

APPENDIX A
Decision of State Supreme Court of West Virginia

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

**Eric Michael Corder,
Petitioner Below, Petitioner**

v.) No. 22-724 (Randolph County 21-C-116)

**Shawn Straughn, Superintendent,
Northern Correctional Center,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Eric Michael Corder appeals the Circuit Court of Randolph County's August 22, 2022, order denying his amended petition for a writ of habeas corpus.¹ Here, the petitioner argues that his plea was not knowing and intelligent. Upon our review, finding no substantial question of law and no prejudicial error, we determine oral argument is unnecessary and that a memorandum decision is appropriate. *See* W. Va. R. App. P. 21(c).

In 2014, the petitioner was indicted on one count of first-degree sexual assault, two counts of second-degree sexual assault, one count of third-degree sexual assault, and two counts of soliciting a minor via a computer. On June 3, 2015, the petitioner and the State entered into a plea agreement whereby the petitioner agreed to plead guilty to one count of first-degree sexual assault, one count of third-degree sexual assault, and one count of soliciting a minor via a computer. The petitioner also agreed to stipulate to being designated as a "sexually violent predator" as defined by West Virginia Code § 15-12-2(k).² In exchange, the State agreed to dismiss the remaining charges in the indictment. The circuit court accepted the petitioner's plea and ordered a presentence investigation report be prepared.

¹ The petitioner appears by counsel Jason T. Gain. The respondent appears by Attorney General Patrick Morrisey and Deputy Attorney General Andrea Nease Proper.

² Pursuant to West Virginia Code § 15-12-2(k),

the term "sexually violent predator" means a person who has been convicted or found not guilty by reason of mental illness, mental retardation, or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

At sentencing, the circuit court imposed consecutive terms of fifteen to thirty-five years of imprisonment for the count of first-degree sexual assault, one to five years of imprisonment for the count of third-degree sexual assault, and two to ten years of imprisonment for the count of soliciting a minor via a computer. The circuit court also sentenced the petitioner to five years of supervised release and designated the petitioner as a sexually violent predator. The petitioner appealed his sentence to this Court, and we affirmed the circuit court's sentencing order. *State v. Corder*, No. 16-0237, 2017 WL 678862 (W. Va. Feb. 21, 2017) (memorandum decision).

The petitioner, self-represented, subsequently filed a petition for a writ of habeas corpus in March 2022. After appointment of counsel and the filing of an amended petition, the habeas court held an omnibus hearing on August 3, 2022. At the hearing, the petitioner waived all claims, save one—that he did not knowingly and intelligently plead to his designation as a sexually violent predator.

The petitioner acknowledged that as part of the plea agreement, he stipulated to designation as a sexually violent predator. The petitioner testified, however, that he did not understand the meaning of the term at the time he pled guilty and that he was not advised as to all of the consequences of the designation, such as his driver's license being coded to indicate that he was a sexually violent predator.³ After reading the definition set forth in West Virginia Code § 15-12-2(k), the petitioner stated that he had never been diagnosed with a mental abnormality, personality disorder, congenital condition, or acquired condition, nor did he know what those terms meant. As such, the petitioner claimed that he could not have stipulated to having such a condition or that the condition made him likely to harm the safety of other persons. The petitioner claimed that he accepted the plea, despite not knowing the meaning of the term "sexually violent predator," to receive a lighter sentence. The petitioner further claimed that, had he known of the definition of the term "sexually violent predator" and of the mark placed upon his driver's license, he would not have entered into the plea agreement. During cross-examination, the petitioner acknowledged that stipulating to the designation of a sexually violent predator was required under the plea agreement, that he executed the plea agreement with knowledge of that requirement, and that he agreed that he was aware of all the ramifications of his plea agreement during the plea colloquy.

By order dated August 22, 2022, the habeas court denied the petition. The court found that, per the plea agreement, the petitioner had waived several constitutional rights and failed to cite any authority that the designation as a sexually violent predator was afforded greater protection than the constitutional rights he had waived. The court further noted that it was unpersuaded by the petitioner's argument and, ultimately, found that because the petitioner had knowingly and voluntarily waived his right to a trial by a jury, "his knowing and voluntary stipulation as a sexually violent predator is not afforded a greater protection such that it cannot also be waived." The petitioner now appeals.

³ West Virginia Code § 17B-2-3(b)(1) requires that after a person is judicially determined to be a sexually violent predator, that person must surrender his or her driver's license and "[a]ny replacement driver's license or nondriver identification card issued to the person under this section must be coded by the commissioner to denote the person is a sexually violent predator."

When considering the appeal of a circuit court's habeas order, we review the final disposition for abuse of discretion and factual findings for clear error; questions of law are considered de novo. Syl. Pt. 1, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006). On appeal, the petitioner argues that the habeas court erred in denying his petition when it is clear that he could not have knowingly and intelligently stipulated to the designation of a sexually violent predator. Although the petitioner acknowledges that a defendant can waive certain constitutional rights, he argues that some rights cannot be waived, even by agreement of the parties. According to the petitioner, pleas containing an admission to being designated a "sexually violent predator" require defendants to admit to something that is "wholly not only not within the knowledge of a defendant, but also not within the knowledge of any attorney, judge, or respectfully any Justice of this Court." As such, the petitioner claims that the court cannot make such a determination without the assistance of medical professionals and, therefore, must always follow the procedure set forth in West Virginia Code § 15-12-2a.⁴ The petitioner claims that, given the foregoing, he could not have knowingly and intelligently stipulated to the sexually-violent-predator designation.

We are unpersuaded by the petitioner's argument that his designation as a sexually violent predator could not be waived by plea agreement. Both constitutional and statutory rights are capable of being waived. *See* Syl. Pt. 2, *Call v. McKenzie*, 159 W. Va. 191, 220 S.E.2d 665 (1975) (holding that "[a] criminal defendant can knowingly and intelligently waive his constitutional rights . . . when such knowing and intelligent waiver is conclusively demonstrated on the record"); *State v. Greene*, 196 W. Va. 500, 505, 473 S.E.2d 921, 926 (1996) (Cleckley, J., concurring) (stating that, "in the absence of special circumstances, a guilty plea waives all antecedent constitutional and statutory violations save those with jurisdictional consequences") (footnote omitted). Here, the limited record⁵ reveals that the circuit court heard testimony and argument at the omnibus hearing and found that the petitioner knowingly and intelligently entered into his plea. The record is devoid of any evidence that the petitioner was unaware of the consequences of his plea agreement, aside from the petitioner's testimony that he was not advised that he would receive a designated mark on his driver's license. In fact, the petitioner admitted that, during the plea colloquy, the heightened reporting requirements for sexually violent predators were made known to him, and he affirmed that he was aware of the ramifications of his plea agreement. Given the foregoing, we conclude that the petitioner has failed to show that the habeas court abused its discretion in denying the amended petition for a writ of habeas corpus.

⁴ West Virginia Code § 15-12-2a(a) requires that a circuit court that "has sentenced a person for the commission of a sexually violent offense . . . shall make a determination whether: (1) A person is a sexually violent predator." This determination is made via a summary proceeding without a jury. W. Va. Code § 15-12-2a(b). Prior to making the determination, the circuit court shall "request and receive a report by the board established pursuant to section two-b of this article. The report shall set forth the findings and recommendation of the board on the issue of whether the person is a sexually violent predator." *Id.* at § 15-12-2a(e). At the hearing to determine whether a person is a sexually violent predator, the person shall be present and has the right to counsel, the right to introduce evidence, and the right to cross-examine witnesses. *Id.* at § 15-12-2a(f).

⁵ The petitioner did not include either the plea hearing transcript or the sentencing hearing transcript in the appendix record.

For the reasons stated above, this Court affirms the August 22, 2022, final order of the Circuit Court of Randolph County.

Affirmed.

ISSUED: June 10, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice William R. Wooton
Justice C. Haley Bunn

DISSENTING:

Justice Elizabeth D. Walker
Justice John A. Hutchison

HUTCHISON, Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.

**Additional material
from this filing is
available in the
Clerk's Office.**