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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Robert Lee Lewis,
Petitioner Below, Petitioner

v.) No. 24-707 (Kanawha County CC-20-2024-P-257)

Tom Harlan, Superintendent,
Huttonsville Correctional Center,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Robert Lee Lewis appeals the October 18, 2024, order of the Circuit Court of Kanawha County denying the instant petition for a writ of habeas corpus.[1] The petitioner argues that the circuit court erred in denying relief based upon its finding that the doctrine of res judicata barred his habeas claims. 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 November 2009, a jury convicted the petitioner of burglary by entering without breaking, abduction with intent to defile, and second-degree sexual assault. Also, the petitioner pleaded guilty to violating a domestic violence protective order. In March 2010, the petitioner was convicted of being a recidivist. After the recidivist trial, the circuit court sentenced the petitioner to the following terms of incarceration: one to fifteen years for burglary; three to ten years for abduction with intent to defile; and twelve months for violating the domestic violence protective order. Based on the recidivist conviction, the circuit court enhanced the petitioner's sentence for second-degree sexual assault by increasing the statutory term of ten to twenty-five years of incarceration to twenty to twenty-five years of incarceration as provided for in West Virginia Code § 61-11-18(a), the recidivist sentencing statute. This Court affirmed the petitioner's convictions and his recidivist sentence in *State v. Lewis* ("*Lewis I*"), 235 W. Va. 694, 776 S.E.2d 591 (2015). In so doing, the Court found that sufficient evidence existed that the petitioner burglarized the premises "of another" pursuant to West Virginia Code § 61-3-11(a) because "the petitioner did not have the right to possess the premises under the terms of the domestic violence protective order,

[1] The petitioner is a self-represented litigant. Due to the petitioner's transfer, the superintendent of Huttonsville Correctional Center has been substituted as the respondent. *See* W. Va. R. App. P. 41(c). The respondent appears by Attorney General John B. McCuskey and Assistant Attorney General Sandra M. Walls. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

[and] the victim's exclusive possession of her residence at that time was sufficient to convict the petitioner of burglary." *Id.* at 703-04, 776 S.E.2d at 600-01.

In a subsequent habeas proceeding, the circuit court denied relief based, in part, upon this Court's decision in *Lewis I*. While the petitioner asserted that his conviction and sentence for burglary violated due process of law, the circuit court determined that the petitioner's argument was foreclosed by *Lewis I*. In *Lewis v. Ames*, ("*Lewis II*") 242 W. Va. 405, 836 S.E.2d 56 (2019), this Court affirmed the denial of habeas relief, concluding, in pertinent part, that the petitioner was raising issues "previously and finally adjudicated on the merits." *Id.* at 409, 836 S.E.2d at 60. In addition, this Court in *Lewis II* observed that while the petitioner also raised "ineffective assistance of counsel of both trial and [direct] appellate counsel" on appeal, those issues were waived as "not [being] raised in the petition for [a writ of] habeas corpus[.]" *Id.* at 410, 836 S.E.2d at 61 (citing *Losh v. McKenzie,* 166 W.Va. 762, 277 S.E.2d 606 (1981), in which we delineated the scope of the doctrine of res judicata in habeas proceedings).

The petitioner filed the instant habeas petition in June 2024, asserting (1) plain error in the State's bringing the burglary charge because the victim's presence at the residence this Court identified in *Lewis I* as belonging to the victim was "as a guest only"; (2) ineffective assistance of trial counsel for failing (a) to investigate the petitioner's claim that he was "the sole lawful tenant" of the residence and (b) to challenge as plain error the trial court's finding that the victim had lawful possession of the residence; and (3) denial of a fair trial because the jury was allowed to consider the erroneous charge of burglary even though the petitioner was "the sole lawful tenant at that residence." In an October 18, 2024, order, the circuit court denied the petition, finding that the doctrine of res judicata barred the petitioner's habeas claims. 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 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