

SUPREME COURT OF LOUISIANA

No. 16-KP-0557

STATE OF LOUISIANA

vs.

CLEVELAND TOROTIEN ALLRIDGE

**ON SUPERVISORY WRIT FROM THE 32nd
JUDICIAL DISTRICT COURT, PARISH OF TERREBONNE**

PER CURIAM:

Denied. Relator fails to show he received ineffective assistance of counsel 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.

STATE OF LOUISIANA	*	32 ND JUDICIAL DISTRICT
VERSUS	*	PARISH OF TERREBONNE
CLEVELAND T. ALLRIDGE	*	STATE OF LOUISIANA
DOCKET NUMBER 601,480	*	DIVISION "A"

**JUDGMENT DENYING PETITIONER'S MOTION FOR
 POST CONVICTION RELIEF**

Upon information and belief, Petitioner, Cleveland T. Allridge, asserts that he has a meritorious constitutional claim to vacate his conviction and sentence. He was tried by a jury of twelve and found guilty on February 10, 2012 for aggravated robbery, a violation of La. R.S.14:60. (Pet'r Sentencing Minutes). Petitioner was sentenced to eighteen years at hard labor with the Louisiana Department of Corrections. *Id.* He argues that he received ineffective assistance of counsel in violation of the Federal Constitution's Sixth Amendment and the corresponding provision of the Louisiana Constitution.

Petitioner alleges counsel failed to properly defend petitioner in four different ways. First, counsel failed to inform petitioner of his right to testify. Second, he failed to interview and present an alibi witness. Third, defense counsel failed to investigate DNA and forensic evidence. Last, counsel failed to submit any written motions. After review and consideration, the trial court believes that all material questions of fact and law can properly be resolved without an evidentiary hearing based solely upon the record. La. C.Cr.P. 928.

LAW: Sixth Amendment and *Strickland*

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right...to have assistance of counsel for his defense." U.S. Const. amend. VI. This guarantee "safeguards...fundamental human rights of life and liberty." *Johnson v. Zerbest*, 304 U.S. 458,462 (1938). It is the very reason why "appointment of counsel for an indigent is required at every stage of a criminal proceeding where substantial rights of accused may be affected." *Mempa v. Rhay*, 389 U.S. 128, 134, (1967).

Ineffective assistance claims are determined under *Strickland's* two-prong test. *Strickland v. Washington*, U.S. 668, 685 (1985). Court defines "the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* 686-687 (1984). In summary, the Petitioner must meet the high burden establishing "that counsel's

performance was deficient” and that “this deficient performance prejudiced his defense.” *State v. Pratt*, 26,862 (La. App. 2 Cir. 1995).

Under *Strickland*'s first prong, deficiency turns on whether counsel was reasonably competent, “not perfect.” *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003). The reasonableness of an attorney is determined by “professional norms” which falls within a “wide range of professional assistance.” *Strickland*, U.S. 668, 688 (1984); *Kimmelman v. Morrison*, 477 U.S. 365 (1986). When evaluating the reasonableness standard as applied to ineffective assistance of counsel, the Court will undertake “a detailed examination of the specific facts and circumstances of the case. This is necessary...because effectiveness of counsel cannot be defined in a vacuum, but rather requires an individual, fact-specific inquiry.” *State v. Peart*, 621 So. 2d 780, 788 (La. 1993).

Strickland's second prong requires the Petitioner to establish that counsel's objectively unreasonable performance prejudiced the petitioner a fair trial. Prejudice is present when “reasonable probability existed that, absent errors, the factfinder would have had a reasonable doubt respecting guilt.” *Kimmelman*, 477 U.S. 365, 380 (1986); see also *Strickland*, U.S. 668, 695 (1984). The Court in *Strickland* defines reasonable as “probability sufficient to undermine confidence in the outcome.” *Id.* At 694. This standard requires more than a mere probability that the defendant would more likely than not the have received a different verdict. *Id.* at 694; *Jones v. Cain*, 151 So.3d 781,793 (2014). It demands a showing that the prejudice “undermines the confidence of the outcome.” *Id.*

Petitioner alleges that counsel failed to properly exercise the skill, judgment, and diligence of a reasonably competent defense attorney. Petitioner articulates that counsel failed in four instances. First, counsel failed to inform petitioner of his right to testify. Second, he failed to interview and present an alibi witness. Third, Defense counsel failed to investigate DNA and forensic evidence. Last, counsel failed to submit any written motions.

Claim One: Failure to inform Petitioner that he had the right to take the stand

Petitioner alleges that defense counsel failed to inform him of his right to testify and therefore provided ineffective assistance counsel. Under the first prong of *Strickland*, defense counsel's performance must fall below the objective standard of reasonableness. *Strickland v. Washington*, U.S. 668, 685 (1985). As stated above, Courts grant great deference to attorney's trial strategy. However, it is not “reasonable trial strategy for an attorney to not honor his client's decision to exercise his constitutional right to testify, not because the advice not to take the stand

is unsound, but because counsel must in the end accede if the client will not abide by the advice." *State v. Lagarde*, 861 So. 2d 871, 887 (La. App. 4th Cir. 2003). Simply, a defendant's right to testify cannot be waived by his counsel. *Id.*

However, counsel's performance not only has to be deficient but also prejudicial. Therefore, if counsel was deficient by allegedly waiving petitioner's right to testify then he must establish that this waiver was prejudicial. The waiver is prejudicial when there is reasonable probability that but for counselor's error, the jury would have held reasonable doubt as to petitioner's guilt.

Here, Petitioner failed to articulate with specificity what his testimony would elucidate had he testified. Petitioner only mentions that it "could have assisted his alibi" defense.(Pet'r PCR pg 6). Petitioner's allegation of "could have" does not rise to the requisite standard of reasonable probability. Petitioner does not establish that there is reasonable probability, but for counsel's failure to inform, that the jury would have had reasonable doubt respecting his guilt. Thus, counsel was not ineffective.

This assignment is without merit and denied.

Claim Second: Failure to interview and present alibi witness

Petitioner voices a general allegation that defense counsel failed to properly exercise his skill, judgment, and diligence as a competent defense attorney, particularly in his failure to interview and present alibi witness. Petitioner alleges that defense counsel should have filed a Notice of Alibi ten days before trial. However, Petitioner fails to identify who the alibi witness is and the substance of his testimony.

A Petitioner who alleges a claim of ineffective assistance of counsel is required to identify specific facts or omissions of counsel that are alleged not to have been the results of reasonable professional judgment. *State v. Williams*, 613 So.2d 252, 257 (La. App.1st Cir., 1992). In this case, petitioner merely listed witnesses' names in his application for post-conviction relief. He does not identify the alibi witness. Moreover, he does not indicate any specific evidence that would have had an effect on the outcome of the case. Thus, Petitioner failed to show that counsel was ineffective.

This assignment is without merit and denied.

Claim Three: No attempt made to obtain forensic testing

Petitioner now alleges that counsel did not make any attempts to obtain the results of forensic evidence. A cursory review of the record demonstrates the contrary. On May 3, 2011, defense counsel filed a Motion for Production of the Report of Crime Scene Examinations, and of the Reports and Underlying Data of Scientific Examination. Within the motion, defense counsel specifically requested the "production of...various scientific and expert examinations of physical evidence." Therefore the overarching allegation that defense counsel did not make any attempts is false. In this regard, defense counsel was not ineffective.

This assignment is without merit and denied.

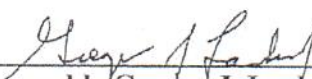
Claim Four: Failure to File any Written Motions

Petitioner alleges counsel failed to file any written motions. However, defense counsel did file written motions. From date of enrollment, defense counsel immediately began to file written motions on behalf of Petitioner. For example, on April 28, 2011, he filed a discovery motion. Following that date, defense counsel filed a motion for a speedy trial and issued subpoenas. This is merely an inclusive list as to some of the written motions filed by defense counsel. Thus, defense counsel was not ineffective for failing to file any written motions.

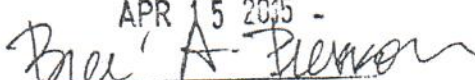
This assignment is without merit and denied.

Petitioner's Post Conviction Application is **DENIED**.

Signed the 15 day of April, 2015 in Houma, Louisiana.


Honorable George J. Lanke, Jr.
32nd Judicial District Court, Div."A"

Please Serve:
Mr. John Hall Thomas
Attorney for Defendant, Cleveland Allridge
639 Loyola Avenue Suite 1820
New Orleans, Louisiana 70113

FILED
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DEPUTY CLERK OF COURT
PARISH OF TERREBONNE, LA