

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

Stoney G. Riley, Petitioner

vs) **No. 11-0413** (Berkeley County 09-C-639)

**Adrian Hoke, Warden,
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 Berkeley County, wherein the petitioner's petition for writ of habeas corpus was denied. This appeal of the order denying his habeas petition was timely perfected by counsel, with Petitioner Riley's record accompanying the petition. Respondent Hoke filed a response in support of the circuit court's decision.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record 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 record 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.

In 2006, Petitioner Riley was convicted by a jury of second degree robbery and conspiracy to commit robbery. The jury acquitted the petitioner of grand larceny. Thereafter, the State sought recidivism and another jury found that the petitioner was a recidivist offender. Consequently, the circuit court sentenced the petitioner to ten to eighteen years for second degree robbery and one to five years for conspiracy to commit robbery; both sentences were ordered to run consecutively. Petitioner's appellate counsel thereafter appealed, which the Court refused. Petitioner Riley filed a petition for writ of habeas corpus with the circuit court, which it denied without conducting an evidentiary hearing. Petitioner Riley now seeks reversal of this order, arguing ten assignments of error, one of which is ineffective assistance of counsel.

“In reviewing challenges to 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 *de novo* review.” Syl. Pt. 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).

The petitioner raises nine issues alleging ineffective assistance of counsel. The petitioner argues that his trial counsel was ineffective because she failed to: (1) properly investigate his alibi defense; (2) properly relay a plea offer to the petitioner; (3) have the 7-Eleven store video of the alleged robbery forensically analyzed; (4) present proper evidence at trial and properly prepare for trial; (5) request grand jury minutes or grand jury transcripts; (6) assert or explore a mental defense/diminished capacity; (7) communicate with the petitioner; and (8) inform the petitioner that his prior criminal conviction could be used against him to enhance his sentence. The petitioner also argues that his appellate counsel was ineffective because he failed to provide an adequate appeal.

In addition to the petitioner’s arguments regarding ineffective assistance of counsel, the petitioner argues nine other assignments of error: (1) the circuit court committed reversible error by denying petitioner’s petition for habeas corpus without an evidentiary hearing because there was probable cause to believe that petitioner was entitled to certain relief; (2) the circuit court committed reversible error when it failed to find that petitioner’s due process rights were violated because the petitioner was not present during all critical stages of his criminal proceeding; (3) the circuit court committed reversible error when it failed to find that the petitioner’s sentence was in violation of the Eighth Amendment of the United States Constitution and Article III of the West Virginia Constitution; (4) the circuit court committed reversible error when it failed to find that petitioner’s due process rights were violated because the State failed to meet its burden in proving that petitioner was guilty of the crimes for which he was convicted; (5) the circuit court committed reversible error when it failed to find that petitioner’s due process rights were violated by upholding the ruling of the trial court which allowed pictures of certain prejudicial evidence to be seen by the jury; (6) the circuit court committed reversible error when it failed to find that petitioner’s due process rights were violated by upholding petitioner’s illegal sentence which wrongfully applied the West Virginia recidivist statute and improperly sentenced petitioner to a total effective sentence of eleven to twenty-three years; (7) the circuit court committed reversible error when it failed to find that petitioner’s due process rights were violated by upholding petitioner’s sentence even though said sentence was grossly disproportionate to that of his co-defendant; (8) the circuit court committed reversible error when it failed to find that petitioner’s due process rights were violated because the amount of cumulative error improperly prejudiced petitioner; and (9) the circuit court committed reversible error when it determined that petitioner’s remaining arguments had been waived by his failure to raise said issues on appeal.

The Court has carefully considered the merits of each of the petitioner's arguments as set forth in his petition for appeal. Finding no error in the denial of habeas corpus relief, the Court fully incorporates and adopts the circuit court's detailed and well-reasoned "Order Denying Petition for Writ of Habeas Corpus," entered October 4, 2010, and attaches the same hereto.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh