05/13/2016 "See News Release 027 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 15-KH-1177

STATE EX REL. TERRANCE LYNN JOHNSON

v.

STATE OF LOUISIANA

ON SUPERVISORY WRITS TO THE FIRST JUDICIAL DISTRICT COURT, PARISH OF CADDO

PER CURIAM:

Denied. Relator fails to show he was denied the effective assistance of counsel during plea negotiations under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The District Court is ordered to record a minute entry consistent with this per curiam.

Exhibit B
D a.

TERRANCE L. JOHNSON : DOCKET NO. 284533; SECTION 5

VERSUS : FIRST JUDICIAL DISTRICT COURT

TIMOTHY KEITH, WARDEN : CADDO PARISH, LOUISIANA
WINN CORRECTIONAL CENTER

RULING

On October 19, 2010, Petitioner, Terrance Johnson, during voir dire, withdrew his plea of not guilty and pled guilty to Distribution of Schedule II, Controlled Dangerous Substance. On September 20, 2012, after having previously been adjudicated as a second felony habitual offender, Petitioner was sentenced to be confined at hard labor for forty (40) years with the first two (2) years of said sentence to be served without the benefit of probation, parole or suspension of sentence and the other thirty-eight (38) years without benefit of probation or suspension of sentence. The court ordered this sentence to run concurrently with any other sentence and credit was given for time served. On appeal, the Second Circuit Court of Appeal affirmed Petitioner's conviction and sentence. *State v. Johnson*, 48,320, (La. App. 2 Cir. 11/20/13); 127 So.3d 988.

Currently before the court filed on September 18, 2014, is Petitioner's Application for Post-Conviction Relief. For the following reasons, Petitioner's Application is **DENIED**.

In Petitioner's application he assets ten claims for relief, all on the theory of ineffective assistance of counsel from his trial counsel up to his guilty plea. To succeed on a claim ineffective assistance of counsel, Petitioner must first satisfy the two prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). First, Petitioner must show that counsel's performance was deficient, that the deficiency prejudiced him and second, that counsel's error was so serious that it violated Petitioner's right to effective assistance of counsel as guaranteed by the Sixth Amendment of the U.S. Constitution. *Id.* at 686. The defendant must prove actual prejudice before relief will be granted. It is not sufficient for the defendant to show the error had some conceivable effect on the outcome of the proceedings. Rather, he must show that but for counsel's unprofessional errors, there is a reasonable probability the outcome would have been different. *Id.* at 693. A defendant who pleads guilty and then claims he received ineffective assistance of counsel must first show that counsel's advice to plead guilty was not within

the wide range of competence demanded of attorneys in criminal cases. The defendant must also show that, but for counsel's erroneous advice, he would have elected to go to trial rather than plead guilty. *State v. Wry*, 591 So.2d 774, 779 (La.App.2dCir. 1991), *Hill v. Lockhart*, 474 U.S. 52, 60, 106 S.Ct. 366, 371, 88 L.Ed.2d 203 (1985), *Armstead v. Scott*, 37 F.3d 202, 206-207 (5th Cir. 1994).

On October 19, 2010, near the close of voir dire, Petitioner chose to plead guilty as charged. There was no agreement as to the sentence and no agreement by the state that a habitual offender adjudication would not be sought. On January 25, 2011, counsel of record, Loyd K. Thomas, was allowed to withdraw from the case and attorney Ransdell Keene was hired, who filed a motion to withdraw the guilty plea. After a hearing, the motion to withdraw the guilty plea was denied. The Second Circuit granted a writ application, but the trials court's decision was affirmed. See *State v. Johnson*, 46,673 (La. App. 2d Cir. 7/11/11)(unpub.). A writ application was then filed with the Louisiana Supreme Court, which was denied. See *State v. Johnson*, 11-1795 (La. 10/14/11), 74 So. 3d 714.

Petitioner argues the same ineffective assistance to counsel claims at the motion to withdraw the guilty plea hearing. After the hearing, this court found no fraud or inducement, no misleading of Petitioner into pleading guilty. The guilty plea was knowingly and voluntarily entered into, as this court asked Petitioner several times if he understood the rights he was giving up, the consequences of his pleading guilty, if anybody was forcing him or promised him anything by pleading guilty. This court further found that counsel, Loyd Thomas, was prepared for trial, spoke with the district attorney at least twice, filed pretrial motions, and spoke with Petitioner over a half dozen times regarding his case. Petitioner's counsel was effective. Mr. Thomas acted in acted in the best interest of Petitioner.

[A] defendant, who entered guilty plea, was not entitled to post-conviction relief on theory that he was denied effective assistance of counsel where there were no allegations of fact indicating that counsel did not act in defendant's best interests and nothing in docket master reflected that counsel was negligent in attending to the defense. *State ex rel. Ryall v. State*, 425 So. 2d 1019 (La. Ct. App. 1983). Here, Mr. Thomas did act in the best interest of Petitioner. He filed several pre-trial motions including a motion to suppress, as

well as a motion in limine which this court granted both in part. Petitioner has failed to show any facts which would support his allegations of ineffective assistance of counsel. Petitioner attacks his trial counsel because the case did not turnout the way he wanted. Petitioner has failed to meet the second prong of *Strickland* by providing facts which show he was suffered actual prejudice. Petitioner's claims are **DENIED.**

Furthermore, Petitioner's claims are denied as repetitive. La. C.Cr.P. Art 930.4(C) states, if the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal the court shall deny relief. Petitioner's claims were raised in the trial court under the motion to withdraw the guilty plea which he did not raise on appeal. Petitioner disguises the same claims in his application for post-conviction relief which were previously argued and denied.

Accordingly, this application is **DENIED.**

The Clerk of Court is directed to mail a copy of this Ruling to the Petitioner, Petitioner Custodian and the District Attorney.

Signed this 14 day of November 2014, in Shreveport, Caddo Parish, Louisiana.

CRAIG MARCOTTE
DISTRICT JUDGE

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ENDORSED FILED
PATRICK GALLAGHER, Deputy Clerk

NOV 20 2014

A TRUE COPY ATTEST
CADDO PARISH DEPUTY CLERK