

FILED
May 26, 2022

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Anthony Dean Brown,
Petitioner Below, Petitioner

vs.) **No. 20-0662** (Kanawha County 19-P-460)

R.S. Mutter, Superintendent,
McDowell County Corrections,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Anthony Dean Brown, by counsel Matthew A. Victor, appeals the Circuit Court of Kanawha County's July 29, 2020, order denying his amended petition for a writ of habeas corpus. Respondent State of West Virginia, by counsel Patrick Morrissey and Mary Beth Niday, filed a response in support of the circuit court's order.

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

On October 17, 1990, petitioner broke a window and gained access to the home of a female acquaintance ("victim"). Petitioner advised the victim that he had a gun and would kill her animals if she did not comply with his demands. Petitioner threatened the victim with a knife from her kitchen, robbed her at knifepoint, and raped her. Petitioner left with the victim's jewelry (a diamond ring) and \$4.00 in cash. At the time of the commission of the crime, petitioner was eighteen years old and had an extensive criminal record.

Petitioner was arrested a few days later and was subsequently indicted on charges of nighttime burglary, aggravated robbery, and first-degree sexual assault. Following his indictment, petitioner was appointed counsel. Petitioner's appointed counsel arranged for petitioner to undergo a competency evaluation, which included findings that petitioner suffered from alcohol dependency but was found "competent to stand trial and assist his counsel." Petitioner's counsel negotiated a plea deal wherein petitioner would plead guilty to burglary and aggravated robbery,

but the charge of first-degree sexual assault would be dismissed. Further, as part of the plea deal, the State agreed to stand silent at sentencing.

A written guilty plea was endorsed by petitioner, and petitioner submitted to a detailed plea colloquy with the circuit court at which he attested that he understood his right to trial but waived that right. Further, petitioner confirmed that he understood the penalties for the offenses of burglary and aggravated robbery. Petitioner acknowledged that he was completely and totally satisfied with his counsel's representation and averred that his plea was voluntarily made. Petitioner's attorney advised the court that he had "spent quite a bit of time on the case, reviewing the facts, and talking to the investigator."

Ultimately, the court sentenced petitioner to sixty years for his aggravated robbery conviction and one to fifteen years for his burglary conviction, with the sentences to run concurrently. The circuit court declared that petitioner was a "menace to society" and that his sentence was appropriate "given the nature of the crimes for which he stands convicted." Petitioner's counsel filed a motion to reconsider his sentence, which the circuit court refused. A direct appeal was filed on petitioner's behalf but was refused by this Court in 1992. In November of 2019, petitioner, acting as a self-represented litigant, filed a petition for a writ of habeas corpus. Thereafter, counsel was appointed for petitioner and an amended petition for a writ of habeas corpus was filed. The amended petition was denied by the circuit court, without a hearing, by order entered on July 29, 2020. It is from the circuit court's July 29, 2020, order that petitioner now appeals.

"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).

On appeal, petitioner asserts two assignments of error. First, petitioner contends that he received ineffective assistance of counsel during his underlying criminal case. Second, petitioner argues that given his tender age of twenty, his sixty-year sentence constitutes cruel and unusual punishment. Our review of the record supports the circuit court's decision to deny petitioner's amended petition for a writ of habeas corpus. Petitioner's arguments herein were thoroughly addressed by the circuit court in its twenty-seven-page order denying petitioner habeas relief. That order includes detailed and well-reasoned findings and conclusions as to the assignments of error now raised by petitioner on appeal. Because we find no clear error or abuse of discretion in the circuit court's order or the record before us, we hereby adopt and incorporate the circuit court's findings and conclusions as they relate to petitioner's assignments of error raised on appeal and direct the Clerk to attach a copy of the circuit court's July 28, 2020, "Final Order With Findings of Fact and Conclusions of Law" to this memorandum decision.

For the foregoing reasons, we affirm the circuit court's July 29, 2020, denial of petitioner's amended petition for a writ of habeas corpus.

Affirmed.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton

NOT PARTICIPATING:

Justice C. Haley Bunn