

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

**John Howard Williams,
Petitioner Below, Petitioner**

vs) **No. 11-0429** (Wayne County 06-C-310)

**Thomas L. McBride, Warden,
Mt. Olive Correctional Complex,
Respondent Below, Respondent**

FILED

**March 30, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioner John Howard Williams appeals the Wayne County Circuit Court's order of February 9, 2011 denying his petition for writ of habeas corpus. This appeal was timely perfected by counsel Ronald Salmons with the appendix accompanying the petition. The State, by counsel Desiree DeVita, has filed a summary response.

This Court has considered the parties' briefs and the record on appeal. 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 of Appellate Procedure.

Petitioner entered a no contest plea to one count of nighttime burglary. He also pled guilty to recidivism. Following entry of these pleas, petitioner indicated to the circuit court that he wished to be sentenced the same day. The circuit court sentenced him to one to fifteen years in prison on the burglary charge and directly thereafter to life in prison for recidivism. At the sentencing hearing, the circuit court stated: "Actually you don't serve the sentence on the burglary, just the life." After the sentencing hearing, two commitment orders were issued, one for the burglary and one for the life recidivist charge. The petitioner initiated a habeas proceeding, arguing that the circuit court was without jurisdiction to sentence petitioner to a term of life in prison after sentencing him on the underlying charge of burglary and that he was never duly cautioned by the circuit court prior to the imposition of the life sentence. The circuit court denied habeas relief but determined that the burglary sentence and corresponding commitment order should be vacated, which it did by separate order.

“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.’ Syllabus Point 1, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006).” Syl.Pt. 2, *State ex rel. Farmer v. McBride*, 224 W.Va. 469, 686 S.E.2d 609 (2009).

The Court has fully reviewed the issues raised by the petitioner. The Court concludes that the circuit court’s decision to deny habeas corpus relief under the facts and circumstances of this case was proper and, further, adopts and incorporates by reference the well-reasoned Order Denying Habeas Corpus Relief entered by the circuit court and attached hereto.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: March 30, 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

11-0429

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

JOHN HOWARD WILLIAMS,
Petitioner,

v.

Case No: 06-C-310
Underlying Indictments: 05-F-030, 055
Judge: ENTERED

THOMAS L. MCBRIDE, Warden,
Mt. Olive Correctional Complex,
Respondent.

FEB 09 2011

CIVIL ORDER
BOOK 118 PAGE 365

ORDER DENYING HABEAS CORPUS RELIEF

ON NOVEMBER 10, 2010, came the Petitioner, John Howard Williams, in person and by and through his counsel, Ronald G. Salmons, *Ronald G. Salmons, Attorney at Law, PLLC*, and came the Respondent, by and through counsel, Scott Maddox, Assistant Prosecuting Attorney of Wayne County, West Virginia, upon the Petition for Writ of Habeas Corpus Ad Subjiciendum filed heretofore, and for hearing thereupon pursuant to W. Va. Code § 53-4A-1, et seq. W. Va. Post-Conv. H.C.P., Rule 9, and Losh v. McKenzie, 277 S.E.2d 606 (W. Va. 1981), and all presided by the Honorable Darrell Pratt, Judge of the Circuit Court of Wayne County, West Virginia.

WHEREFORE this Court did review and consider the pleadings filed heretofore, including but not limited to the Petition, the supporting Memorandum of Law, the Response of the State, this Court did review and consider all pertinent legal authorities, and this Court did hear the proffers and arguments of counsel for the Petitioner and counsel for the Respondent, and in consideration of all, this Court does hereby make the following Findings of Fact and Conclusions of Law:

1. That jurisdiction and venue of this matter are proper in the Circuit Court of Wayne County, West Virginia;

BOOK 118
PAGE 365

2. That on October 3, 2005, in the Circuit Court of Wayne County, West Virginia, the Petitioner entered a plea agreement in which he pleaded no contest to one count of burglary;

3. That on October 3, 2005, in the Circuit Court of Wayne County, West Virginia, the Petitioner entered a plea agreement in which he pleaded guilty to being a habitual criminal;

4. That on December 28, 2006, the Petitioner filed a *pro se* Petition for Writ of Habeas Corpus Ad Subjiciendum, and subsequently Petitioner was appointed counsel to assist in his Petition;

5. That on behalf of the Petitioner, counsel submitted an Amended Memorandum In Support of Writ of Habeas Corpus;

6. That Petitioner included with his Amended Memorandum In Support of Writ of Habeas Corpus a Checklist of Grounds Asserted or Waived in Post-Conviction Habeas Corpus Proceeding, in which the Petitioner did not specifically waive any contention but did assert the following:

- a. 1. Trial court lacked jurisdiction, and
- b. 21. Ineffective assistance of counsel;

7. That Petitioner in his Amended Memorandum In Support of Writ of Habeas Corpus asserted three contentions:

- a. The trial court was without jurisdiction to sentence Petitioner to a term of life in prison after sentencing Petitioner on the underlying charges,
- b. Petitioner was never duly cautioned by the judge prior to imposing a life sentence, pursuant to the criteria established by the Supreme Court of Appeals of West Virginia, and
- c. Petitioner did not receive effective assistance of counsel as required by both the Constitution of West Virginia and the Constitution of the United States;

BOOK 118
PAGE 366

8. That at hearing on November 10, 2010, Petitioner's counsel did proffer that the Petitioner wished to withdraw his contention of ineffective assistance of counsel and that the Petitioner wished to proceed on the other contentions as previously set forth;

9. That this Court inquired of the Petitioner as to whether Petitioner wished to withdraw his contention of ineffective assistance of counsel, and the Petitioner answered in the affirmative;

10. That this Court did instruct Petitioner's counsel to review with Petitioner the Checklist of Grounds Asserted or Waived in Post-Conviction Habeas Corpus Proceeding and to have the Petitioner specifically assert or waive each and every contention listed therein;

11. That Petitioner's counsel did review the Checklist with the Petitioner, and the Petitioner did waive each and every contention therein except for the contention that the trial court lacked jurisdiction;

12. That Petitioner's counsel did proffer that, included in Petitioner's remaining contention, the Petitioner asserted that (a) the trial court lacked jurisdiction, and (b) Petitioner was never duly cautioned by the judge prior to imposing a life sentence, pursuant to the criteria established by the Supreme Court of Appeals of West Virginia;

13. That this Court maintained jurisdiction throughout the October 3, 2005, proceedings in accordance with the "general intent and purpose" of the recidivist statutes. W. Va. Code §§ 61-11-18, 19; State ex rel. Appleby v. Recht, 583 S.E.2d 800 (W. Va. 2002);

14. That this Court maintained jurisdiction throughout the October 3, 2005, proceedings in accordance with the intent of the plea agreement;

15. That the sentencing under the recidivist plea agreement superseded the sentencing under the burglary plea agreement;

BOOK 118
PAGE 367

16. That it was erroneous that two commitment orders were filed, and that any error was harmless;

17. That pursuant to the holding in State ex rel. Daye v. McBride, 658 S.E.2d 547 (W.Va. 2007), this Court will correct the sentencing of Petitioner by separate order, and the Petitioner's sentencing in the underlying felony case will be vacated and Petitioner's sentence under the recidivist statute will stand;

18. That the Petitioner entered into a plea agreement and received the exact sentence that the Petitioner agreed, and that the Petitioner was duly cautioned in accordance with W. Va. Code § 61-11-19, as evidenced by the transcript of the October 3, 2005, hearing;

19. That this matter has been fully heard, and the Court finds no violations of the Petitioner's State or Federal Constitutional rights;

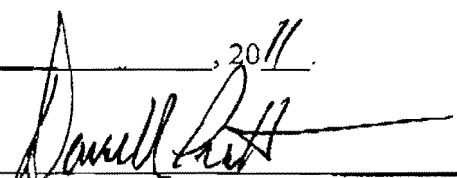
It is, therefore, **ADJUDGED** and **ORDERED** that the Petition for Writ of Habeas Corpus is **DENIED**.

The Clerk of the Circuit Court shall send a copy of this Order to the following:

Ronald G. Salmons, Esq.
P.O. Box 161
West Hamlin, WV 25571


Scott D. Maddox, Esq.
P.O. Box 758
Wayne, WV 25570.

Entered on this 9th day of Feb., 2011.




DARRELL PRATT, Circuit Judge

PREPARED AND SUBMITTED BY:



Ronald G. Salmons (W. Va. Bar # 10304)
Ronald G. Salmons, Attorney at Law, PLLC
P.O. Box 161
West Hamlin, WV 25571

REVIEWED BY:



Scott D. Maddox (W. Va. Bar # 6628)
Assistant Prosecuting Attorney
P.O. Box 758
Wayne, WV 25570

BOOK 118
PAGE 368

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

JOHN HOWARD WILLIAMS,
Petitioner,

v.

THOMAS L. MCBRIDE, Warden,
Mt. Olive Correctional Complex,
Respondent.

Case No:
Underlying Indictments:
Judge:

BY: *SALT*
WAYNE COUNTY, WV
06-C-110
05-Feb-11
Feb 9 PM 3:32
FILED
CLERK'S OFFICE
Darrell Pratt

ORDER APPOINTING APPELLATE COUNSEL

ON NOVEMBER 10, 2010 came the Petitioner, John Howard Williams and moved this Honorable Court for an order granting appellate counsel to represent the Petitioner on appeal in the above-styled matters.

WHEREFORE it is hereby **ORDERED** that Ronald G. Salmons, Esq., an attorney licensed in the State of West Virginia, is hereby appointed to represent the Petitioner as appellate counsel.

The Clerk of the Circuit Court shall send a copy of this Order to the following:

Ronald G. Salmons
Ronald G. Salmons, Attorney at Law, PLLC
P.O. Box 161
West Hedden, West Virginia 25571

Scott D. Maddox, Assistant Prosecutor
Wayne County Courthouse
P.O. Box 758
Wayne, WV 25570.

Entered on this 9 day of Feb., 2011.

Darrell Pratt

DARRELL PRATT, Circuit Judge

PREPARED AND SUBMITTED BY:

Ronald G. Salmons

Ronald G. Salmons (W. Va. Bar # 10304)
P.O. Box 161
West Hedden, WV 25571
Phone: (304) 824-5711/Fax: (304) 824-2544

12/24/2010

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

10 DEC 22 AM 10:52
EV...
VA
... WV

JOHN HOWARD WILLIAMS,

Petitioner,

VS.

CIVIL ACTION NO. 06-C-310
INDICTMENT NO. 05-F-30

THOMAS L. MCBRIDE, Warden,
Mt. Olive Correctional Complex,

Respondent.

ORDER

On November 10, 2010, this matter came on for hearing before the Honorable Darrell Pratt, Judge of the Circuit Court of Wayne County, West Virginia, upon Petitioner's Writ of Habeas Corpus. There appeared the Petitioner, John Howard Williams, in person and by counsel, Ronald G. Salmons, and the Respondent by Scott Maddox, Assistant Prosecuting Attorney for Wayne County, West Virginia.

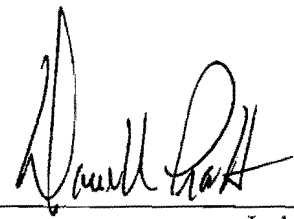
Based upon testimony and evidence presented, it is **ORDERED** that the sentence imposed upon Defendant for his conviction of Nighttime Burglary as charged and contained in Count Three (3) of Indictment No. 05-F-30, and subsequent commitment to the custody of the State of West Virginia and the West Virginia Division of Corrections, are hereby vacated and set aside.

All, accordingly, which is **ORDERED** and **DECREED**.

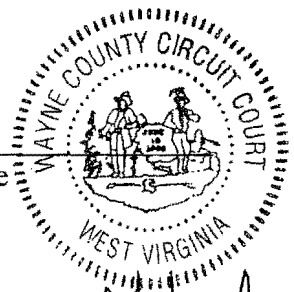
Entered this 21 day of December, 2010.

ORDER


ENTER:



Judge



COPY TESTE

Milton J. Ferguson II, Clerk
By  Deputy