims were the parents and daughter of the petitioner's boyfriend. The trial court admitted statements the petitioner gave to the police after the fire. The petitioner originally explained that she had learned of the fire on a scanner at the home of a friend. The petitioner later admitted that the friend did not own a scanner and that she was present at her boyfriend's parents' residence during the fire. The petitioner explained that she had visited the home before the fire; had tripped over something on the porch, possibly a gasoline can; had thrown her cigarette on the porch; and then had heard a whooshing sound. The petitioner thereafter left her boyfriend's parents' home and later returned to find the structure in flames. After she returned, the petitioner heard her boyfriend's mother scream. Because the petitioner did not want her boyfriend to know that she had been at the home at the time of the fire, the petitioner stated that she fabricated the story about learning of the fire through a friend's scanner. Also at trial, Mr. Campbell, the State's fire investigative expert, testified that the ghosting patterns and run-down patterns found on the residence's rear porch could be indicative of the use of an accelerant. Additionally, Mr. Campbell presented a demonstration in which he attempted to prove that the petitioner's cigarette was not

[1] The petitioner appears by counsel Jeremy B. Cooper. The respondent appears by Attorney General John B. McCuskey and Assistant Attorney General Mary Beth Niday. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

likely to have ignited any gasoline present on the porch. The petitioner objected to the demonstration, and the court instructed the jury that it was not intended to precisely repeat the conditions in existence at the time of the fire.

After the jury's verdict, the court determined that an arson sentence would violate double jeopardy because arson was a lesser included offense of felony murder. Therefore, the court ultimately sentenced the petitioner to three life terms of incarceration with the possibility of parole for the three murder convictions. This Court affirmed the petitioner's convictions in *State v. McCracken*, 218 W. Va. 190, 624 S.E.2d 537 (2005). The Court rejected the petitioner's argument that the lower court erred in admitting her statements to the police. *Id.* at 195, 624 S.E.2d at 542. We also reviewed that portion of Mr. Campbell's expert testimony involving the demonstration of the combustible qualities of gasoline, specifically "conclud[ing] that the lower court did not abuse its discretion in admitting the expert testimony and demonstration conducted by Mr. Campbell." *Id.* We further found that there was sufficient evidence to support the jury's verdict of guilty. *Id.* at 197, 624 S.E.2d at 544.

In November 2016, the petitioner filed a petition for a writ of habeas corpus. The circuit court appointed habeas counsel, who filed an amended habeas petition in December 2022, raising various claims of ineffective assistance of trial counsel. The circuit court held a May 2024 evidentiary hearing, at which the petitioner's fire investigative expert[2] and her trial counsel testified mainly about her claim that trial counsel should have sought to exclude Mr. Campbell's opinion.[3] Trial counsel testified that the petitioner's fire investigative expert at trial was generally more qualified than Mr. Campbell, but even if counsel had tried and successfully excluded Mr. Campbell's opinion, the petitioner's statements admitting to being at the scene and starting the fire were what ultimately led to her conviction. Therefore, trial counsel did not believe that the absence of Mr. Campbell's opinion would have changed the outcome of the trial. In a July 19, 2024, order, the circuit court denied the amended habeas petition, finding that based upon trial counsel's testimony, "a reasonable lawyer would have acted the same, under the circumstances, as trial counsel acted in [the] [p]etitioner's case." The petitioner now appeals the denial of 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

[2] The petitioner also had a fire investigative expert who testified at trial. Each of the petitioner's fire investigative experts criticized Mr. Campbell's opinion. At the May 2016 evidentiary hearing, that fire investigative expert quibbled over whether the petitioner's expert at trial told the jury Mr. Campbell's methods were unreliable or merely "not scientific" but acknowledged that her expert at trial "refuted what Mr. Campbell said, yes."

[3] The petitioner's raised other ineffective assistance claims, including that trial counsel should have (1) raised a defense based upon her mental state and sought to exclude her statements to the police on that basis; (2) sought relief from alleged "improper shackling" and jury instructions regarding the same; (3) moved for a change of venue; and (4) sufficiently investigated the issue of the petitioner testifying on her own behalf. However, on appeal, the petitioner assigns error only to the circuit court's determination that trial counsel was not ineffective by not seeking to exclude Mr. Campbell's opinion.

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 her 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 [she] 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