

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

**State ex rel. David Munday,
Petitioner Below, Petitioner**

vs) No. 11-1205 (Berkeley County 06-C-70)

**Thomas McBride, Warden,
Respondent Below, Respondent**

FILED

June 25, 2012

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

MEMORANDUM DECISION

Petitioner David Munday, by counsel, Christopher Prezioso, appeals the circuit court's orders dated March, 3, 2011, and July 20, 2011, denying his petition for writ of habeas corpus. The State has filed its response, by counsel Christopher Quasebarth. Petitioner has filed a reply.

This Court has considered the parties' briefs and the appendix 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 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 of Appellate Procedure.

Petitioner was found guilty by a jury of three counts of burglary; five counts of wanton endangerment; one count of unlawful assault on a police officer; four counts of attempted second degree murder; two counts of brandishing; three counts of discharge of firearm within 500 feet of a dwelling place; one count of destruction of property; one count of assault; and, one count of fleeing from an officer on foot. The State filed a recidivist information, and a jury found that petitioner had twice been convicted of offenses for which he could have been sentenced to the penitentiary. Therefore, his conviction for unlawful assault on a police officer was enhanced to a life sentence. His total sentence was seven to fifty-seven years in the penitentiary, followed by a consecutive sentence of fifteen years to life in prison. Petitioner then filed a direct appeal, which was refused by this Court. Thereafter, he filed a petition for writ of habeas corpus. The circuit court reviewed the petition, and issued a lengthy order entered on March 3, 2011, denying relief on most counts, but requesting additional briefing on the issue of whether the recidivist statute was properly applied in this matter. Both sides briefed the issue, and the circuit court then issued a final order denying the petition for writ of habeas corpus on July 20, 2011. The circuit court determined that no evidentiary hearing was necessary.

Petitioner now appeals the denial of his habeas corpus petition below.

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.

Syl. Pt. 1, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006).

Petitioner argues several assignments of error on appeal. First, he argues that the circuit court erred in denying his petition for writ of habeas corpus without conducting an evidentiary hearing, as probable cause existed to believe that petitioner was entitled to relief. Petitioner argues that he met the “probable cause” standard pursuant to West Virginia Code § 53-4A-7(a) and was entitled to an evidentiary hearing. The State argues that no hearing was necessary when the reviewing court could base its decision on the record, the underlying criminal case, or any other proceeding in which petitioner sought relief.

This Court has previously addressed the denial of a writ of habeas corpus without holding a hearing, as follows:

“A court having jurisdiction over habeas corpus proceedings may deny a petition for a writ of habeas corpus without a hearing and without appointing counsel for the petitioner if the petition, exhibits, affidavits or other documentary evidence filed therewith show to such court's satisfaction that the petitioner is entitled to no relief.”
Syl. Pt. 1, *Perdue v. Coiner*, 156 W.Va. 467, 194 S.E.2d 657 (1973).

Syl. Pt. 2, *State ex rel. Watson v. Hill*, 200 W.Va. 201, 488 S.E.2d 476 (1997). In the present matter, the circuit court did not err in failing to hold an evidentiary hearing. A review of the record presented and of the circuit court’s orders show that the circuit court properly determined that petitioner was not entitled to relief without the necessity of a hearing.

Petitioner also argues many of the issues he asserted before the circuit court in his petition for writ of habeas corpus. These alleged errors include the following: insufficient evidence to sustain a conviction; ineffective assistance of counsel; petitioner’s competency at trial; failure to suppress and exclude certain evidence; improper comments by the prosecutor at trial; reference to petitioner’s prior periods of incarceration; improper jury selection; false and/or unreliable testimony; and improper denial of a change of venue. The State has responded to each allegation, arguing in favor of the circuit court’s findings.

The Court has carefully considered the merits of each of 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 Part II of the circuit court’s detailed and well-reasoned “Order Demanding Additional Briefing on Certain Counts and Granting Final Denial on Certain Counts of Petition for Writ of Habeas Corpus” dated March 3, 2011, and attaches the same hereto.

Finally, petitioner argues that the circuit court erred by dismissing petitioner's amended petition for writ of habeas corpus when the West Virginia Recidivist Statute found at West Virginia Code § 61-11-18 was improperly applied to petitioner's case as petitioner had not been convicted of two predicate felonies which would require petitioner to be sentenced to life under said statute.

The Court has carefully considered the merits petitioner's arguments regarding the application of the recidivist statute, as set forth in his petition for appeal. Finding no error in the denial of habeas corpus relief on this issue, the Court fully incorporates and adopts the circuit court's detailed and well-reasoned "Final Order Denying Petition for Writ of Habeas Corpus," dated July 20, 2011, and attaches the same hereto.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 25, 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