

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**SER Brian Markley,
Petitioner Below, Petitioner**

vs.) No. 11-0412 (Berkeley County 07-C-662)

**West Virginia Board of Parole and
West Virginia Department of Corrections,
Respondents Below, Respondents**

FILED
October 25, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner appeals the circuit court’s denial of a writ of habeas corpus, arguing that the circuit court erred in denying the relief requested in the petitioner’s third petition for writ of habeas corpus. Petitioner argued that his constitutional right to due process is being violated, as the West Virginia Parole Board and the West Virginia Department of Corrections refuse to recognize Petitioner’s correct parole eligibility date. The instant appeal was timely filed by the petitioner with the entire record being designated on appeal. The State has filed its response on behalf of the West Virginia Department of Corrections (“DOC”). The Court has carefully reviewed the record and the written arguments contained in the pro se petition and the response thereto, and the case is mature for consideration.

Pursuant to Revised Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the response, and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present either a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

At issue in this appeal is petitioner’s eligibility for parole after conviction on two counts of sexual assault and one count of malicious wounding. Petitioner was sentenced to be incarcerated for fifteen to twenty-five years, fifteen to twenty-five years, and two to ten years, respectively, to run consecutively. Petitioner filed the instant petition for writ of habeas corpus before the circuit court, arguing that his parole eligibility date should be December 25, 2018, rather than the DOC’s calculated date of December 25, 2023. Petitioner

has previously filed two other habeas petitions. The circuit court denied the instant petition, finding that this was not a justiciable case or controversy as petitioner's argued parole date was too far into the future, and speculative.

On appeal, petitioner argues that his calculated parole eligibility date is incorrect. Petitioner further argues that this is a case or controversy as he is prejudiced by the due process violation because his placement and treatment during incarceration are affected by his parole eligibility date. The State responds in support of the circuit court's decision. This Court has stated that the constitutional jurisdiction of circuit courts extends only to actual controversies that have adversarial character. See, Syl. Pt. 1, *West Virginia Board of Dental Examiners v. Storch*, 146 W.Va. 662, 122 S.E.2d 295 (1961). In the present matter, petitioner, even by his own calculations, would not be eligible for parole for at least seven more years. Thus, this Court finds no error in the circuit court's order dismissing this action without prejudice.

For the foregoing reasons, we find no error in the decision of the circuit court and the denial of petitioner's petition for a writ of habeas corpus is affirmed.

Affirmed.

ISSUED: October 25, 2011

CONCURRED IN BY:

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