

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Ricky Vincent Pendleton,
Petitioner Below, Petitioner**

vs.) No. 19-0116 (Berkeley County 18-C-281)

**Terry C. Hamrick and Tracy P. Rice,
Respondents Below, Respondents.**

FILED

June 3, 2020

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

MEMORANDUM DECISION

Petitioner Ricky Vincent Pendleton, self-represented, appeals the January 22, 2019, order of the Circuit Court of Berkeley County denying his petition for a writ of mandamus. Respondents Terry C. Hamrick and Tracy P. Rice, by counsel Teresa J. Lyons, filed a response in support of the circuit court's order. Petitioner filed a reply.

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

On May 22, 1996, petitioner was indicted in the Circuit Court of Berkeley County on felony charges of kidnapping, malicious wounding, grand larceny, and aggravated robbery. These charges stemmed from an incident in which petitioner and an accomplice beat Ryan Frankenberry and robbed him of his wallet and vehicle. The beating was so severe that the victim required multiple surgeries, including the insertion of titanium plates and screws in his facial bones. Following a jury trial, petitioner was found guilty on all counts, and the jury recommended mercy in regard to his conviction for kidnapping. Petitioner was thereafter sentenced to a life term of incarceration with the possibility of parole for his kidnapping conviction, two to ten years of incarceration for his conviction of malicious wounding, one to ten years of incarceration for his conviction of grand larceny, and sixty years of incarceration for his conviction of aggravated robbery. These sentences

party seeking the writ has the burden of “show[ing the] clear legal right . . . and [the] corresponding duty[.]” Syl. Pt. 1, *Dadisman v. Moore*, 181 W. Va. 779, 384 S.E.2d 816 (1988) (Internal quotations and citations omitted.); *see also* Syl. Pt. 3, *State ex rel. Nelson v. Ritchie*, 154 W. Va. 644, 177 S.E.2d 791 (1970) (“He who seeks relief by mandamus must show a clear legal right to the remedy.”).

On appeal, petitioner presents the same argument we rejected in *Pendleton II* when we denied his motion for the production of the grand jury transcript. Respondents argue that the circuit court properly found that petitioner’s request for the transcript was previously denied. We agree with respondents and find that petitioner cannot show his entitlement to the requested writ of mandamus. Therefore, we conclude that the circuit court did not abuse its discretion in denying petitioner’s petition.

For the foregoing reasons, we affirm the circuit court’s January 22, 2019, order denying petitioner’s petition for writ of mandamus.

Affirmed.

ISSUED: June 3, 2020

CONCURRED IN BY:

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

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICKY VINCENT PENDLETON----PETITIONER

VS.

TERRY C. HAMRICK & TRACY P. RICE----RESPONDENTS

APPENDIX B:

DENIAL OF REHEARING BY W.VA. SUPREME COURT