

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

**Keith R. Jeffers, Petitioner Below,
Petitioner**

vs.) **No. 11-0433** (Kanawha County 10-MISC-510)

**David Ballard, Warden, Mt. Olive
Correctional Complex, Respondent
Below, Respondent**

FILED

March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Keith R. Jeffers, pro se, appeals the circuit court's dismissal order dismissing his petition for a writ of habeas corpus without a hearing. The respondent warden, by Barbara H. Allen, his attorney, filed a timely response.

The Court has considered the parties' briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on May 6, 2011. 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 that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner was convicted on January 28, 2008, of three counts of first degree murder without mercy, one count of attempted murder in the first degree, one count of attempted murder in the second degree, two counts of malicious assault, and one count of burglary. The trial court sentenced petitioner to the maximum statutory term on each count, with the sentences to run consecutively. This Court refused petitioner's direct appeal by an order entered on June 3, 2009. The Supreme Court of the United States subsequently denied certiorari at ___ U.S. ___, 130 S.Ct. 2370, 176 L.Ed.2d 767 (2010).

Petitioner filed his first petition for a writ of habeas corpus on May 26, 2010, alleging four grounds of relief: (1) that a number of jurors were dismissed by the trial court and the attorneys in advance of trial without petitioner's knowledge and without his being present; (2) that the trial court erred in instructing the jury with respect to evidence of flight; (3) that the trial court erred in not granting a continuance in order for the defense to locate a witness; and (4) that the trial court erred in making various evidentiary rulings at trial. The circuit

court denied habeas corpus relief without a hearing, finding that the allegations about the dismissal of the jurors were untrue and that the other grounds lacked merit based upon the record before the trial court. Petitioner did not appeal the denial of this habeas corpus petition.

Petitioner filed his instant petition for a writ of habeas corpus on October 22, 2010, and raised a total of seven grounds for relief, the first four in his petition and the final three in a supplement he attached to the petition. The four grounds for relief petitioner advanced in his instant habeas petition were the same four grounds he previously raised in his first habeas petition. However, the three grounds for relief found in the attached supplement were new: (1) that the trial court improperly interfered with the underlying criminal case against petitioner; (2) that trial counsel did not provide effective assistance; and (3) that there was prosecutorial misconduct. On October 25, 2010, the circuit court denied petitioner's instant habeas petition, without a hearing, upon a ruling that "Petitioner's present Petition is based on the same grounds previously reviewed by the Circuit Court of Kanawha County and does not set forth any new grounds for relief."

Petitioner now appeals the circuit court's denial of his instant petition. He argues that the case should be remanded for further proceedings with appointment of counsel. The respondent warden states that the circuit court should be given the opportunity to rule on the grounds for relief raised by petitioner's supplement in the first instance, but also states that the undecided grounds lack substantial merit.

While West Virginia Code § 53-4A-7(c) (1994) requires a circuit court denying relief in a habeas corpus proceeding to make specific findings of fact and conclusions of law relating to each ground advanced by the petitioner, a remand for such findings is not always necessary. See *State v. VanHoose*, 227 W.Va. 37, 50 n. 39, 705 S.E.2d 544, 557 n. 39 (2010) (*per curiam*) (finding that a remand was not necessary "because the record in this case is adequately developed."); *State ex rel. Farmer v. Trent*, 209 W.Va. 789, 796 n. 3, 551 S.E.2d 711, 718 n. 3 (2001) (declining to remand for entry of a proper habeas order); *State ex rel. Vernatter v. Warden, West Virginia Penitentiary*, 207 W.Va. 11, 19, 528 S.E.2d 207, 215 (1999) ("While in most circumstances the failure to make specific findings of fact and conclusions of law regarding an issue raised in habeas proceedings would necessitate a remand, we need not take such action in the present case."). After careful consideration, this Court concludes that petitioner's undecided grounds do not necessitate a remand to the circuit court.

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

Affirmed.

ISSUED: March 12, 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