

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 11th day of May, 2023.

Present: Goodwyn, C.J., Powell, Kelsey, McCullough, Chafin and Mann, JJ., and Koontz, S.J.

Justin Andra Little, Appellant,

against Record No. 220249
Circuit Court No. CL21-4668

Harold Clarke, Director,
Virginia Department of Corrections, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Norfolk.

Justin Andra Little (“Little”) appeals from the dismissal of his petition for a writ of habeas corpus (“petition”) by the Circuit Court of the City of Norfolk. Upon consideration of the record, briefs, and arguments of counsel, the Court is of the opinion that the circuit court erred by failing to conduct an evidentiary hearing.

Whether a petitioner is entitled to habeas relief presents “a mixed question of law and fact.” *Zemene v. Clarke*, 289 Va. 303, 306 (2015). When a habeas court dismisses a habeas petition without conducting an evidentiary hearing, “we review the decision to dismiss the petition de novo.” *Id.* at 307. However, the habeas court’s factual findings “are entitled to deference and are binding upon this Court unless those findings are plainly wrong or without evidence to support them.” *Hedrick v. Warden, Sussex I State Prison*, 264 Va. 486, 496 (2002). A habeas court’s preliminary determination of whether to conduct an evidentiary hearing is reviewed by this Court for an abuse of discretion. *See Yeatts v. Murray*, 249 Va. 285, 290 (1995) (holding “that the habeas court did not abuse its discretion in failing to grant a plenary hearing”).

This determination is made “on a case-by-case basis” and the habeas court may decline to hold an evidentiary hearing “[w]hen a trial record provides a sufficient basis to determine the merits of a habeas corpus petition.” *Friedline v. Commonwealth*, 265 Va. 273, 277 (2003); *see also* Code § 8.01-654(B)(4) (“In the event the allegations of illegality of the petitioner’s

detention can be fully determined on the basis of recorded matters, the court may make its determination whether such writ should issue on the basis of the record.”).

Little alleges that the Deputy Commonwealth’s Attorney, Patricia H. O’Boyle (“O’Boyle”), falsely asserted during trial that Lakimberly Haynes (“Haynes”)¹ was a subpoenaed witness. The Deputy Commonwealth’s Attorney made this assertion while the jury was in the courtroom, after the bailiff made a witness call for Haynes and informed the circuit court that the witness did not respond. The circuit court then asked if Haynes was properly subpoenaed, and the Deputy Commonwealth’s Attorney responded that she was and had “received posted service” at her listed address.

In the habeas proceeding, the evidence before the circuit court consisted of the criminal trial record, a sworn declaration from Haynes, copies of the Commonwealth’s witness subpoenas and returns of service, and an affidavit from O’Boyle.²

Haynes states in her declaration that she never received a subpoena. Conversely, O’Boyle asserts in her affidavit that the Commonwealth issued a subpoena for Haynes. There is a subpoena for Haynes in the record but no return of service. Accordingly, a factual issue remains as to whether Haynes was properly subpoenaed as a witness. Without a resolution of this factual question, the record was insufficient for the circuit court to determine whether the Commonwealth knowingly presented false evidence regarding Haynes’ absence at trial. Therefore, an evidentiary hearing is “necessary to produce a complete record that will permit an intelligent disposition of the habeas petition.” *Smith v. Brown*, 291 Va. 260, 264 (2016) (internal quotations omitted) (quoting *Yeatts*, 249 Va. at 288).³

¹ Haynes was incorrectly referred to at trial as “LaKimberly Hayes,” and her married name is now “Lakimberly Burrus.” This order will refer to her as “Haynes.”

² Haynes’ declaration and the Commonwealth’s subpoenas were attached as exhibits to Little’s petition, while O’Boyle’s affidavit was attached as an exhibit to the Director’s supplemental motion to dismiss. The Director moved to supplement the record with an email written by Norfolk Police Detective R.G. Gray, but the circuit court rejected it because it did not constitute a proper affidavit.

³ The Court’s order is limited to the circuit court’s ruling that an evidentiary hearing was not required. Consequently, the Court does not reach the circuit court’s findings of fact and conclusions of law challenged in Little’s remaining assignments of error. *See Butcher v. Commonwealth*, 298 Va. 392, 396 (2020) (stating that “the doctrine of judicial restraint dictates

For the foregoing reasons, the Court reverses the circuit court’s dismissal of Little’s habeas corpus petition and remands the case for further proceedings consistent with this order. This order shall be certified to the Circuit Court of the City of Norfolk.

A Copy,

Teste:



Clerk

that we decide cases ‘on the best and narrowest grounds available’” (quoting *Commonwealth v. White*, 293 Va. 411, 419 (2017) (alteration omitted)).