

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

FILED

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

**State ex rel. Steve A. Watkins,
Petitioner**

vs) **No. 11-0530** (Fayette County 09-C-102)

**Jim Rubenstein, Commissioner of the
Division of Corrections and Shannon Markle,
Administrator at the Central Regional Jail,
Respondents**

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Fayette County, wherein the petitioner's petition for writ of habeas corpus was denied following an omnibus hearing. This appeal of the order denying his habeas petition was timely perfected by counsel, with Petitioner Watkins's appendix accompanying the petition. Respondent Rubenstein filed a response in support of the circuit court's decision.

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 was convicted by a jury of attempt to commit second degree robbery. Petitioner thereafter filed an appeal of this conviction to the Court, which was refused. Petitioner subsequently filed a petition for habeas corpus in circuit court and an omnibus evidentiary hearing followed. Subsequently, the circuit court entered an order denying the petitioner of habeas relief. Petitioner now seeks reversal of this order, arguing five assignments of error.

"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 ten issues alleging ineffective assistance of counsel. The petitioner argues that his trial counsel was ineffective because he failed to: (1) file a motion to dismiss; (2) move to dismiss alleging no assault in the indictment or that the charge was provable; (3) move the trial court for an evaluation for competency or criminal responsibility; (4) plea negotiate; (5) acquire the preliminary hearing tape or request the grand jury transcript; (6) object during opening statement; (7) engage in meaningful cross-examination; (8) sufficiently address the right to testify with the petitioner; (9) object during closing argument as it was not supported by evidence and because there was a golden rule violation; and (10) contact the petitioner’s psychiatrist before the sentencing hearing. In addition to the petitioner’s arguments regarding ineffective assistance of counsel, the petitioner argues four other assignments of error: (1) that the petitioner was denied a fair trial because the State of West Virginia failed to inform the petitioner that the prosecuting witness/alleged victim had told them that he was not afraid of the petitioner, in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed 2d 215 (1963); (2) that the circuit court erred in finding that the evidence elicited at the trial of this matter was insufficient to support a conviction for attempted robbery in the second degree; (3) that the circuit court erred in finding that the cumulative error in this case did not deprive the petitioner of a fair trial and due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article III, Section 14 of the West Virginia Constitution; and (4) that the circuit court erred in denying and dismissing the Amended Petition for Habeas Corpus ad Subjiciendum as factual findings made by the court were entirely unsupported by the evidence and therefore clearly erroneous.

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 and Dismissing Petition for Writ of Habeas Corpus,” entered February 25, 2011, 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