

petitioner to show “not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” *Id.* (quotation and emphasis omitted). We directed the superior court to apply this standard on remand. We also noted that to the extent that petitioner’s double jeopardy claim was premised on the same ground as the double jeopardy claim presented in his prior PCR, it could be properly dismissed under 13 V.S.A. § 7134. *Id.* ¶ 23. Additionally, “if the superior court reach[ed] the merits of petitioner’s argument that the Washington County District Court lacked jurisdiction to accept his guilty plea, the issue is governed by 4 V.S.A. § 436, which creates ‘one district court having statewide jurisdiction.’” *Id.*

The parties filed additional materials in superior court, and following a hearing, the court granted the State’s motion to dismiss for abuse of the writ. The court found that the State met its burden of pleading abuse of the writ by clearly and particularly noting petitioner’s PCR history, identifying the claims that appear for the first time, and alleging that petitioner had abused the writ. The burden thus shifted to petitioner. The court considered arguments raised by Furlan, petitioner’s appointed counsel, as well as arguments raised by petitioner in a pro se filing. With respect to petitioner’s arguments, the court first found that petitioner’s double jeopardy claim was premised on the same ground as the double jeopardy claim in his first PCR, and it thus dismissed this claim under 13 V.S.A. § 7134. As to the remaining claims, the court found that petitioner failed to show cause and actual prejudice. The court explained that petitioner made no argument in his brief that identified any cause for his failure to raise his claims concerning the district court’s jurisdiction, the authority of the State’s Attorney, or ineffective assistance of counsel. Instead, petitioner focused solely on alleged “official interference” by the Washington District Court, the Supreme Court, and Justice Johnson, with respect to a videotaped transcript of his change-of-plea hearing. The court found that the videotape had no bearing whatsoever on the three claims mentioned above. It thus concluded that petitioner failed to carry his burden to show cause and dismissed these claims.

The court turned next to petitioner’s claim that his plea colloquy did not meet the requirements of V.R.Cr.P. 11(f). Petitioner again indicated that the cause of his failure to raise this claim was “official interference,” specifically, allowing the district court docket sheet to reflect (or reciting that the district court records reflected) that petitioner’s change of plea hearing was off the record and that no videotape transcript of that hearing existed. The court rejected this argument. It explained that more than a year before the superior court rendered judgment against petitioner in his first PCR proceeding, the issue of whether petitioner had the transcript was raised. The court found that petitioner or his attorney could have requested a transcript if one had been necessary for claims that petitioner wanted to raise in his prior PCR proceeding. The court noted that despite purportedly being misled by the docket recitation that there was no transcript, petitioner acknowledged existence of the videotape in 2004, when he asked the Supreme Court to review it. The court thus concluded that any error on the docket sheet clearly had no bearing on petitioner’s actions in the first PCR proceeding. The court also noted that petitioner could have raised his Rule 11 colloquy claim without the videotape and that the errant docket entry was not “official interference” that prevented petitioner or his attorney from raising the Rule 11 colloquy claim. The court therefore granted the State’s motion to dismiss. Petitioner then filed a motion for reconsideration, which the court denied.

Many of the arguments that petitioner raises on appeal were not raised below. See *In re Grega*, 2003 VT 77, ¶ 17, 175 Vt. 631 (mem.) (Court will ordinarily not address issues that party failed to raise below). This includes his assertion that the superior court’s decision effectively suspends his constitutional right to apply for a writ of habeas corpus and his claim that his PCR counsel was ineffective in the underlying proceedings here. Notwithstanding this failure, we address these

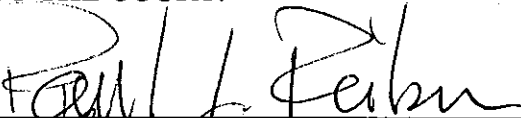
arguments and find them without merit. We rejected the first claim in Laws, 2007 VT 54, ¶ 4 n.1 (noting that federal case law on which Court relied made no distinction between previous petitions brought in accordance with PCR statutes and general habeas corpus petitions when considering successive petitions). As to the second claim, petitioner cannot demonstrate any prejudice. The superior court considered both his counsel's arguments as well as petitioner's pro se arguments. We note, moreover, that the superior court explicitly found an absence of prejudice in its decision denying petitioner's motion for reconsideration. The court also observed that petitioner had no constitutional right to counsel in a PCR proceeding and that federal courts had clearly and repeatedly stated that ineffective assistance of counsel in such proceedings cannot form the basis for cause excusing a default. The court thus found no basis for altering the denial of his PCR as a result of this claim. We agree.

Petitioner's remaining arguments appear to center on the court's dismissal of his claim that his plea colloquy did not meet the requirements of V.R.Cr.P. 11(f). He states that he did not admit the elements necessary to find that he committed the offense of aggravated sexual assault. He reiterates his assertion that the district court denied the existence of the transcript of the plea colloquy, which constitutes "official interference." He also argues that the court erred in concluding that he could have requested the videotape in the first PCR proceedings, that the absence of the videotape did not preclude him from raising his claim in the first PCR proceedings, or that the record could have been recreated.

All of these arguments are without merit. As the superior court found, petitioner had ample opportunity to obtain the videotape in conjunction with his first PCR filing. The issue of the transcript was raised at a January 2003 status conference, and a June 2004 letter indicated that petitioner believed the videotaped transcript existed. Petitioner fails to demonstrate that the court committed clear error in so finding. The court's observation that petitioner could also have raised this claim without the videotape was merely an additional ground for its decision. Given the validity of the first ground, we need not reach the second ground. We note, moreover, that in ruling on petitioner's motion for reconsideration, the superior court reviewed the actual transcript at issue and found that it provided overwhelming evidence of petitioner's admissions and support for the factual basis for each of his three convictions. We have considered all of petitioner's arguments and find them all without merit. Petitioner fails to show that the court erred in denying his PCR.

Affirmed.

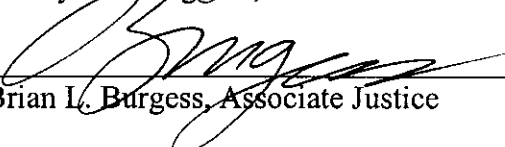
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice