

SUPREME COURT OF LOUISIANA

No. 16-KH-0372

STATE EX REL. AUSTIN SLAUGHTER

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-SIXTH
JUDICIAL DISTRICT COURT, PARISH OF BOSSIER**

PER CURIAM:

Denied. Relator's guilty plea waived all non-jurisdictional defects in the proceedings leading to his conviction. *State v. Crosby*, 338 So.2d 584(La. 1976). Relator also fails to show that 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.

FILED

AUG - 4 2015

Appendix A (2)

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STATE OF LOUISIANA

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VERSUS

26TH JUDICIAL DISTRICT COURT

AUSTIN SLAUGHTER

BOSSIER PARISH, LOUISIANA

RULING

Petitioner, AUSTIN SLAUGHTER, pled guilty to Aggravated Incest on August 22, 2014, and he was sentenced to ten (10) years at hard labor with credit for time served. On March 12, 2015, Petitioner filed a *pro se* "Uniform Application for Post-Conviction Relief". The District Attorney's Office filed its Answer on May 11, 2015. Petitioner then filed a traversal of the Answer filed by the District Attorney's Office on May 19, 2015.

In Claim I, Petitioner asserts the claim of ineffective assistance of counsel for the following reasons:

1. "due to the lack of case awareness, applicability and his lack of help on Mr. Slaughter's case";
2. because his statement to Det. Angela Adams was induced by "coercion, promises, intimidation and fear" and that he was not treated the way he should have been;
3. because his lawyer did not file any motions for a bond reduction; and
4. because his parents informed the prosecutor that he should receive a life sentence and that the only reason why the prosecutor interviewed his parents was because he was running for reelection.

Also in his Application, Petitioner also asserts the following claims:

1. "inconsistencies" in his taped statement to Det. Adams;
2. "inconsistencies" in Sarah Smith's statement made to Alex Persons at the Gingerbread House; and
3. that there was not any DNA evidence present on the victim, her clothes, the bed sheet, her personal items or on any property in her room.

In response, the State contends that the Petitioner has failed to state grounds to warrant post-conviction relief due to the actions or inaction of his counsel. The State argues that the transcript of Petitioner's guilty plea contradicts the allegation that his statement to Det. Adams was the product of "coercion, promises, intimidation and fear". The State asserts that Petitioner has failed to substantiate his claim that the statement made to Det. Adams was not "free and voluntary". The State contends that claims of counsel failing to prepare or investigate a case must be couple with a showing of prejudice, which Petitioner has failed to make. Furthermore,

the State contends that the claims of Petitioner's counsel failing to file for a bond reduction and the prosecutor's interview with this parents being the product of a re-election bid are not grounds upon which post-conviction relief can be granted pursuant to Louisiana Code of Criminal Procedure Article 930.3. The State asserts that the Petitioner was informed during his guilty plea colloquy that he was giving up his right to a trial by a judge or jury, and he waived his right to trial when he entered his guilty plea to aggravated incest and did not reserve for appellate review the claim of insufficient evidence. Thus, the State contends that Petitioner's claim for post-conviction relief should be denied.

On May 19, 2015, Petitioner filed a "Motion to Traverse District Attorney's Objection to Post Conviction Relief," which argues that the Court should "disregard the objection by the District Attorney due to the abundance of supporting evidence of the application for Post Conviction Relief." Petitioner argues that "Mike Miller failed to meet [the] satisfactory requirements as a public defender". Petitioner further raises a claim of "actual innocence" and asserts he "did not sign a plea agreement for the 10 years at hard labor he was sentenced to". Petitioner further argues that he "did not make a knowingly, and intelligently plea of guilty, and at the time of the prosecution tendering the plea the defendant was very emotionally, mentally, and physical distressed due to the current situations." Lastly, the Petitioner asserts "[i]t is the duty of the counsel to show cause to the [sic] defendant that the plea agreement is in fact his best option, and they can not persuade the defendant to take the plea agreement."

The guidelines for evaluating claims of ineffective assistance of counsel were set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under *Strickland*, in order for a defendant to demonstrate that counsel's assistance was so defective as to require reversal of the conviction, he must demonstrate that the deficient performance prejudiced him to such an extent that he was deprived of a fair trial. *Strickland* also provides that the standard to be used in judging attorney performance is that of reasonably effective assistance of counsel considering all the circumstances. The defendant must show that his counsel's performance fell below an objective standard of reasonableness. There is a strong presumption that the conduct of counsel falls within the wide range of reasonable professional assistance. Also, according to *Strickland*, with regard to a showing of prejudice, the defendant must show

that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *See also State v. Ball*, 554 So.2d 114 (La.App.2d Cir.1989).

The defendant has the burden of proving that certain acts by his counsel were deficient and that this deficiency led to an unreliable outcome. *State v. Wry*, 591 So.2d 774 (La. App. 2 Cir. 1991). The defendant must make both showings to prove that counsel was so ineffective as to require reversal. *State v. Sparrow*, 612 So.2d 191, 199 (La. App. 4 Cir. 1992). Judicial scrutiny of counsel's performance must be highly deferential and the court must refrain from second-guessing particular strategy on hindsight. *Id.* Hindsight is not the proper perspective for judging the competence of counsel's decisions. Neither may an attorney's level of representation be determined by whether a particular strategy is successful. *State v. Brooks*, 505 So.2d 714 (La.1987), *cert. denied* 484 U.S. 947, 108 S.Ct. 337, 98 L.Ed.2d 363 (1987). After a thorough review of Petitioner's record and all arguments presented, the Court concludes the Petitioner has failed to meet the applicable standard.

A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, "with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747 (1970). As shown by the guilty plea colloquy transcript, Petitioner knowingly, voluntarily and expressly entered his plea of guilty before the Court. It was stated on the record that Petitioner's counsel, Mr. Miller, advised him concerning the charge against him and his legal rights. At no time during his guilty plea did Petitioner assert that he was unsatisfied with his counsel's performance. In fact, to the contrary, Petitioner affirmatively acknowledged that he was satisfied with the lawyer's performance in his representation. The pertinent parts of Petitioner's guilty plea colloquy illustrates as follows:

THE COURT: All right. Mr. Slaughter, up here today are you under the influence of any type of medication, drugs or alcohol?

MR. SLAUGHTER: No, sir.

THE COURT: And how old are you?

MR. SLAUGHTER: Nineteen.

THE COURT: How far have you gone in school?

MR. SLAUGHTER: Twelfth grade. I – I graduated.

THE COURT: Graduated from high school?

MR. SLAUGHTER: Yes, sir.

THE COURT: So, you're able to read and write; correct?

MR. SLAUGHTER: Yes, sir.

THE COURT: Have you had an opportunity to discuss your case with your lawyer?

MR. SLAUGHTER: Yes, sir.

THE COURT: Are you satisfied with the job your lawyer's done in representing you?

MR. SLAUGHTER: Yes, sir.

THE COURT: The charge you are pleading guilty to is said to have occurred in Bossier Parish on or about May 9, 2014, and it said you committed the crime of aggravated incest with a person whose initials are S.S. and whose date of birth is August 25, 2000. So, do you understand what it is you are pleading guilty to?

MR. SLAUGHTER: Yes, sir.

THE COURT: I want you to be aware of what the penalty is for this charge and that is imprisonment with or without hard labor for not less than five nor more than 20 years, and a fine not -- of not more than \$50,000; do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: Do you understand that this is a felony? So by entering the plea of guilty you will have a felony conviction on your record that could be used against you in the future as the basis for an increased sentence under our -- our State's habitual offender laws?

MR. SLAUGHTER: Yes, sir.

THE COURT: Also, do you understand that this is classified under Louisiana law as a sex offense? So by you pleading guilty it will mean that you will be subject to the registration and notification requirements for sex offenders; do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: Now, earlier this afternoon I gave your attorney some forms that I asked that you read through, initial each page and sign those. Have you done that?

MR. SLAUGHTER: Yes, sir.

THE COURT: You've read through those and you've initialed each page; --

MR. SLAUGHTER: Yes.

THE COURT: -- those are your initials?

MR. SLAUGHTER: Yes, sir.

THE COURT: And you have signed at the end of them?

MR. SLAUGHTER: Yes, sir.

THE COURT: So, you've -- you've been made aware of the notification and registration for sex offenders; correct?

MR. SLAUGHTER: Yes, sir.

THE COURT: Do you understand that by pleading guilty you will be admitting that you are guilty and you'll be giving up all the rights I just went over with you?

MR. SLAUGHTER: Yes, sir.

THE COURT: And I believe I've already advised you that this is a felony and case be used against you in the future as a basis for an increased sentence under our State's habitual offender laws; do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: Other than what you've heard stated here today in court has anyone promised you anything to get you to plead guilty?

MR. SLAUGHTER: Yes, sir.

THE COURT: All right. Do you understand you have a right to a jury trial?

MR. SLAUGHTER: Yes, sir.

THE COURT: Do you understand you could choose to waive that right and be tried before a judge alone? Do you understand what I mean by that?

MR. SLAUGHTER: Like --

THE COURT: All right. If you were going to take the matter to trial, there would be two ways that that could be done. You could choose to have a trial by jury which would mean they would -- the -- there would be jurors sitting in that jury box right there. They would hear the evidence in the case. They would decide whether you were guilty or not guilty; do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: Or, you could choose to waive or give up your right to have a jury decide whether you were guilty or not guilty and you could decide to have the judge decide that. What that would mean is your case is assigned to me, so I would be the one that would hear the case and decide whether you were guilty or not guilty. So, you have your choice. If it went to trial you could have a jury make that decision or you could have me make that decision. So, do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: Now, if your chose to take the matter to trial, whether before a jury or before the judge alone, do you understand you would have the right to make the District Attorney prove you are guilty of this charge beyond a reasonable doubt?

MR. SLAUGHTER: Yes, sir.

THE COURT: Do you understand that you would have the right to be represented by a lawyer, and you could either hire one of your own choice, or if you could not afford one, the Court would appoint one for you as I've done in this case? So, do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: If we were to have a trial, do you understand you would have a right to be present here in the courtroom during the trial, to see each of the witnesses called to testify against you and, through your lawyer, to ask questions of those witnesses; do you understand that?

MR. SLAUGHTER: Yes, sir.

THE COURT: If you had witnesses that you wanted to be here to testify for you, do you understand you would have the right to have subpoenas issued ordering them to come court -- to court to testify for you?

MR. SLAUGHTER: Yes, sir.

THE COURT: And, do you understand at all times you would have the right to remain silent which means no one can force you to say anything that would incriminate yourself?

MR. SLAUGHTER: Yes, sir.

THE COURT: Do you understand that by entering this guilty plea you will be admitting that you are guilty and you'll be giving up the rights I've just gone over with you?

MR. SLAUGHTER: Yes, sir.

THE COURT: Has anyone forced you to plead guilty?

MR. SLAUGHTER: No, sir.

THE COURT: Other than what's been stated here in the courtroom today, have promises been made to you to try and get you to plead guilty?

MR. SLAUGHTER: No, sir.

THE COURT: And, Mr. Miller, have you advised Mr. Slaughter concerning this charge and his legal rights?

MR. MILLER: Yes, Your Honor.

THE COURT: Do you believe his answers to my questions and his guilty plea are voluntary?

MR. MILLER: Yes, Your Honor.

THE COURT: So, to the charge of Aggravated Incest, do you plead guilty or not guilty?

MR. SLAUGHTER: Guilty.

THE COURT: All right. The guilty plea is accepted by the Court. It's found to be voluntary, made with full understanding of his rights and also based upon sufficient evidence. . .

The guilty plea colloquy transcript shows that Petitioner affirmatively acknowledged that he had an opportunity to discuss his case with his lawyer. Petitioner was advised of his constitution rights, and it was determined that he knowingly and voluntarily waived his privilege against compulsory self-incrimination, his right to a trial by jury, and his right to confront his accusers. Petitioner affirmatively acknowledged that he understood that, by admitting guilt, he was forfeiting those rights explained in court. Petitioner further acknowledged that no one had made any promises to him in an effort to persuade him to plead guilty.

Generally, a defendant who asserts a claim of ineffective counsel based upon a failure to investigate must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial or sentencing. *See State v. Castaneda*, 94-1118 (La. App. 1st Cir. 6/23/95), 658 So.2d 297, 306. General statements and conclusory charges will not suffice. *Id.* Petitioner neither argues, nor does the record reveal, any specific evidence counsel could have presented which would have had an effect on the outcome of a trial or sentencing. Thus, Petitioner has failed to establish counsel's ineffectiveness in this area.

Furthermore, to establish the claim of "actual innocence", the petitioner must make a *bona fide* claim. Such a claim must involve "new, material, noncumulative," and "conclusive" evidence, which meets an "extraordinarily high" standard and which "undermine[s] the prosecution's entire case." *State v. Conway*, 01-2808 (La. 4/12/02), 816 So.2d 290. Petitioner fails to present new evidence or testimony of such persuasiveness that would undermine the State's case in its entirety. Thus, the Court finds that Petitioner has not made an affirmative case of "conclusive exoneration." *House v. Bell*, 547 U.S. 518, 554-55, 126 S.Ct. 2064, 2086-87, 165 L.Ed.2d 1 (2006).

Lastly, Article 930.3 of the Louisiana Code of Criminal Procedure provides the exclusive grounds for granting post conviction applications.

Article 930.3 states as follows:

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

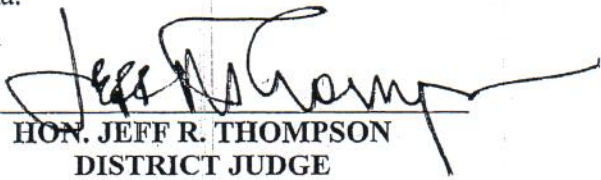
- (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana;
- (2) The court exceeded its jurisdiction;
- (3) The conviction or sentence subjected him to double jeopardy;
- (4) The limitations on the institution of prosecution had expired;
- (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional; or
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
- (7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

The Court concludes that the claims of Petitioner's counsel failing to file for a bond reduction and the prosecutor's interview with this parents being the product of a re-election do not appear to fit within any of the seven enumerated grounds found in Article 930.3.

Based upon the allegations concerning the actions of Petitioner's counsel, the Court cannot find that counsel's performance fell below an objective standard of reasonableness. Petitioner failed to state if or how he was prejudiced by the actions of his counsel that would have changed the outcome of his case. Petitioner has failed to establish any deficiency or prejudice as required under *Strickland*.

Considering the foregoing, and for all of the above cited reasons, Petitioner's "Application for Post-Conviction Relief" is **DENIED**. The Clerk of Court is directed to provide Petitioner, his custodian, his attorney and the District Attorney with a copy of this Ruling.

THUS DONE AND SIGNED this 3 day of August, 2015, in Benton, Bossier Parish Louisiana.



 HON. JEFF R. THOMPSON
 DISTRICT JUDGE

Please Serve:

Mr. Austin Slaughter # 627828
 David Wade Correctional Center
 670 Bell Hill Road
 Homer, Louisiana 71040

Custodian
 David Wade Correctional Center
 670 Bell Hill Road
 Homer, Louisiana 71040

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 AUG - 4 2015

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