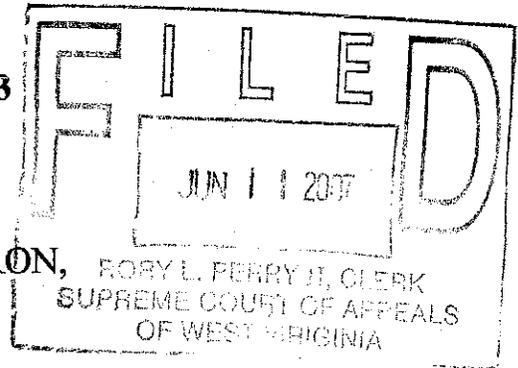


IN THE SUPREME COURT OF THE STATE OF WEST VIRGINIA

Case Number: 33063



JAMES BLAINE WALDRON,

Petitioner,

and

**TOM SCOTT, Southwestern Regional Jail Administrator,
JIM RUBENSTEIN, Commissioner, and
WEST VIRGINIA DIVISION OF CORRECTIONS,**

Respondents.

APPELLANTS' BRIEF

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State v. Green, 207 W.Va. 530 at 533 (2000).

State of West Virginia v. Waldron, 2005 W.Va. (32693)

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West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings, Rule 9 (b)

I. KIND OF PROCEEDING AND RULING BELOW

Appellant James Blaine Waldron appeals the Memorandum Opinion Order Denying Petitioner's Writ of Habeas Corpus of September 25, 2006, denying him habeas corpus relief.

II. STATEMENT OF THE CASE

By Order dated March 5, 2003, the Circuit Court of McDowell County, West Virginia refused to accept the plea agreement entered into by the State of West Virginia and the defendant, James Blaine Waldron (Waldron). The defendant subsequently, by and through counsel, filed a Motion for Reconsideration of Plea Agreement, which the State of West Virginia opposed said Motion by response. Said Motion was denied by Order dated April 14, 2004. On May 7, 2004, a jury convicted Waldron of Voluntary Manslaughter. On July 14, 2004 Waldron was sentenced to seven (7) years confinement in the penitentiary. Upon his conviction, the State filed an Information of former convictions warranting a recidivist sentence per W.Va. Code § 61-11-18, et seq. On September 30, 2004, Waldron was sentenced to an additional five (5) years confinement in the penitentiary as a recidivist sentence to run consecutively with his seven (7) year sentence.

In May, 2005 Waldron appealed his conviction to this Honorable Court. On November 30, 2005 this Honorable Court affirmed the ruling of the McDowell County Circuit Court.

On March 10, 2006, Waldron filed a *pro se* petition for Writ of Habeas Corpus requested the appointment of counsel. By Order dated April 19, 2006, the Circuit Court appointed counsel in this matter and an amended petition further supporting six of the grounds previously raised was filed on June 1, 2006. A special prosecutor filed a response to said amended petition on September 19, 2006. On September 25, 2006 the Circuit Court entered the Order denying habeas corpus relief.

Waldron subsequently filed a Petition for Appeal with this Honorable Court. Said Petition was granted on May 9, 2007 as to Assignment of Error No. 1 only, to-wit: "The Circuit Court Erred by failing to hold an evidentiary hearing prior to denying petitioner habeas corpus relief."

III. STATEMENT OF FACTS

For ease of understanding, the facts of this case as outlined by this Honorable Court shall be adopted nearly verbatim. The facts center around the criminal actions of Waldron and a co-defendant, Mose Douglas Mullins, Jr. (Mr. Mullins). Waldron was indicted on one count of murder, and Mr.

Mullins was indicted on one count of murder and two counts of malicious assault. The record reveals that Mr. Mullins was illegally selling the prescription drug, OxyContin, on behalf of a third party. Mr. Mullins testified that he was a drug addict and used more of the drugs than he sold. He became indebted to the third party for the remainder of the money due for the OxyContin pills. The third party worked out a deal with Mr. Mullins whereby Mr. Mullins would kill four people who had allegedly broken into the third party's home. The third party offered to waive Mr. Mullins' debt, and would also give him five thousand dollars for each murder, for a total of twenty thousand dollars. Thereafter, on May 13, 2001, Mr. Mullins was out of pills. He discovered that he did not have the money to purchase new pills or to pay the third party for the pills that he had used for his personal addiction. Mr. Mullins testified that he determined that he had to go through with the four killings.

Later that same day, Mr. Mullins invited Mr. Waldron to ride around with him. Mr. Mullins testified that he planned on killing the four targets if he happened to run into them. Further, Mr. Mullins testified that Waldron, at this time, had no idea of the murder plan. While driving around, the two ran into Jeffrey Mullins, Don Ball, and Chantel Webb. Jeffrey Mullins and Chantel Webb were two of the people whom Mr. Mullins was supposed to

kill.

Mr. Mullins offered Oxycontin pills to the others, and plans were made to meet at a secluded location. The two groups drove in separate cars and met at the chosen location. Mr. Mullins claims that it was during this drive that he told Waldron of his plan, and further, that Waldron agreed to be a look-out for the sum of one thousand dollars. Waldron avers that he at no time had any idea about Mr. Mullins' plan to kill anyone.

After arriving at the specified location, Mr. Mullins retrieved a gun that had been provided by the third party. He shot Chantel Webb, Don Ball, and Jeffrey Mullins. Don Ball fled the scene with five gunshot wounds, and Jeffrey Mullins was shot and left for dead. Chantel Webb was killed at the scene. Jeffrey Mullins survived, but was paralyzed as a result of his injuries. Don Ball eventually recovered. Waldron testified that he remained in the car the entire time, and that he didn't pay attention to the gunshots being fired because he was breaking up marijuana to roll a joint. However, Don Ball testified that he remembers seeing Mr. Waldron out of the car at the crime scene during the shootings. Further, Jeffrey Mullins testified that prior to being shot, he heard Mr. Mullins ask Mr. Waldron if everything was okay, and Waldron responded in the affirmative.

Following the shootings, Mr. Mullins threw the bodies of Chantel Webb and Jeffrey Mullins over an embankment. He and Waldron rode to a carwash where Mr. Mullins washed the blood stains from the car. They then disposed of the murder weapon and Mr. Mullins' blood-stained clothing. After a stop at a relative's house and a convenience store, Mr. Mullins then drove them to their homes, which were located beside of each other. The police were waiting for them when they arrived, and both were arrested.

Waldron was incarcerated from the time of his arrest until approximately three months later when he agreed to assist law enforcement officers in their investigation in exchange for leniency. Waldron submitted to a blood test, gave a voluntary statement, and directed police to the location of evidence such as the murder weapon and Mr. Mullins' bloody clothing. Thereafter, Mr. Mullins entered a guilty plea to second degree murder and two counts of malicious assault. Mr. Mullins was sentenced to forty years for the murder, and two to ten years for each count of the malicious assaults, to run consecutively. For Waldron's assistance in recovering evidence, the State of West Virginia entered into a plea agreement. The agreement called for the state to dismiss the felony indictment against Waldron, Waldron agreed to enter a voluntary plea of guilty to the misdemeanor charge of accessory after-the-fact, and the state agreed to recommend a period of one year

confinement in the regional jail, a fine of two hundred fifty dollars, and all court costs.

On February 6, 2003, the plea agreement was presented to the circuit court, and it was refused. During the same hearing, the circuit judge disclosed his close personal relationship with one of the victim's family. The presiding circuit judge transferred the case to another circuit judge. On March 3, 2003, the plea agreement was presented to the second circuit judge, who also refused to accept it. The court stated that the only plea it would entertain would be a felony plea. Waldron, by and through counsel, filed a motion to reconsider said plea agreement, which was opposed by the newly appointed special prosecutor. The case was scheduled for trial, which resulted in a verdict of guilty of voluntary manslaughter, as described above. *See Generally* State of West Virginia v. Waldron, 2005 W.Va. (32693), at 3-5.

IV. STANDARD OF REVIEW

The standard of review of a Circuit Court's ruling regarding a Petition for Habeas Corpus has been clearly defined by this Honorable Court as follows:

In this challenge to the circuit court's rulings on a petition seeking habeas corpus relief, we apply the broadly-applicable standard enunciated in *Phillips v. Fox*, 193 W.Va. 657, 661, 458 S.E.2d 327, 331 (1995): "In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a de novo review." *See also* syl. pt. 1, *Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995). As we have repeatedly stressed, "[f]indings of fact made by a trial court in a post-conviction habeas corpus proceeding will not be set aside or reversed on appeal by this Court unless such findings are clearly wrong." Syl. pt. 1, *State ex rel. Postelwaite v. Bechtold*, 158 W.Va. 479, 212 S.E.2d 69 (1975), *cert. denied*, 424 U.S. 909, 96 S.Ct. 1103, 47 L.Ed.2d 312 (1976). *See also* *Stuckey v. Trent*, 202 W.Va. 498, 501, 505 S.E.2d 417, 420 (1998); syl. pt. 2, *State ex rel. Kidd v. Leverette*, 178 W.Va. 324, 359 S.E.2d 344 (1987). *State v. Green*, 207 W.Va. 530 at 533 (2000).

V. THE ASSIGNMENTS OF ERROR RELIED UPON APPEAL AND
THE MANNER IN WHICH THEY WERE DECIDED IN THE LOWER
TRIBUNAL.

- A. **The Circuit Court Erred by failing to hold an evidentiary hearing prior to denying petitioner habeas corpus relief.**

VI. POINTS AND AUTHORITIES RELIED UPON, A DISCUSSION OF
LAW, AND RELIEF PRAYED FOR.

A. The Circuit Court Erred by failing to hold an evidentiary hearing prior to denying petitioner habeas corpus relief.

The Circuit Court's factual findings are reviewed under a clearly erroneous standard. The question of law is reviewed *de novo*. The ultimate disposition under an abuse of discretion standard. State v. Green at 533.

West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings, Rule 9, provides in relevant part:

(a) Determination by court. -- If the petition is not dismissed at a previous stage in the proceeding, the circuit court, after the answer is filed, shall, upon a review of the record, if any, determine whether an evidentiary hearing is required. If the court determines that an evidentiary hearing is not required, the court shall include in its final order specific findings of fact and conclusions of law as to why an evidentiary hearing was not required.

In this matter, Waldron was not afforded an evidentiary hearing. The State of West Virginia responded to the amended petition on September 19, 2006. The denial of his petition was by Order dated September 25, 2006.

While the Order detailed the grounds why said petition was denied, it failed

to comply with the requirements of the Rule 9(b) by either holding an evidentiary hearing, as an answer was filed, or providing in the order denying said relief “specific findings of fact and conclusions of law as to why an evidentiary hearing was not required.” Id.

Waldron contends the failure to allow an evidentiary hearing in this matter crippled his position in the underlying habeas corpus action. Waldron’s remaining assignments of error from his Petition for Appeal were an unfulfilled plea bargain and ineffective assistance of counsel. Absent and evidentiary hearing in this matter, Waldron could not present to the trial court actual testimony or call witnesses regarding the unfulfilled plea bargain or his trial counsel’s actions. Further, failure of the trial court’s Order to address the lack of said evidentiary hearing with specific findings of fact and conclusions of law violated the West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings

For this reason, the Lower Court ruling should be reversed and Petitioner should be granted either an evidentiary hearing or an order properly detailing why such hearing is not required.

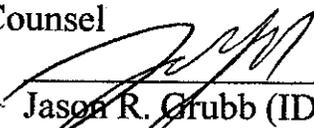
VII. CONCLUSION

For the reasons stated above, the trial court should be reversed and the Petitioner’s Habeas Corpus Petition should be granted, or, in the alternative,

this case should be remanded for further findings consistent with this prayer
for relief.

Respectfully submitted this the 9th day of June, 2007.

JAMES BLAINE WALDRON
By Counsel



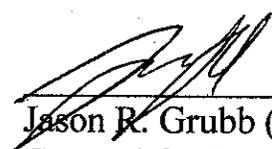
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CERTIFICATE OF SERVICE

I, hereby certify that a true and exact copy of the foregoing has been
mailed by U.S. Mail, postage prepaid to all interested parties as follows:

Dawn E. Warfield
Deputy Attorney General
Appellate Division
State Capitol Complex,
Bldg. 1, Room E-26
Charleston, WV 25305

This the 9th day of June, 2007.



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Counsel for Petitioner