

STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS

**Robert Allen Hager,  
Petitioner Below, Petitioner**

vs.)No. 11-0129 (Mingo County 08-C-187)

**Thomas McBride, Warden, Mount  
Olive Correctional Complex,  
Respondent Below, Respondent**

**FILED**

February 14, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

This appeal arises from the Circuit Court of Mingo County, wherein Petitioner Robert Allen Hager was denied habeas corpus relief following an omnibus evidentiary hearing. The appeal was timely perfected by counsel, with petitioner's appendix from the circuit court accompanying the petition. Respondent Thomas McBride has filed a response brief.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner is currently serving two life sentences, without mercy, for two counts of first degree murder. Petitioner filed a direct criminal appeal to this Court, and the appeal was the subject of a published opinion in *State v. Hager*, 204 W.Va. 28, 511 S.E.2d 139 (1998). In that opinion, the Court "affirm[ed] the decision of the lower court in all respects." *State v. Hager*, 204 W.Va. 28, 40, 511 S.E.2d 139, 150 (1998). Petitioner later filed a petition for writ of habeas corpus in the circuit court, alleging multiple issues. On December 17, 2010, the circuit court issued a twenty-two page order denying the petition for writ of habeas corpus following an omnibus evidentiary hearing. Petitioner now appeals from the denial of his habeas corpus petition below. "In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final 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, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006).

On appeal, petitioner alleges the following four assignments of error: 1) that the trial court erred by denying him a continuance based upon a lack of notice of the State's intention to use evidence of his murder of the second victim under West Virginia Rule of Evidence 404(b) during his severed trial for the first victim; 2) that his sentences are excessive; 3) that his multiple convictions for two murders committed on the same day and in close proximity to each other violate his right against double jeopardy; and, 4) that the evidence was insufficient to support his convictions for first degree murder because the State could not satisfy the elements of premeditation and deliberation. A review of the record shows that petitioner raised these exact issues before the circuit court during his habeas proceeding below. The Court has carefully considered the merits of these arguments as set forth in his petition for appeal and in the State's response, and it has reviewed the appendix designated by the petitioner. The Court finds no error in the denial of habeas corpus relief and fully incorporates and adopts, herein, the circuit court's detailed order dated December 17, 2010. The Clerk of Court is directed to attach a copy of the same hereto.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** February 14, 2012

**CONCURRED IN BY:**

Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Margaret L. Workman  
Justice Thomas E. McHugh

**DISSENTING:**

Chief Justice Menis E. Ketchum