

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

**Kevin F. Fortney,
Petitioner Below, Petitioner**

vs) **No. 11-1143** (Harrison County 08-C-58-1)

**Evelyn Seifert, Warden,
Respondent Below, Respondent**

FILED

October 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal with accompanying record, filed by counsel Rocco Mazzei on behalf of Petitioner Fortney, arises from the Circuit Court of Harrison County, wherein petitioner's petition for writ of habeas corpus was denied by order entered on July 13, 2011. Respondent Warden Seifert, by counsel Jacob Morgenstern, filed a response in support of the circuit court's decision.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, 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.

In February of 2006, a jury convicted petitioner of seven counts of obtaining money by false pretenses. At sentencing, the circuit court ordered petitioner to serve seven consecutive sentences of one to ten years incarceration, totaling a term of seven to seventy years incarceration. This Court denied petitioner's appeal of these convictions in March of 2007. Petitioner thereafter filed a petition for writ of habeas corpus in circuit court, which was denied. Petitioner appeals, arguing the same issues that he raised in circuit court.

This Court reviews appeals of circuit court orders denying habeas corpus relief under the following standard:

“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. 1, *State ex rel. Franklin v. McBride*, 226 W.Va. 375, 701 S.E.2d 97 (2009).

Our review of the record submitted on appeal, alongside the parties' arguments and the circuit court's order, shows that the habeas circuit court committed no error in factual findings nor abuse of discretion in its conclusions.¹ The appellate record indicates that the habeas court held an omnibus evidentiary hearing and, in addition to petitioner's testimony at this hearing, it reviewed transcripts from the underlying trial and the hearing on petitioner's motion for a new trial. Petitioner's arguments on appeal are all arguments he raised before the habeas circuit court, all of which the habeas circuit court addressed and analyzed in its thorough forty-five-page order denying habeas corpus relief.² Having reviewed the circuit court's "Order *Denying* Petition For a Writ of Habeas Corpus" entered on July 13, 2011, we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions as to the assignments of error raised in this appeal. The Clerk is directed to attach a copy of the circuit court's order to this memorandum decision.

For the foregoing reasons, we affirm the circuit court's order.

Affirmed.

ISSUED: October 22, 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

¹ We note that although a copy of the transcript for the omnibus evidentiary hearing was included in the appellate record, the transcripts for the underlying trial proceedings, to which the habeas circuit court made numerous references in its order denying habeas relief, were not included.

² We note that one of petitioner's arguments concerns the trial court's ruling on his credit for time served on his sentence. In its order, the habeas circuit court made a finding that after the omnibus hearing, petitioner provided additional information concerning this matter and that the habeas circuit court would subsequently address this issue in a separate order.