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STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

vs.) No. 19-0259 (Raleigh County 19-PCS-145-D)

Jamal A. Azeez,
Defendant Below, Petitioner

FILED

June 25, 2020

EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Jamal A. Azeez, a self-represented litigant, appeals the February 22, 2019, order of the Circuit Court of Raleigh County refusing his petition for an order for relief from registration as a sexual offender. Respondent, State of West Virginia, by counsel Holly M. Flannigan, filed a response in support of the circuit court's order. On appeal, petitioner argues that circuit court erred in dismissing his petition on the basis that he failed to comply with the filing requirements set forth in an August 24, 2014, order.¹

¹On appeal, petitioner alleges seven assignments of error; however, only two attempt to address the order on appeal and these have been combined herein. The remaining five assignments of error are not proper for consideration. Petitioner's remaining assignments of error are that he demonstrated actual innocence, which should allow reconsideration of his case despite procedural bars; that he discovered several pieces of exculpatory evidence, which is sufficient to justify relief in all of his subsequent petitions; that the circuit court ignored his claims of racial discrimination during jury selection; that the circuit court failed to address whether trial court failed to consider if a jury member was struck due to race, encouraged the suppression of evidence, erred in denying a witness's testimony, and ignored testimony; and that the circuit court ignored the effects of registration on a sexual offender registry based on petitioner's unlawful conviction. Petitioner's remaining assignments of error fail to address the order on appeal, and petitioner's citations to authority and the record that are not applicable to the order on appeal. We therefore decline to address these issues. Pursuant to Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure,

[t]he brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must 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

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.

Following a jury trial in July of 1987, petitioner was convicted of second-degree sexual assault. This conviction stemmed from an incident in which petitioner sexually assaulted a patient at a hospital where he was employed. Thereafter, the circuit court sentenced petitioner to a term of incarceration of ten to twenty years. In June of 1988, petitioner filed a direct appeal with this Court, which was refused. Petitioner renewed his petition for appeal on July 26, 1988, and this Court again refused to hear the appeal.

In June of 1992, petitioner, by counsel, filed a petition for writ of habeas corpus. Following an omnibus hearing, the circuit court denied petitioner habeas relief. Petitioner appealed that denial to this Court. In January of 1995, this Court heard oral arguments on petitioner's appeal of the circuit court's order denying habeas relief. By order entered July 13, 1995, this Court affirmed the circuit court's order. *See State ex rel. Azeez v. Mangum*, 195 W. Va. 163, 465 S.E.2d 163 (1995). Two years later, petitioner filed a second petition for a writ of habeas corpus in the circuit court, which was summarily denied based upon res judicata.

In August of 2013, petitioner filed a petition for writ of error coram nobis. Following an evidentiary hearing in April of 2014, the circuit court denied petitioner relief based upon res judicata and collateral estoppel because petitioner's grounds for relief were previously litigated in the Circuit Court of Raleigh County, this Court, and the United States District Court for the Southern District of West Virginia. In its August 25, 2014, order, the circuit court found that

[t]his Petitioner has inundated the Circuit Court of Raleigh County with actions for twenty-seven years and has failed to prevail in any. The Petitioner has always pled pauper status and has further filed these actions without any accountability with regard to good faith pleadings. It is the ORDER of this Court that *no* further pleadings from this Petitioner shall be accepted by the Clerk of the Circuit Court of Raleigh County unless and until the Petitioner has provided a full and complete

presented to the lower tribunal. The Court may disregard errors that are not adequately supported by specific references to the record on appeal.

Additionally, in an Administrative Order entered December 10, 2012, *Re: Filings That Do Not Comply With the Rules of Appellate Procedure*, this Court specifically noted that "[b]riefs that lack citation of authority [or] fail to structure an argument applying applicable law" are not in compliance with this Court's rules. Further, "[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 . . .' as required by rule 10(c)(7)" are not in compliance with this Court's rules. *Id.*

financial statement for review by an appropriate judicial officer to determine his pauper status and further the Clerk shall refuse to accept any pleadings, petitions, motions or actions unless and until the proposed pleadings, petitions, motions or actions are countersigned by an attorney licensed to practice law in the State of West Virginia verifying that there is a good faith basis for the pleading sought to be filed by this Petitioner.

See *State v. Azeez*, No. 14-0951, 2015 WL 5125803 (W. Va. Aug. 31, 2015)(memorandum decision). This Court affirmed the August 25, 2014, denial of a petition for a writ of error coram nobis and adopted the circuit court's order.

On February 20, 2019, petitioner filed a motion seeking relief from his obligation to register as a sexual offender. The motion was denied by the circuit court on February 22, 2019, because petitioner failed to comply with the filing requirements set forth in the August 25, 2014, circuit court order. That is, he failed to provide a full and complete financial statement and failed to have an attorney verify that there was a good faith basis for his pleading. Petitioner now appeals the February 22, 2019, circuit court decision.

"This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*." Syl. Pt. 1, *Haines v. Kimble*, 221 W. Va. 266, 654 S.E.2d 588 (2007) (quoting Syl. Pt. 4, *Burgess v. Porterfield*, 196 W. Va. 178, 469 S.E.2d 114 (1996)).

On appeal, petitioner argues that the circuit court erred in dismissing his 2019 petition on the basis that he failed to comply with the requirements set forth in the August 24, 2014, order. Petitioner contends that, instead, the circuit court should have addressed the issues presented and erred in failing to list "at least one requirement that could be considered legally acceptable." Petitioner further argues that it is unclear what requirements were imposed upon him. He also argues that the circuit court erred in dismissing his legitimate petition for a writ of error coram nobis.

Our cases have made clear that "[a]lthough we liberally construe briefs in determining issues presented for review, issues which are . . . mentioned only in passing but are not supported with pertinent authority, are not considered on appeal." *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996). We have explained that

[a]n appellant must carry the burden of showing error in the judgment of which he complains. This Court will not reverse the judgment of a trial court unless error affirmatively appears from the record. Error will not be presumed, all presumptions being in favor of the correctness of the judgment.

Syl. Pt. 4, *State v. Myers*, 229 W. Va. 238, 728 S.E.2d 122 (2012) (internal quotations and citations omitted).

In his brief, petitioner cites to no legal authority and fails to reference anything in the appendix that addresses the issues on appeal. Further, petitioner's argument fails to actually address the issues on appeal. Instead, petitioner uses the assignments of error as a launching pad to attempt to relitigate issues that were decided long ago. Because petitioner fails to adequately address the issues on appeal, we decline to address his issues on appeal. W. Va. R. App. P. 10(c)(7) ("The Court may disregard errors that are not adequately supported by specific references to the record on appeal."); *State, Dep't of Health and Human Res. ex rel. Robert Michael B. v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995) ("[A] skeletal 'argument,' really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs.").

Even if we had addressed the issue on the merits, petitioner's argument still falls short. In the August 25, 2014, circuit court order dismissing petitioner's petition for a writ of error coram nobis, the circuit court noted that petitioner had filed thirty-eight petitions in the twenty-seven years since petitioner's underlying criminal conviction. The circuit court noted that petitioner had argued the same issues time and time again and that petitioner had filed these petitions at the taxpayers' expense with no regard for good faith pleadings. Therefore, the circuit court-imposed restrictions upon petitioner's future filings. Petitioner did not challenge these restrictions in the circuit court or in his appeal to this Court. Further, we adopted and incorporated the August 25, 2014, circuit court order in petitioner's 2014 appeal. *See State v. Azeez*, No. 14-0951, 2015 WL 5125803 (W. Va. Aug. 31, 2015)(memorandum decision). In the order at issue in the instant appeal, the circuit court determined that petitioner failed to abide by the filing regulations, which remained in effect, and, upon our review, we agree with the circuit court's conclusion and, therefore, find no error.

For the foregoing reasons, we affirm the circuit court's February 22, 2019, order refusing the petition for relief from registration for sexual offenders.²

Affirmed.

ISSUED: June 25, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins

DISQUALIFIED:

Justice John A. Hutchison

² Petitioner's April 1, 2020, motion for an expedited decision is rendered moot by this memorandum decision.

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston
Kanawha County, on September 3, 2020, the following order was made and entered:

State of West Virginia,
Plaintiff Below, Respondent

vs) No. 19-0259

Jamal A. Azeez,
Defendant Below, Petitioner

ORDER

The Court, having maturely considered the petition for rehearing filed by Jamal A. Azeez self-represented, is of opinion to and does hereby refuse said petition for rehearing. Justice John Hutchison disqualified.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court



APPENDIX A⁽¹⁾

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 11th day of September, 2020, the following order was made and entered:

State of West Virginia,
Plaintiff Below, Respondent

vs.) No. 19-0259

Jamal A. Azeez,
Defendant Below, Petitioner

MANDATE

Pursuant to Rule 26 of the Rules of Appellate Procedure, the memorandum decision previously issued in the above-captioned case is now final and is hereby certified to the Circuit Court of Raleigh County (Case No. 19-PCS-145-D) and to the parties. The decision of the circuit court is hereby affirmed, and it is hereby ordered that the parties shall each bear their own costs. The Clerk is directed to remove this action from the docket of this Court. Justice Hutchison disqualified..

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court



APPENDIX B

COMPLAINT FOR SUMMONS OR WARRANT

IN THE MAGISTRATE COURT OF RALEIGH COUNTY, WEST VIRGINIA

(Page 2 of Criminal C.

Complainant Detective Cedric R. Robertson

Address Beckley Police Department, Drawer A.J. Beckley WV Tele (304) 256-1708

Defendant(s) name and address:

Jamal Adeen Azeez

Juvenile _____ Adult X Juvenile _____ Adult _____

Before the undersigned Magistrate this day appeared the above complainant, and upon oath states that the defendant(s), on about the 5th day of February, 1987, in the County of Raleigh committed the following offense(s):

X 3rd Degree Sexual Assault (61-88-5)

The basis for this belief that such offense(s) have or has been committed are as follows: On 2/9/87, the complainant met with Mrs. Nasby and Mr. Greg Roth, Assistant Administrator, of the Beck Appalachian Regional Hospital, who advised the complainant that two nurses of the hosp had discovered ~~Jamal Adeen Azeez~~ in room 201 of the hospital sitting on the bed of the victim, Dara Lynn Corker, a patient described as being 29 years of age, but having the Intelligence Quotient of a five year old child. The nurses described the appearance of ~~Jamal Adeen~~ Azeez as having his back to them and his clothing being disorganized. After ~~Jamal Adeen~~ Azeez left the patient's room, the patient told the nurses that he "stuck his wingding inside me and put his hand over my mouth and it hurt". The nurses also discovered the patient's pajamas were open at her lower torso. Laboratory tests, includ a rape examination kit, were conducted on the patient and the results were positive for sexual intercourse. On 2/10/87, the complainant interviewed the victim, along with her psychologist. The victim stated that the defendant "stuck his wingding in me and it hurt and he put his hands over my mouth". The physician who conducted the Laboratory te on the victim was Dr. Slack, Emergency Room Physician at the BASH.

Perjury, False Arrest, / → See Rape Kit Report Ex#9
& DR SLACK'S ER INTERVIEW

I do hereby swear or affirm that the information contained above is true and correct.

Detective Cedric Robertson
Complainant

Taken, subscribed and sworn to before me this 11th day of February 1987

THURMAN

Warrant Issued _____
(Date)

Summons Issued _____

APPENDIX C

Dr. Slack A. I can only read what I wrote, because I honestly don't recall in my own mind doing the exam. (Reading) Rape kit employed for examination of patient. No sign trauma, bruise or laceration. Pelvic-rectal examination done and not remarkable. Mucous-like secretions present in the vagina. Dry, caked secretions present right side of vaginal outlet. That's all I wrote.

Cleckley Q. Now, based on your examination, did you find any objective evidence that Ms. Corker (alleged victim) had engaged recently in sexual intercourse?

Dr. Slack A. No.

See next page

The woman's testimony on my identity and the alleged incident

Defense: Let me ask you this, Dora. Do you see the man (defendant) seated right there? Did you ever see him before?

Witness: Huhuh. No

Defense: Never saw him?

Witness: No response

Defense: Do you know what his name is?

Witness: Huhuh. No

Defense: Now, let me ask you this so I can see if I understand. Do you even recall February 5th of this year what happened?

Witness: Huhuh. No

Defense: You have no idea?

Witness: I can't remember.

TRANSCRIPTS ON EVIDENTIARY HEARING HELD 5 YEARS AFTER CONVICTION PERTAINING TO THE E.R. RAPE EXAMINATION AND THE DOCTOR'S FINDINGS—THIS NEGATIVE REPORT WAS CONCEALED AT TRIAL. DR. R. SLACK TESTIFIED AS TO THE NEWLY DISCOVERED REPORT

No indication that the woman was "upset", "excited", "fearful", "crying", etc

1 Dr. Slack → A That's used in the pelvic/rectal exam done
2 and not remarkable. That would be a term that would mean
3 that there was nothing unusual found, such as any pathologi
4 lesions, tears, bruises, blood, and so forth.

5 Q Now, you also refer to some secretions, an
6 I need you to identify that for me again and tell me, what
7 does that mean?

8 A Well, mucous-like secretions, I have
9 written here, mucous-like secretion present in the vagina.
10 That's a normal finding. Dry, caked secretions present in
11 right side of vaginal outlet. That simply could be more of
12 the same that's dry and caked.

13 Q Now, based on your examination, did you
14 find any objective evidence that Ms. Corker had engaged
15 recently in sexual intercourse?

16 A No.

17 Q Now, I understand, sir, that you refer to a
18 rape kit, and I think your notes refer to that; is that
19 correct?

20 A Yes, sir.

21 Q Now, what is involved in the -- and explain
22 to me what this rape kit is about.

23 A Well, it's simply a box with all the
24 equipment necessary to do a proper examination on this type

Susan Phillips, Registered Nurse, Beckley Appalachian Regional Hospital, Stanaford, Rd., Beckley, Raleigh County, West Virginia.

Lenn Kirschner, Director of Behavioral Science and Psychology, Beckley, Appalachian Regional Hospital, Stanaford Rd., Beckley, WV

Debbie Lilly, Counselor, Beckley Appalachian Regional Hospital, Stanaford Rd., Beckley, WV

Jean Giesenking, Licensed Practical Nurse, Beckley Appalachian Regional Hospital, Stanaford Rd., Beckley, WV

Geneve Fox, Registered Nurse, Beckley Appalachian Regional Hospital, Stanaford Road, Beckley, WV

* Dr. Robert Slack, Emergency Room M.D., Beckley Appalachian Regional Hospital, Stanaford Road, Beckley, WV

Gene VanReenan, Director of Nursing, Beckley Appalachian Regional Hospital, Stanaford Rd., Beckley, WV

Franklin Bosia, Chief Medical Technologist, Beckley Appalachian Regional Hospital, Stanaford Road, Beckley, WV

Detective Cedric Robertson, BCPD

Lt. Billy J. Cole, BCPD

Ptl. Don W. Lilly, Evidence Officer, BCPD

* A Representative of the C.I.B. Lab. Charleston, WV

The Prosecuting Attorney has no records of any prior convictions of any of these potential witnesses.

F. Additional Disclosure

1 and 2-The State is not presently aware of any exculpatory evidence at this time.

3-The defendant had a previous incident similar to the one for which he is indicted which occurred at Appalachian Regional Hospital.

4-None

5-None, as to the common meaning of the word informant.

G. Early Disclosure

The State objects to this motion.

Respectfully submitted,

APPENDIX E

Prosecutor

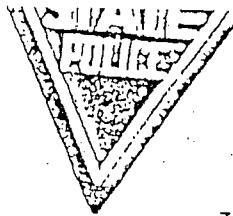
MR. LAZENBY: Your Honor, if I may, we don't know anything about Dr. Slack. We got the whole hospital records of the patient and gave it to the Court and gave counsel a good deal of it. What I told Mr. --what Mr. Froble said about CIB is about correct. I told Miss Panella that, to my knowledge, there wasn't a report that the chemist that was there had quit, but that the evidence was negative. We're making a phone call to Fred Zain, who was still there, but the chemist that actually did the work is gone. I never received a report. I believe I told Miss Panella that six weeks ago.

THE COURT: Absent testimony is not necessarily exculpatory.

MR. FROBLE: Well, I've never seen the report of Dr. Slack. Did the Court review the medical records under Almond to determine whether it was exculpatory?

THE COURT: The Court didn't review anything that wasn't brought to It's attention. It never does. I don't go through cases and try to determine what's exculpatory. I mean that's a burden that has never been placed upon a trial court.

MR. FROBLE: Well, Your Honor, I believe State v. Almond has indicated the Court must read the medical records and provide defense co



Page 3 of Criminal Comp

FORENSIC SECTION

725 Jefferson Road, South Charleston, West Virginia 25309

To: Patrolman D. W. Lilly
Beckley Police Department
340 Prince Street
Beckley, W.V. 25802

March 19, 1987

Your No. 87-1334
Lab No. 3-01-001

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Reference:

SEXUAL ASSAULT
2/5/87

DARA LYNN CORKER - VICTIM
JAMAL ADEEN AZEEZ - SUSPECT

Evidence Received:

Via U.S. mail 2/26/87

Evidence Disposition:

Attached

Examination requested:

Seminal

Specimens:

Sex Crime Evidence Kit
Hospital gown and stockings

RESULTS OF EXAMINATION:

No seminal fluid or spermatozoa were identified.

Sincerely,

A handwritten signature in black ink, appearing to read "F. S. Zain".

F. S. ZAIN, SERGEANT
FORENSIC BIOLOGIST

FSZ/pds

APPENDIX H

Lilly. (Report dated March 19, 1987, attached to the plaintiff's Complaint). The results were then sent to the prosecuting attorney. On July 29, 1987, the plaintiff was tried and convicted of sexual assault. (Azeez Complaint, ¶ 6).

On June 7, 1996, the plaintiff filed the instant civil action, entitled a "civil rights complaint." (Azeez Complaint). On June 17, 1996, the plaintiff filed a "Motion for Leave to File Amended Complaint." The Amended Complaint presents no specific claim against Officer Lilly, although it states that the defendants failed to disclose exculpatory evidence and committed various constitutional violations. (Azeez Amended Complaint, ¶ 2, 5). The plaintiff's Amended Complaint fails to state a claim upon which relief may be granted; consequently, defendant Don Lilly should be dismissed from this case.

DISCUSSION

THERE IS NO CLAIM OF WRONGDOING BY OFFICER DON LILLY

In both the Complaint and the Amended Complaint, the plaintiff advances no claim of wrongdoing by Officer Lilly. The only mention of conduct by Officer Lilly is that he forwarded "specimens to the CIB lab for analysis." (Azeez Complaint, ¶ 2). Inasmuch as there is no allegation of wrongdoing by Officer Lilly, the claims against him should be dismissed as a matter of law.

¹The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of a complaint. Collia v. McJunkin, 358 S.E.2d 242, 243 (W. Va. 1987), cert. denied, 484 U.S. 944 (1987). As the following demonstrates, the plaintiff's Amended Complaint presents no sufficient or cognizable claim against Don Lilly. Thus, dismissal is warranted.

Q. You have indicated that the acid phosphatase would indicate when intercourse occurred. With regard to that, when did intercourse occur?

A. The mere fact that it was such a tremendous elevation, one would think that it occurred within I would say five or six hours.

Q. That would have been five or six hours after it was collected?

A. Before.

PROSECUTOR AND THE JUDGE IN THE ABSENCE OF THE JURY OMITTING THE RESULT THAT IS EXONERATORY IN NATURE:

THE COURT: Well, that particular part gives me some concern, that particular part of the deposition and it's not--well, I don't know. Maybe we'd better go back and go through this in order to make sure we don't make a mistake. Let's go back to chambers.

(Whereupon, the Court, counsel and defendant retired to Judge's chambers where proceedings continued as follows:)

THE COURT: What do you say as to the attempting here of the Court to taking out everything that has to do with the acid phosphatase.

MR. LAZENBY: Me?

THE COURT: Either one of you...

MR. LAZENBY: Judge, I agree. I don't think it should be admitted.

APPENDIX J

THE WOMAN'S TESTIMONY DURING DIRECT* EXAMINATION-
(Prosecutor)

*The questions were very few and word-selective that lasted less than five minutes. (TT 84-85)

Q. Dara, what happened when that man came to your room?

A. He stuck his wingding in me.

Q. What time did it happen?

A. 10 til 12.

Q. Do you know who that man was that did that?

A. Huh uh. (No)

Q. What did you do?

A. I screamed out for nurses.

THE WOMAN'S TESTIMONY DURING CROSS EXAMINATION -(Defense)

Q. Do you recall what happened, how you got out of that group home?

A. I was walking, running away from Ted.

Q. Why?

A. I don't know. I just did run away... Ted caused me to take brown pills... I run away from Ted.... We get in a fight and I'll hit Ted.

Q. Were you trying to run in front of a car?

A. Yes

Q. Were you trying to kill yourself?

A. Yes.

Q. Did you believe you were pregnant back then?

A. Uh huh (Yes)

Q. How did you get pregnant?

A. Someone at Spencer did it to me... Ted.

Q. Did you remember Bobby in there (room)?

A. Uh huh (Yes)

Q. Now, did you ever meet Bobby?

A. Uh huh (Yes)

Q. Did he father one of your children?

A. Uh huh, yeah

Q. Did you tell him (Det. Cedric Robertson) at what time that someone put their wingding in you?

A. Uh huh. At ten minutes till twelve that night.

Q. How you recall that time?

A. Well, I was beginning to get chest pains.

Q. Do you see the man (Defendant) seated right here? Did you ever see him before?

A. Huh uh (No)

Q. Never saw him?

A. No response

Q. Do you know what his name is?

A. Huh uh (No)

Q. Do you remember who was it was...trying to get some blood?

A. Huh uh (No)...I was half asleep....I seemed dizzy like I passed out.

Q. Did you react...when someone turning the lights on?

A. I know I was screaming out to nurses. I told them I couldn't stand myself.

Q. Was it because of the pains you were having?

A. Uh huh (Yes)

Q. Now, do I understand that before the man came in, you had already experienced some pain and you were starting to scream?

A. Uh huh, starting to scream.

Q. So, it wasn't from the man, it was from the pains you were having?

A. Uh huh (Yes)

Q. So they (nurses) were inquiring what happened...after you started screaming.

A. Uh Huh (Yes). I told---when I told---when Dianne took my blood pressure, she said it was over 180.

Q. Now Dara, do you know what hallucination is?

A. It's where you start---I was washing dishes and I almost started passing out.

Q. Now, let me ask you this so I can see if I understand. Do you recall February 5th of this year what happened?

A. Huh uh (No)

Q. You have no idea?

A. I can't remember

Q. Can't remember?

A. I know Mary Casino, she was going to put---I took a bath and she told me there was somebody at the desk wanting to see me...James Clayton...my teacher at FMRS.

courtroom at 10:25 a.m., the following proceedings took place.)

THE COURT: All right, you got them?

MR. FROBLE: Your Honor, may we approach the bench before swearing them in.

THE COURT: Yeah.

(Whereupon, counsel and defendant approached the bench and the following discussion was had.)

MR. FROBLE: Your Honor, we would, based upon the Baton case and other recent cases, object to the State's striking Mr. Thompson, based upon what we believe that he is black. We don't have any South Americans to pick from but we think that because Mr. Azeez is a minority that the same principle applies, and we would object to them striking Mr. Thompson, or Johnson, excuse me.

THE COURT: Which one is Johnson?

MR. FROBLE: Number 19.

~~MR. LAZENBY~~ THE COURT: The State made the strike,

Judge, on the basis that he said he knew Cedric.

We speculated that maybe Cedric had arrested him, we don't know.

THE COURT: Well, unless it's based upon race alone, I would find it difficult to believe

BACKGROUND REPORT

Contact Information Criminal & Court Bankruptcies & Liens Ownerships Licenses

Contact Information

Joseph E Johnson

Age: 64

Born: Sep 1950

Contact Phone

304-255-5733

Current Address

418 Orchard Ave
Beckley, WV 25801

Phone Numbers Contact phone 304-255-5733

Address History 418 Orchard Ave. Beckley, WV 25801

319 1/2 Ferry St. Montgomery, WV 25136

Po Box 98 Smithers, WV 25186

[View all 4 Addresses](#)

Relatives

Marylou Lou Boggs 53

121 Riggs St, Apt 1, Montgomery, WV 25136

[View Contact Info](#)

Katherine A Daniels 60

418 Orchard Ave, Beckley, WV 25801

[View Contact Info](#)

Jeffrey D Johnson 42

358 Hess Lively Rd, Mount Hope, WV 25880

[View Contact Info](#)

APPENDIX M

Criminal Records

We found '0' criminal records online for
Joseph E Johnson.

Some counties may be processing. We will notify you of updates.

We have coverage for records
in all 50 states.

We've started where Joseph has lived

Places searched where Joseph has lived:

	Sex Offense	Court	Felony	Misdemeanor
West Virginia			<u>Not Digitized</u>	<u>Not Digitized</u>
Fayette, West Virginia			<u>Not Digitized</u>	<u>Not Digitized</u>
Raleigh, West Virginia			<u>Not Digitized</u>	<u>Not Digitized</u>

APPENDIX M(6)

Order: Judge Faber

government's interest (which would be limited if relief was limited to allowing access), and the risk of erroneous deprivation (which is unknown, but obviously relates to how pressing a claim for relief is presented). Nonetheless, the Harvey court did not pronounce such an exception to its ruling. As such, the court concludes it is constrained to rule that engaging in due process balancing in the adjudication of petitioner's claim would inject the court into the legislative process, notwithstanding circumstances that the court feels make this case unique.

V. Summary and Conclusion

This petition presents a compelling case for review. The petitioner, who it appears has steadfastly maintained his innocence even after his release from incarceration, argues that the state's refusal to order a post-conviction analysis of principal evidence in his underlying criminal case violates his constitutional rights. As the petitioner notes, conducting a DNA analysis would consume relatively few resources on the part of the state and could result in evidence strongly suggesting his actual innocence to the sexual assault charge he was convicted of. However, the court is constrained to apply the law as it is written. The Fourth Circuit appears to have squarely foreclosed this claim, and this court must accordingly conclude that the petition fails to state a claim for which relief may be granted.

CITY OF BECKLEY

POLICE DEPARTMENT

REPORT OF INVESTIGATION

File No.

87-1334

Final Disposition

Date of Report

03-02-87

Report Made By

DETECTIVE C. E. ROBERTSON

Status of Investigation

Complete

Subject of Investigation

3RD DEGREE SEXUAL ASSAULT

VICTIM: Dara Lynn Corker, W/F, Brown Hair, Brown Eyes, DOB:03-04-57
Hgt:5'3", Wgt: 171 lbs., 29 Years of age.

DATE OF CRIME: February 5, 1987

PLACE OF CRIME: Beckley Appalachian Regional Hospital, Room 201, 2nd Floor
Stanaford Road, Beckley, Raleigh County, West Virginia.

DISCOVERED BY: Geneva Fox, LPN., Beckley Appalachian Hospital, Stanaford Rd
Beckley, Raleigh County, West Virginia
Jean GisenKing, LPN., Beckley Appalachian Hospital, Stanaford
Road, Beckley, Raleigh County, West Virginia.

WEATHER CONDITIONS: Snowing and Cold.

ACCUSED: JAMAL ADEEN AZEEZ DOB: W/M
Hgt: 5'9", Wgt: 150 lbs. SOC: 24 Years of a
Address: Box 759, Black Hair Brown Eyes
Oak Hill, West Virginia

SUSPECTS: None other than accused.

MOTIVE: Sexual Gratification

MODE OF OPERATION: The victim was a patient in the Beckley Appalachian Regional Hospital. Room 201. While she was laying in her bed, the accused put his hand over her mouth and had sexual intercourse with her. Accused threatened to kill victim if she screamed.

PROPERTY STOLEN: None.

DISCOVERED

APPENDIX O(a)

the accused a

u 12/15

PROPERTY RECOVERED: None

EXHIBITS:

- (1) General Investigative Service Report, Beckley City Police Service Number 87-1334.
- (1) Property Control Form, Beckley City Police Department covering sex Crime Kit and victim's clothing.
- (1) Markit Malicious Assault Rape Kit
- (1) Cytology Report - Lab #C87-0409
- (1) Consolidated Laboratory Report
- (1) Emergency Room Report submitted by Dr. Slack.
- (1) Forensic Section Report from C.I.B., Charleston, WV.
- (1) Voluntary Statement given by Geneve Fox, LPN, Beckley Appalachian Regional Hospital
- (1) Voluntary Statement given by Jean Giesenking, LPN, Beckley Appalachian Regional Hospital
- (1) Voluntary Statement given by Susan Phillips, RN, Beckley Appalachian Regional Hospital
- (1) Arrest Report on Jamal Adeen Azeez
- (1) Complaint for Summons or Warrant
- (1) Warrant for arrest of accused
- (1) Hospital Gown worn by victim
- (1) Pajama Bottom worn by victim

ACTION TAKEN:

On Monday, February 9, 1987, Detective C. R. Robertson was sent to Beckley Appalachian Regional Hospital, Stanaford Road, Beckley, Raleigh County, West Virginia by Lt. B. J. Cole to talk with the Assistant Administrator, Greg Roth and the Personnel Director, Edna Nasby.

Mr. Roth related to the writer that on February 5, 1987 at about 11:45 p.m., Geneva Fox and Jean Giesenking both who are licensed practical nurses had received a call from the emergency room who was looking for the accused and that he was needed in the emergency room. Mrs. Fox and one of the registered nurses went down the hall to look for him and all the lights were out and they did not see accused. Mrs. Fox and the R.N. returned to the desk. Mrs. Giesenking, who was at the desk stated that the accused is up here because she had just saw him a few minutes before.

Mrs. Giesenking and Mrs. Fox began



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~~EXAMINE RECORDS~~

Details for case: State ex rel. Azeez v. Mangum

DEFENDANT: Azeez, Jamal Adeen

State: WV

Jurisdiction: Raleigh County

Case: State ex rel. Azeez v. Mangum

Citation: 465 S.E.2d 163

Date Issued: 7/13/1995

Was the misconduct ruled *harmless error* or *prejudicial conduct*:

If the court did not address the prosecutorial misconduct or ruled it harmless error, does a dissenting or concurring judge believe the misconduct was more serious than the majority did:
Dissenting Opinion

Name(s) of the case prosecutor(s):

Kristen L Keller

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Dozens falsely imprisoned due to prosecutor misconduct

By MICHAEL J. SNIFFEN
Associated Press Writer

WASHINGTON (AP) — State and local prosecutors bent or broke the rules to help put 32 innocent people in prison, some under death sentence, since 1970, according to the first nationwide study of prosecutorial misconduct.

"Prosecutors misbehaved so badly in more than 2,000 cases during that period that appellate judges dismissed criminal charges, reversed convictions or reduced sentences the study also found.

The study "Harmful Error" included 59 West Virginia cases where defendants alleged misconduct by prosecutors. The prosecutor named in six of those cases stood by her work Thursday.

"We don't want to jeopardize these cases," said Kristen Keller, an assistant prosecutor in Raleigh County. "It's the prosecutor that suffers. He or she has to go and do it all over again."

"Harmful Error" found

223 prosecutors around the nation who had been cited by judges for two or more cases of unfair conduct but in the past 33 years, the study found only two prosecutors had been disbarred for mishandling criminal cases. There are about 30,000 local prosecutors in 2,341 jurisdictions.

A product of three years of research by The Center for Public Integrity, a private ethics watchdog group, the study found 28 cases involving 32 defendants in where judges concluded that misconduct by prosecutors contributed to the convictions of innocent people.

These 32 were later exonerated 12 by use of DNA genetic evidence. Some of these innocent defendants had been convicted of murder, rape, or kidnapping; some had been under death sentence before exoneration spared them.

In another 26 cases, 31 innocent defendants were convicted despite their allegations of misconduct by prosecutors.

But in those cases, all subsequently exonerated appellate judges dismissed the misconduct allegations or ruled prosecutors committed "harmless error." DNA evidence exonerated 24 of those defendants. The report said convictions of an undetermined number of guilty defendants also were undoubtedly overturned because of unfair prosecutor tactics.

Some of those defendants could not be retried and were set free, so prosecutor misconduct "has severe consequences, for the entire citizenry," the report said. Charles Lewis, executive director of the center, said that by focusing only on cases in which appellate judges found misconduct the study presented

"an extremely conservative and undoubtedly understated picture of the problem." The study also excluded federal prosecutors.

Among the West Virginia Cases the report singles out Keller. During a 1999 murder trial, Keller reminded jurors that the defendant had not testified the report said. The conviction in that case was later reversed for that comment and others.

A 1994 murder conviction was reversed after Keller asked the defendant about her involvement in satanic rituals during the trial.

Keller said both defendants were convicted at retrials. She said she raised the issue of satanic rituals because that defendant had testified "she was a good Christian with good character." "I impeached her by that," Keller said.

Keller said another report wrongly names her as the prosecutor in a 1987 rape case where the defendant (Azeéz) alleged racial bias during jury selection. Keller said she handled a separate escape (Failure to Appear) charge against that defendant. (That case was subsequently reversed by the Federal District Court)

Astoria, Ore., District Attorney Joshua Marquis, a National District Attorneys Association board member, said the cited cases emerge "from a universe of million."

The results suggested that the problem was "episodic not epidemic" and that the prosecutors "are and should be subject to a high degree of scrutiny by trial and appellate judges, defendants and defense lawyers, the press and bar associations and ultimately the voters," Marquis added.

Project director Steve Weinberg, a University of Missouri journalism professor on leave, said researchers found and analyzed 11,458 appellate rulings in which prosecutor misconduct was raised as an issue.

In 2,017 cases, appellate judges found misconduct serious enough to order dismissal, missal of charges, reversal of convictions or reduction of sentences. In an additional 513 cases, at least one judge filing a separate concurring or dissenting opinion thought the misconduct warranted reversal.

In thousands more cases judge's labeled prosecutorial behavior inappropriate but characterized it as "harmless error" and allowed a conviction to stand or a trial to continue.

"We are really talking about misconduct in the cases that went to trial," Weinberg told a news conference, noting that nationally, 95 percent of defendants who are charged never go to trial. A majority plead guilty without a trial, some charges are dropped.

"We eliminated more than 90 percent of all the criminal cases in the United States that could harbor misconduct," because there was no way to detect it, Weinberg said. But Washington University law professor Katherine Goldwasser, a former prosecutor, said it was not safe to assume, that "guilty pleas are absent prosecutorial misconduct."

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Requesting Assistance

To paul.flanagan@courtswv.gov
Jan 4, 2014.

Dear Mr. Flanagan,

I am experiencing serious difficulties locating an attorney to represent me in the Coram Nobis Petition at bar.

One local lawyer responded to my request and stated he does 'not want to touch the case'.

Since I was incarcerated for more than 12 years and truly indigent, can you forward this request to the court for appointment of counsel?

Expecting a response as soon as possible with court *forma pauperis* forms to determine if appointment of counsel is required, or I need to pay the filing fees.

Thank you.

Jamal Azeez.

APPENDIX Q