

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

**William Brennan III,
Petitioner Below, Petitioner**

vs) **No. 14-0674** (Logan County 12-C-318)

**Dennis Dingus, Warden,
Stevens Correctional Center,
Respondent Below, Respondent**

FILED

March 16, 2015

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

MEMORANDUM DECISION

Petitioner William Brennan III, by counsel Timothy P. Lupardus, appeals the Circuit Court of Logan County’s June 5, 2014, order dismissing his petition for writ of habeas corpus as moot. Respondent Dennis Dingus, Warden, by counsel Benjamin F. Yancey III, filed a response. On appeal, petitioner alleges that the circuit court erred in dismissing his petition for writ of habeas corpus as moot.

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 affirming the circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

In October of 2006, a Logan County Grand Jury indicted petitioner on one count of voluntary manslaughter. Petitioner’s first trial took place in April and May of 2007 and ended in a hung jury. In February of 2008, petitioner was tried, by jury, and was convicted of voluntary manslaughter. In June of 2009, the circuit court sentenced petitioner to a term of incarceration of fifteen years for his conviction. While incarcerated, petitioner filed a pro se petition for writ of habeas corpus in November of 2012. However, the next month, petitioner fully discharged his sentence and was released from incarceration. Thereafter, the State filed a motion to dismiss the petition for writ of habeas corpus as moot. The circuit court thereafter granted the motion on June 5, 2014. It is from the resultant order that petitioner appeals.

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).

In support of his petition for appeal, petitioner admits that our past holdings support the circuit court’s dismissal, but asks that the Court re-examine its analysis of whether a petition for writ of habeas corpus is mooted by the petitioner’s release from incarceration. We decline to do so. We have previously held that “[a]n inmate who has been released from incarceration and placed on parole is no longer ‘incarcerated under sentence of imprisonment’ for purposes of seeking habeas corpus relief under the Post–Conviction Habeas Corpus Act, West Virginia Code §§ 53–4A–1 to –11 (2008).” Syl. Pt. 3, *Cline v. Mirandy*, -- W.Va. --, 765 S.E.2d 583 (2014). Similar to the petitioner in *Cline* who was released from incarceration on parole, petitioner herein was released from incarceration after fully discharging his sentence. Because petitioner fully discharged his sentence and was released from incarceration shortly after filing his petition for writ of habeas corpus, we find no error in the circuit court granting the State’s motion to dismiss the same as moot.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: March 16, 2015

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Allen H. Loughry II