

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

**State ex rel. Donald Lee Taylor,
Petitioner Below, Petitioner**

vs) **No. 11-1565** (Randolph County 11-C-138)

**Marvin Plumley, Warden,
Respondent Below, Respondent**

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal with accompanying record, filed pro se by Petitioner Taylor, arises from the Circuit Court of Randolph County, wherein petitioner's petition for writ of habeas corpus was dismissed by order entered on October 17, 2011. Respondent Warden Plumley¹, by counsel Charles Houdyschell Jr., filed a response in support of the circuit court's decision. Petitioner has filed a reply.

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 August of 1987, petitioner began serving his sentence of ten years to life in prison. In July of 2011, petitioner was found to have sent letters to a prison nurse at her home, requesting that she send him ultram and neurontin. Accordingly, he was cited for three violations, two for compromising an employee and one for trafficking. Petitioner was consequently placed on punitive segregation for sixty days. During this time, petitioner filed a petition for writ of habeas corpus in circuit court, arguing that respondent erred in his findings that petitioner had committed these violations. The habeas court dismissed petitioner's petition for writ of habeas corpus, based upon his failure to state a claim upon which relief could be granted. Petitioner appeals.

On appeal, petitioner argues that the circuit court abused its discretion by entering an arbitrary order not based in law or fact, deliberately misquoting petitioner's facts and evidence, failing to appoint counsel, refusing and failing to decide petitioner's claims upon the merits, and failing and refusing to grant petitioner the relief to which he is entitled. Respondent contends that the circuit court did not abuse its discretion in dismissing petitioner's petition as part of the pre-

¹ Pursuant to Rule 41(c) of the West Virginia Rules of Appellate Procedure, we have replaced the respondent party's name with Warden Marvin Plumley. The initial respondent on appeal, Adrian Hoke, is no longer Warden of Huttonsville Correctional Center.

service of process screening. Respondent also adds that he was never properly served with petitioner's original filing 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 reflects no clear error or abuse of discretion by the circuit court. Having reviewed the circuit court's "Order" entered on October 17, 2011, we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions as to the assignment 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: November 19, 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