

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Scotty E. Boothe,
Petitioner Below, Petitioner

vs.) **No. 21-0648** (Fayette County 20-C-78)

Shelby Searls, Superintendent, Huttonsville
Correctional Center,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Scotty E. Boothe appeals the order of the Circuit Court of Fayette County, entered on July 13, 2021, denying his petition for a writ of habeas corpus. Mr. Boothe is serving a term of imprisonment of 35 to 150 years for his conviction (after a trial by a jury of his peers) of one count of first-degree sexual assault and two counts of first-degree sexual abuse.¹

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 review², 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.

Mr. Boothe was convicted in the Circuit Court of Fayette County in 2009. He filed a petition for appeal with this Court, and the petition was refused. Since then, this Court has affirmed

¹ Petitioner appears by counsel William C. Forbes and W. Jesse Forbes. Respondent Shelby Searls, Superintendent of the Huttonsville Correctional Center, appears by counsel Patrick Morrissey and Lara K. Bissett.

² We have held:

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).

the denials of two petitions for a writ of habeas corpus that Mr. Boothe filed in the Circuit Court of Fayette County. *See Boothe v. Ballard*, No. 13-0740, 2014 WL 2782127 (W. Va. June 19, 2014) (“*Boothe I*”) and *Boothe v. Ames*, No. 17-0343, 2019 WL 911166 (W. Va. Feb. 22, 2019) (“*Boothe II*”).³ But Mr. Boothe persists.

The matter now before us is Mr. Boothe’s third appeal of a circuit court’s denial of a petition for a writ of habeas corpus. “[Our] [p]ostconviction habeas corpus statute . . . clearly contemplates that [a] person who has been convicted of a crime is ordinarily entitled, as a matter of right, to only one postconviction habeas corpus proceeding[.]” Syllabus Point 1, in part, *Gibson v. Dale*, 173 W.Va. 681, 319 S.E.2d 806 (1984).” Syl. Pt. 1, *Markley v. Coleman*, 215 W. Va. 729, 601 S.E.2d 49 (2004).

“A prior omnibus habeas corpus hearing is *res judicata* as to all matters raised and as to all matters known or which with reasonable diligence could have been known; however, an applicant may still petition the court on the following grounds: ineffective assistance of counsel at the omnibus habeas corpus hearing; newly discovered evidence; or, a change in the law, favorable to the applicant, which may be applied retroactively.” Syllabus Point 4, *Losh v. McKenzie*, 166 W.Va. 762, 277 S.E.2d 606 (1981).

Id. at Syl. Pt. 2.

In 2014, we opined that “[t]he record on appeal. . . shows that both [of Mr. Boothe’s trial attorneys] made strategic decisions on [Mr. Boothe’s] behalf that were assistive of his interests” and we found “that the circuit court did not err in denying petitioner’s claim that he received ineffective assistance of counsel.” *Boothe I*, 2014 WL 2782127, at *5. In 2019, we reiterated the point: the circuit court “made sufficient findings to deny the [habeas] petition based on a determination that petitioner failed to show that there was ineffective assistance of counsel. Therefore, we conclude that the circuit court rejected petitioner’s claims on their merits and did not rely on the doctrine of *res judicata*.” In 2022, we emphasize: this Court is satisfied that Mr. Boothe’s habeas claims have been thoroughly and effectively considered by our circuit courts on three occasions, and on each of those occasions the merits of those claims have been thoroughly reviewed by this Court.

We are acquainted with the circumstances of Mr. Boothe’s criminal conviction, and we are familiar with Mr. Boothe’s continued claims about the roles and actions of his attorneys. These claims have received ample attention from our courts. Mr. Boothe’s claims—those that were raised in his earlier petitions and those which with reasonable diligence could have been known—are barred by the doctrine of *res judicata*. We, accordingly, find no merit in Mr. Boothe’s appeal.

For the foregoing reasons, we affirm.

³ Mr. Boothe also filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Southern District of West Virginia. *Boothe v. Ballard*, No. 2:14-CV-25165, 2016 WL 1275054 (S.D.W. Va. Mar. 31, 2016), *aff’d*, 670 F. App’x 193 (4th Cir. 2016).

Affirmed.

ISSUED: August 30, 2022

CONCURRED IN BY:

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