

FILED
May 26, 2022

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

John Spaulding,
Petitioner Below, Petitioner

vs.) **No. 21-0198** (Mercer County 15-C-299)

Donnie Ames, Superintendent, Mt. Olive
Correctional Complex,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner John Spaulding, by counsel P. Michael Magann, appeals the order of the Circuit Court of Mercer County, entered on December 11, 2020, denying his petition for a writ of habeas corpus. Respondent State of West Virginia appears by counsel Patrick Morrissey and Lara K. Bissett.

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.

Mr. Spaulding is incarcerated for a period of 75 to 300 years for his conviction of three counts of sexual assault and numerous counts of possession of material depicting minors engaged in sexually explicit conduct. His conviction was affirmed on direct appeal in *State v. Spaulding*, No. 14-0718, 2015 WL 3875802 (W. Va. June 22, 2015) (memorandum decision). Approximately two years after we entered our memorandum decision affirming his conviction, Mr. Spaulding filed a petition for a writ of habeas corpus in the Circuit Court of Mercer County. The circuit court conducted an omnibus hearing on the several grounds that Mr. Spaulding asserted, and ultimately denied the requested relief.

Mr. Spaulding asserts two assignments of error in his appeal from the circuit court's denial of his petition. First, he argues that the circuit court erred in failing to find that his counsel's performance was deficient and ineffective. Second, he argues that the circuit court failed to recognize that his sentence was excessive in comparison with that of his codefendant. We review Mr. Spaulding's arguments according to the following standard of review:

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 test under which we review Mr. Spaulding's ineffective assistance of counsel claim for his first assignment of error was established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and it requires us to consider whether the evidence shows that "(1) [c]ounsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Syl. Pt. 5, in part, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995). Mr. Spaulding's appellate brief presents insufficient facts or analysis for us to find in his favor on the application of this test. In conclusory fashion, he asserts thirty "failures" of his counsel. This list of failures lacks citation to the appendix record on appeal, and Mr. Spaulding did not present a factual statement adequate to elucidate most (or possibly any) of the claims on his list. In an Administrative Order entered on December 10, 2012, *Re: Filings That Do Not Comply With the Rules of Appellate Procedure*, the then-Chief Justice of this Court specifically noted in paragraph 7 that

[b]riefs with arguments that do not contain a citation to legal authority to support the argument presented and do not 'contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal' as required by rule 10(c)(7) are not in compliance with this Court's rules.

Nevertheless, it is apparent from the circuit court's thorough and well-reasoned order that the circuit court gave ample attention to each allegation set forth by Mr. Spaulding before concluding that Mr. Spaulding's trial counsel's performance was objectively reasonable. Upon our review of the circuit court's order and on our own comprehensive review of the appendix record on appeal, we agree that each allegation of deficient legal assistance is wholly unsupported, and we find no error in the circuit court's ruling.

We turn to Mr. Spaulding's second assignment of error, in which he cursorily argues that his sentence was "excessive and disparate" to that of his codefendant.

Disparate sentences for codefendants are not per se unconstitutional. Courts consider many factors such as each codefendant's respective involvement in the criminal transaction (including who was the prime mover), prior records, rehabilitative potential (including post-arrest conduct, age and maturity), and lack of remorse. If codefendants are similarly situated, some courts will reverse on disparity of sentence alone.

Syl. Pt. 2, *State v. Buck*, 173 W. Va. 243, 314 S.E.2d 406 (1984).

Mr. Spaulding's criminal deeds with his codefendant are set forth in detail in *Spaulding I*, and we need not repeat the account here. In short, Mr. Spaulding's female codefendant transferred a substantial amount of material depicting minors engaged in sexually explicit conduct to him. The transferred material included pictures of the codefendant's own fourteen-year-old daughter and the three-year-old victim of Mr. Spaulding's assaults, whom the codefendant eventually drugged and presented to him. The codefendant pled guilty by information to a single count of sexual assault in the first degree and sexual abuse by a custodian, for which she was cumulatively sentenced according to statutory provisions to confinement in the state penitentiary for twenty-five to seventy years. We emphasize the critical fact that the codefendant pled guilty to two felony counts, in exchange for providing testimony in Mr. Spaulding's prosecution, and was sentenced accordingly. Mr. Spaulding, who continued to deny involvement and elected to have a jury decide the question of his guilt or innocence, was convicted of three felony counts of sexual assault and fifty counts for his possession of child pornography. Mr. Spaulding asks that we reverse the circuit court's decision merely because the codefendant's sentence was fractional to that of Mr. Spaulding. However, he fails to address the differences in the convictions that led to the differing sentences. Thus, we find no error in the circuit court's finding that the two codefendants were not similarly situated and, therefore, not the recipients of impermissibly disproportionate sentences.

For the foregoing reasons, we affirm.

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