For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

CABA ALPHONSO WOODRUP, Appellant/Petitioner, v. **GOVERNMENT OF THE VIRGIN ISLANDS,** Appellee/Respondent.	**S. Ct. Civ. No. 2019-0006** Re: Super. Ct. Civ. No. 47/2016 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Kathleen Mackay

Considered: October 13, 2020
Filed: January 25, 2022

Cite as: 2022 VI 1

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Caba Alphonso Woodrup
Big Stone Gap, VA
Pro Se,

Ian S.A. Clement, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

CABRET, Associate Justice.

¶ 1 Appellant Caba Alphonso Woodrup, *pro se*, appeals from a June 20, 2018, memorandum opinion and order denying his petition for writ of habeas corpus. For the reasons that follow, we affirm the denial of Woodrup's petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 On the evening of April 25, 2010, Leshelle Gumbs walked through the Paul M. Pearson Gardens Housing Community on St. Thomas and was accosted and grabbed by Woodrup. *Woodrup v. People*, 63 V.I. 696, 703 (V.I. 2015) ("*Woodrup I*").[1] An hour later Gumbs walked back through the same housing community with her boyfriend, Patrick Smith. *Id.* Woodrup, who was still in the area, called out to Gumbs, and Gumbs and Smith responded. *Id.* A confrontation ensued, and Woodrup pulled out a gun and fired at least four shots, killing Smith. *Id.* Woodrup was later charged in the killing of Smith with first-degree murder, among other offenses. *Id.* at 704. Gumbs and another eyewitness, Austin Callwood, gave statements regarding the events of the shooting, and identified Woodrup to police from photographs. *Id.* Before trial, Woodrup moved to suppress Callwood's identification of him on the grounds that the procedures used to obtain the identification were unconstitutionally suggestive. *Id.* The Superior Court held a suppression hearing, found that the procedures were not suggestive, and denied the motion. *Id.* at 704-05. The court later held a three-day jury trial, beginning on November 28, 2012. *Id.* at 705. The jury convicted Woodrup on all counts. *Id.* at 706. The Superior Court sentenced Woodrup to life in prison without parole for first-degree murder, a consecutive term of 25 years' imprisonment and a $25,000 fine for unauthorized possession of a firearm during a crime of violence, and five years imprisonment for first-degree reckless endangerment. *Id.* at 706-07. We affirmed Woodrup's convictions in *Woodrup I*.

¶ 3 On July 22, 2016, Woodrup filed a petition for a writ of habeas corpus in the Superior Court, and the court dismissed his petition with prejudice. However, the judge who dismissed the

[1] We have previously discussed the facts of this case in our opinion deciding Woodrup's direct appeal. *See Woodrup I*, 63 V.I. at 703-07. The facts relevant to the present appeal are summarized here.

petition was also the trial judge in the case, and this Court vacated that dismissal order and remanded the petition for consideration before a different judge. *Woodrup v. Gov't of the V.I.*, S. Ct. Civ. No. 2016-0059 (V.I. 2017) (unpublished per curiam order) ("*Woodrup II*"). *See Alexander v. People*, 65 V.I. 385, 395 (V.I. 2016) ("*Alexander II*") ("[A] habeas petitioner is entitled to have his habeas corpus petition heard by a judge who had not participated in his conviction.") (internal quotation marks omitted). On remand, a different judge considered Woodrup's petition and denied it without a hearing on June 20, 2018. *Woodrup v. Gov't of the V.I.*, 2018 WL 3099143 (V.I. Super. Ct. 2018) ("*Woodrup III*"). The court found that Woodrup's petition did not state a prima facie case for relief because his allegations were either conclusory, speculative, or were improper challenges to witness credibility. *Id.* at *3-*8. Woodrup filed his notice of appeal on January 18, 2019.[2]

II. JURISDICTION AND STANDARD OF REVIEW

¶ 4 We have jurisdiction because "[a]n order denying a petition for a writ of habeas corpus is a final order from which an appeal may lie." *Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 292 (V.I. 2014) (quoting *Suarez v. Gov't of the V.I.*, 56 V.I. 754, 758 (V.I. 2012)); 4 V.I.C. § 32(a). This Court exercises plenary review over the dismissal of a habeas corpus petition. *Rivera-Moreno*, 61 V.I. at 292 (citing *Mendez v. Gov't of the V.I.*, 56 V.I. 194, 199 (V.I. 2012)).

III. DISCUSSION

¶ 5 On appeal, Woodrup argues that the Superior Court erred in denying his habeas petition because (1) the prosecution knew or should have known that it was using perjured testimony from eyewitnesses Leshelle Gumbs and Austin Callwood to prove its case, and (2) Detective Jose Allen

[2] Although Woodrup's notice of appeal was untimely, the government did not file any response or answering brief in the matter. Therefore, any argument against timeliness is waived. *See Bryan v. Gov't of the V.I.*, 56 V.I. 451, 456 (V.I. 2012). *See also Simpson v. Golden*, 56 V.I. 272, 278–79 (V.I. 2012).

used unconstitutionally suggestive tactics in obtaining the identification of Woodrup by Gumbs and Callwood during police interviews. We examine the legal standard governing Woodrup's habeas petition and apply it to each of his arguments.

A. Legal Standard

¶ 6 "[U]nder Virgin Islands law, a petition for writ of habeas corpus should be granted and the matter set for an evidentiary hearing on the merits if the petitioner has set forth a prima facie case for relief, and the petition is not procedurally barred." *Rodriguez v. Bureau of Corrections*, 70 V.I. 924, 930 (V.I. 2019) (quoting *Mosby v. Mullgrav*, 65 V.I. 261, 265 (V.I. 2016)); *Rivera-Moreno*, 61 V.I. at 311. To make out a prima facie case, a petitioner "must establish facts that—if true—would entitle him to relief." *Mullgrav*, 65 V.I. at 268. *See also Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 625 (V.I. 2012) ("The term 'prima facie evidence' is … a term of art, and means 'evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.'") (quoting BLACK'S LAW DICTIONARY 638-39 (9th ed. 2009) (emphasis omitted)). "If the court determines that the petition does not state a prima facie case … the court will deny the petition outright." *See Rivera- Moreno*, 61 V.I. at 311. A habeas petition filed pro se is to be liberally construed. *Hughley v. Gov't of the V.I.*, 61 V.I. 323, 330 (V.I. 2014).

¶ 7 If the petition states facts that, if true, entitle the petitioner to relief, and if the petition is not procedurally barred, the court shall grant the writ, which then "requir[es] the Government … to produce the petitioner in court for a hearing on the merits of the petition." *Alexander II*, 65 V.I. at 390. But a hearing is not always required. "[T]he right to an evidentiary hearing is not absolute" and "is not necessary if the submissions before the Court… reveal no factual disputes that are

material to disposition of the issues raised in the petition, and the court makes a written finding to that effect." *Cascen v. Gov't of the V.I.*, 2021 VI 4, ¶ 10.[3]

¶ 8 We note that *Blyden v. Gov't of the V.I.*, 64 V.I. 367 (V.I. 2016), could be interpreted as requiring an evidentiary hearing once the petitioner makes an allegation in the petition, provided that the allegation, if later proven true, would entitle the petitioner to relief:

> Blyden's allegation that the People knowingly introduced a firearm at trial that was not the firearm seized from Blyden during his arrest presents a prima facie case for relief since a government lawyer's fabricating evidence against a criminal defendant is a violation of due process. This is all Blyden was required to do in order to obtain the writ under Virgin Islands law: state facts in the petition that, if true, entitle the petitioner to relief. ... *[I]t is sufficient that a petitioner simply make allegations that, if later proven true, would entitle him to habeas relief.*

Id. at 380 (internal quotations and citations omitted) (emphasis added). We clarify that merely making allegations, without more, does not state a prima facie case for habeas relief, and therefore does not entitle the petitioner to the issuance of the writ.

¶ 9 In *Blyden*, we recognized that a petitioner is "required to... *state facts*... that, if true, would entitle him to relief." *Id.* (emphasis added). Thus, a petitioner must support any allegations with the "required" facts to sufficiently state a prima facie case for habeas relief. *Id.* Indeed, throughout our habeas corpus jurisprudence we have consistently required a petitioner to support their allegations, as opposed to merely making them, by requiring they plead facts that, if proven true, would entitle them to relief. *See Rivera-Moreno*, 61 V.I. at 311; *Roebuck v. Gov't of the V.I.*, 2021 VI 13, ¶ 13. *See also In re Gillette*, 64 V.I. 440, 445 (V.I. 2016); *Simon v. Gov't of the V.I.*, 67 V.I. 702, 707 (V.I. 2017); V.I. H.C.R. Rule 2(a)(4). So while we stated in *Blyden* that it is "sufficient

[3] *See Simon v. Gov't of the V.I.*, 929 F.3d 118, 126, 71 V.I. 1227, 1239 (3d Cir. 2019) ("In considering whether to hold a hearing, we have suggested that [trial] courts 'focus on whether a new evidentiary hearing would be meaningful, in that a new hearing would have the potential to advance the petitioner's claim.'") (quoting *Morris v. Beard*, 633 F.3d 185, 196 (3d Cir. 2011)).

that a petitioner simply make allegations that, if later proven true, would entitle him to habeas relief," our jurisprudence mandates that these allegations be factually supported. An allegation that the government has fabricated evidence is a matter of grave severity, going to the heart of a criminal defendant's due process rights, and the fundamental fairness of our adversarial system. But separate from the initial allegation itself, a petitioner must provide the court with a factual basis supporting the allegation; merely alleging impropriety by the government, or making any other allegation, without the proper factual predicate, cannot state a prima facie case for relief. If it could, then a petitioner could make a multitude of "discreditable" and "inaccurate" allegations, which would then "impede the Superior Court's ability to expeditiously resolve habeas corpus petitions" by requiring an evidentiary hearing even where the "Superior Court can easily examine the habeas petition, the People's return and accompanying exhibits, the petitioner's traverse (if any), and the record of the case, and soundly discern whether the habeas claims lack merit." *Alexander II*, 65 V.I. at 396-98 (Swan, J., concurring). Therefore, we clarify that a petitioner must make allegations that, if later proven true, would entitle him to habeas relief, and these allegations must also have specific factual support to sufficiently state a prima facie case warranting granting of the writ of habeas corpus. Consequently, a factually unsupported allegation is insufficient to state a prima facie case and entitle a petitioner to habeas relief. *See United States v. Fishel*, 747 F.2d 271, 273 (5th Cir. 1984) ("Allegations… must be supported by substantial factual assertions capable of resolution by an evidentiary hearing.").

¶ 10 Additionally, any factual assertions made to support a petitioner's allegations must be well founded. *Id.* In this case, for example, the Superior Court correctly found that Woodrup's claims of perjured testimony and unconstitutional identification were founded on conclusory or speculative factual assertions, and that such assertions were insufficient to warrant granting his

petition and holding a hearing on the merits. *Woodrup III*, 2018 WL 3099143, at *3. We note that other Superior Court decisions have also found that a petitioner may not rely on conclusory or speculative factual assertions. *See Destin v. Gov't of the V.I.*, 2017 WL 3475702, at *2 (V.I. Super. Ct. 2017) (unpublished) ("The petitioner must state specific factual allegations which require habeas relief rather than conclusory or speculative allegations."); *Donavan v. Gov't of the V.I.*, 2013 WL 1961789, at *3 (V.I. Super. Ct. 2013) (unpublished); *Ledesma v. Gov't of the V.I.*, 2016 WL 6078568, at *2 (V.I. Super Ct. 2016) (unpublished). And the weight of authority supports the proposition that a petitioner may not rely on conclusory or speculative factual assertions to support his allegations. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977) ("[P]resentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."); *Dellenbach v. Hanks*, 76 F.3d 820, 822 (7th Cir. 1996) ("A hearing is not necessary if the petitioner makes conclusory or speculative allegations rather than specific factual allegations.") (quoting *Daniels v. United States*, 54 F.3d 290, 293 (7th Cir. 1995)); *Fishel*, 747 F.2d at 273 (Denying a petition without hearing based on "speculative" and "conclusory factual assertions" the Fifth Circuit found that "[a] hearing is not required on claims based on unsupported generalizations.") (citing *United States v. Guerra*, 588 F.2d 519, 521 (5th Cir. 1979)); *Koch v. Puckett*, 907 F.2d 524, 530 (5th Cir. 1990) ("Although pro se habeas petitions must be construed liberally, mere conclusory allegations on a critical issue are insufficient to raise a constitutional issue.") (internal quotation marks omitted); *In re Martinez*, 209 P.3d 908, 915 (Cal. 2009) (Because a petition for habeas corpus "seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to plead sufficient grounds for relief.... At the pleading stage, the petition must state a prima facie case for relief. To that end, the petition should ... *state fully and with particularity the facts on which relief is sought*....") (citing

People v. Duvall, 886 P.2d 1252 (Cal. 1995) (en banc) (emphasis added) (internal quotation marks omitted)); *Duvall*, 886 P.2d at 1258 ("Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing.") (quoting *People v. Karis*, 758 P.2d 1189, 1216 (Cal. 1988) (en banc)); *James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief."). Therefore, we conclude that the Superior Court may correctly deny a habeas petition without a hearing when the facts supporting a petitioner's allegations are conclusory or speculative.

B. Allegation of Knowingly Perjured Testimony

¶ 11 Turning to Woodrup's first argument, he contends that the prosecutor knew that statements given by Gumbs and Callwood were "contrary," "untrue," and "inconsistent with the alleged facts" of the case, and nevertheless used their statements in violation of his due process rights. We analyze this claim as a "*Giglio* violation." *See People v. Ward*, 55 V.I. 829, 842 (V.I. 2011) (A *Giglio* violation occurs when undisclosed evidence reveals that the prosecution knowingly made false statements or introduced or allowed trial testimony that it knew or should have known was false: "To prevail on a *Giglio* claim, a defendant must establish that (1) the prosecutor knowingly used perjured testimony or failed to correct what he subsequently learned was false testimony; and (2) such use was material") (internal quotation marks omitted); *see also Giglio v. United States.*, 405 U.S. 150 (1972).

¶ 12 First, Woodrup fails to point to any "undisclosed evidence" revealing false testimony that was introduced or allowed at trial. *Ward,* 55 V.I. at 842. He also fails to indicate what testimony was allegedly false. Instead, Woodrup merely recites the trial testimony and statements of the witnesses, pointing out perceived discrepancies and issues he takes with their testimony, but fails

to demonstrate any instances of perjury, instead relying on speculation and bald conclusions. For instance, he states: "It is Appellant's position that Callwood most likely initially and impulsively 'duc[k]ed for cover'" out of fear from the loudness of the gunshots fired nearby, and therefore he could not have seen the shooting or the shooter. Woodrup also rhetorically asks: "How would Gumbs know where the shooter took his gun from when she already passed him?" He also notes that Callwood never mentioned Woodrup's distinctive scar on the back of his head when identifying him. These observations are not specific factual assertions that, if true, would make out a prima facie case for habeas relief, but rather, are arguments about witness credibility. We do not review witness credibility determinations made by the jury during trial. *See Alexander v. People*, 60 V.I. 486, 498 (V.I. 2014) ("*Alexander I*") (the jury determines the credibility of witnesses in a jury trial, not the court). Consequently, Woodrup failed to provide sufficient facts to make out a prima facie case that a witness perjured himself, let alone that there was a knowing use of perjured testimony by the prosecution. *See Fishel*, 747 F.2d at 273 ("Allegations of perjured testimony must be supported by substantial factual assertions capable of resolution by an evidentiary hearing."). Therefore, the Superior Court did not err in denying Woodrup's habeas petition without a hearing on this issue.

C. Allegation of Unconstitutional Identification Procedure

¶ 13 Woodrup also argues that Detective Allen used unconstitutionally suggestive tactics in obtaining Woodrup's identification by both Gumbs and Callwood during several interviews after the shooting took place.[4] Woodrup only devotes a half-page of speculative, bald, and conclusory

[4] Woodrup already raised this issue previously in his direct appeal, where we found that he waived his argument by "inadequately briefing it." *Woodrup I*, 63 V.I. at 712-13. Woodrup was not procedurally barred from raising this issue again through his habeas petition, as a petitioner is procedurally barred when they *properly* raise an issue on direct appeal to this Court and we reject it on the *merits*. *Blyden*, 64 V.I. at 377 (emphasis added); *In re George*, 2020 V.I.

sentences within his brief to this argument, thereby waiving the issue. V.I. R. APP. P. 22(m) ("Issues that… are only adverted to in a perfunctory manner… are deemed waived…."); *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 699 n.16 (V.I. 2015).

¶ 14 Although we need not reach this argument, we nevertheless address it. Within this short portion of his brief, Woodrup summarily states that Detective Allen used "improper suggestive techniques during the identification process" and that he "tampered with evidence by feeding Callwood and Gumbs details about the case." These conclusory factual allegations fail to make out a prima facie case for habeas relief, as Woodrup offers no support from the record to sustain them. Therefore, the Superior Court properly denied this allegation as insufficiently pled due to its conclusory nature.

D. Ineffective Assistance of Counsel

¶ 15 Woodrup also alleged ineffective assistance of counsel in his petition to the Superior Court, and the court ruled that his counsel's performance did not fall below an objective standard of reasonableness. *Woodrup III*, 2018 WL 3099143, at *7. Woodrup does not complain that the Superior Court erred in this ruling, and he did not brief a claim of ineffective assistance of counsel on appeal. Therefore, it is waived. V.I. R. APP. P. 22(m) (Issues that were raised before the Superior Court but not briefed are waived on appeal).

19, ¶18; *Rodriguez v. Bureau of Corr.*, 70 V.I. 924, 930 (V.I. 2019); *Burke v. Prosper*, 70 V.I. 866, 873 (V.I.), *cert. denied*, 140 S.Ct. 213 (2019). On direct appeal, Woodrup did not *properly* raise, nor did we decide on its merits, the allegation that impermissibly suggestive identification procedures violated his constitutional rights, due to his waiver of the allegation. Therefore, although Woodrup "raised" the identification issue, he did not "*properly* raise" it due to the waiver of this issue on direct appeal. *See State v. Johnson*, 416 P.3d 443, 450 (Utah 2017) ("[W]e use [the term] 'preservation'… to refer to a waiver of an issue in the trial court, and we use 'waiver' to refer to an issue that has *not properly been raised* and argued on appeal.") (emphasis added). Further, because we concluded that Woodrup waived this issue on direct appeal, we did not discuss his arguments, and our rejection of this issue was not on the merits. *Woodrup I*, 63 V.I. at 712-13. Therefore, the procedural bar does not apply.

IV. CONCLUSION

¶ 16 Woodrup did not present a prima facie case for habeas relief on his allegation of the knowing use of perjured testimony by the prosecution, because the factual assertions Woodrup made to support his claim of perjury were bald, speculative, and conclusory. Woodrup also insufficiently briefed, and therefore waived argument on, the purported use of unconstitutionally suggestive tactics by Detective Allen in witness identification procedures. Further, he did not brief a claim of ineffective assistance of counsel on appeal, and consequently waived argument on that claim. Therefore, the petition was correctly denied without a hearing, and Woodrup is not entitled to a writ of habeas corpus. Accordingly, we affirm the Superior Court's order denying Woodrup's petition for habeas relief.

Dated this 25th day of January, 2022.

BY THE COURT:

MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: _____
Deputy Clerk

Dated: 1-25-2022