

**SUPREME COURT OF LOUISIANA**

**No. 17-KP-0211**

**STATE OF LOUISIANA**

**v.**

**DUSTIN GORE**

**ON SUPERVISORY WRITS TO THE TWENTY-THIRD  
JUDICIAL DISTRICT COURT, PARISH OF ASCENSION**

**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 relief.

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.

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23RD JUDICIAL DISTRICT COURT  
PARISH OF ASCENSION  
STATE OF LOUISIANA

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ASCENSION PARISH, LA.

No.: 28,205

STATE OF LOUISIANA

V.

DUSTIN GORE

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JUDGMENT WITH WRITTEN REASONS

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I. PROCEDURAL HISTORY

On April 6, 2011, the State of Louisiana charged Petitioner Dustin Gore by Bill of Information with carnal knowledge of a juvenile in violation of La. R.S. 14:80. On February 5, 2013, the Petitioner entered into a negotiated plea to carnal knowledge of a juvenile. The plea included a forty-two (42) month sentencing recommendation to run concurrently with a seven (7) years and six (6) months sentence imposed in an unrelated charge for forcible rape in Terrebonne Parish (Docket Number 601,524). The Terrebonne plea, entered into on January 14, 2013, required the Petitioner to register as a sex offender for fifteen (15) years.

Petitioner's Application for Post-Conviction Relief was filed on February 3, 2015. Petitioner alleges that he received ineffective assistance of counsel regarding the collateral consequences of his plea. Petitioner alleges he was not informed that his Ascension Parish plea would require him to register as a sex offender for life as it was his second conviction for an offense for which registration is required under La. R.S. 15:544(B)(2)(c). An evidentiary hearing was held in this matter on August 8, 2016. The matter was subsequently taken under advisement.

II. PETITIONER'S ARGUMENT

Petitioner argues that he received ineffective assistance of counsel, in violation of the Federal Constitution's Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments and the corresponding provisions of the Louisiana Constitution. Petitioner argues that had he known that pursuant to La. R.S. 15:544(B)(2)(c) he would be required to register as a sex offender for life, and not for fifteen (15) years he would not have entered a guilty plea.

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Petitioner argues that ineffective assistance claims are determined under the two-part test announced in *Strickland v. Washington*: the defendant must establish that "counsel's representation (1) fell below an objective standard of reasonableness" and (2) prejudiced the defendant.<sup>1</sup> Where counsel is ineffective at the guilty-plea stage, a defendant is prejudiced if "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>2</sup> Petitioner argues that failure to advise a client that pleading guilty will require him to register as a sex offender for life is a constitutionally deficient performance. To support this argument, Petitioner cites to *Padilla v. Kentucky*, in which the United States Supreme Court held that constitutionally competent counsel must advise their noncitizen clients whether their guilty plea carries a risk of deportation.<sup>3</sup> Petitioner argues that like deportation, a lifetime requirement to register as a sex offender is a "drastic measure" with severe ramifications for a convicted criminal.

With regards to the second prong of the *Strickland* test, Petitioner argues that he suffered prejudice as a result of his attorney's mistaken advice and failure to investigate. Petitioner testified that he assumed that the registration requirement imposed by the plea in Ascension would last fifteen (15) years, the same as his plea in Terrebonne Parish. Petitioner stated that had he known he would be required to register for life he would have not entered into the plea agreement and would have asked his attorney to do whatever possible to negotiate with the State to ensure that any guilty plea would not require lifetime sex offender registration.

### III. STATE'S ARGUMENT

Jean Paul Robert, Petitioner's trial counsel for the Ascension charge, testified that the major focus of Petitioner's plea deal was to have any jail time run concurrent with Petitioner's charges in Terrebonne Parish. Mr. Robert testified that if Petitioner had not agreed to the plea, and instead went to trial, the Prosecutor had made it clear he would not agree to concurrent sentences for the Ascension and Terrebonne charges. Mr. Robert testified he had no specific recollection of what he advised the Petitioner with regards to the lifetime sex offender registry requirements for his plea.

<sup>1</sup> 466 U.S. 668, 687-88, 691-92 (1984).

<sup>2</sup> *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985).

<sup>3</sup> 559 U.S. at 359, 130 S.Ct. at 1478.

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The State argued that pursuant to the Louisiana Supreme Court's holding in *State v. Trosclair*, the purpose of registering as a sex offender is not to impose punishment and is predominantly non-punitive.<sup>4</sup> The State further argued that the testimony at the hearing shows that Petitioner's main concern with regards to the plea agreement was that the jail sentences in both the Ascension Parish and Terrebonne Parish cases run concurrently. The State argues that Petitioner succeeded in attaining that condition as part of his plea agreement.

#### IV. ANALYSIS

Under *Strickland*, in order to prove an ineffective assistance of counsel claim the petitioner must establish that "counsel's representation fell below an objective standard of reasonableness" and prejudiced the defendant.<sup>5</sup> Here, Petitioner argues that Mr. Robert's alleged failure to inform him of the lifetime sex offender registration requirement constituted constitutionally deficient counsel. Petitioner further argues he was prejudiced in that he would not have accepted the plea agreement had he known he would have to register for life and not fifteen (15) years.

This Court, like other courts around the country, is hesitant to expand *Padilla* past the deportation context.<sup>6</sup> *Padilla* did not expressly require notice of "collateral" consequences of conviction beyond deportation. In fact, the United States Supreme Court found that deportation was "uniquely difficult to classify as either a direct or collateral consequence" due to "its close connection to the criminal process."<sup>7</sup> The Court further noted that deportation is "a particularly severe penalty, [although] not, in a strict sense, a criminal sanction."<sup>8</sup> This Court finds *Padilla* to be distinguishable from the instant case as registration as a sex offender, a collateral consequence, is not a "particularly severe penalty." Unlike deportation, registering as a sex offender, even for life, is not so unique or drastic a measure as to be "equivalent [to] banishment or exile."<sup>9</sup> As noted by the State, the Louisiana Supreme Court has stated that the intention of

<sup>4</sup> *State v. Trosclair*, 2011-2202 (La. 5/8/12), 89 So. 3d 340, 357.

<sup>5</sup> 466 U.S. 668, 687-88, 691-92 (1984).

<sup>6</sup> See *Rodriguez-Moreno v. Oregon*, No. CIV. 08-499-TC, 2011 WL 6980829, at \*4 (D. Or. Nov. 15, 2011), report and recommendation adopted, No. CIV. 08-493-TC, 2012 WL 78406 (D. Or. Jan. 5, 2012); *State v. LeVere*, 2016 WL 41, ¶ 69, 368 Wis. 2d 624, 662, 879 N.W.2d 580, 599; *State v. Sigua*, 2013-1072 (La. App. 3 Cir. 3/5/14), 134 So. 3d 156, 159.

<sup>7</sup> *Padilla v. Kentucky*, 359 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010)

<sup>8</sup> *Id.* at 365-366, 130 S. Ct. at 1481-1482.

<sup>9</sup> *Id.* at 373, 130 S. Ct. at 1486.

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the Louisiana legislature was not to impose punishment when it enacted the sex offender registration provisions.<sup>10</sup> The Louisiana Supreme Court has found:

It is clear that the laws were enacted to protect communities, aid police in their investigation of sex offenders, and enable quick apprehension of sex offenders. These enactments were further founded on the findings of the Legislature that this legislation was of paramount governmental interest because: (1) sex offenders pose a high risk of engaging in sex offenses, (2) sex offenders have a high incidence of recidivism, and (3) unless there was registration and community notification, sex offenders could remain hidden and thereby increase the risk to public safety. Accordingly, it is apparent that the intent of the Legislature was to alert the public for the purpose of public safety, a remedial intent, not to punish convicted sex offenders.<sup>11</sup>

After reviewing the pleadings and hearing the arguments, and accepting Petitioner's allegations as true, the Petitioner has failed to meet the burden of the first prong of *Strickland* in showing that that counsel was constitutionally deficient. Petitioner has failed to show that Mr. Robert was constitutionally deficient in not explaining Petitioner would have to register for life rather than for fifteen (15) years. This Court finds that the requirements of *Padilla* have not been expanded past the deportation context. Arguably, if *Padilla* were to be extended it would only be for the most drastic and severe of collateral consequences.

Further, had Petitioner been able to satisfy the first prong, this Court does not find that Petitioner suffered prejudice in satisfaction of the second prong. Petitioner's own testimony speaks to his assumptions about the plea agreement and not his reliance on his attorney's alleged advice or omissions. Petitioner's counsel testified that his focus during negotiations was on the part of the plea agreement that was most important to the Petitioner – that the sentences in Ascension Parish and Terrebonne Parish run concurrently. Petitioner testified that he knew that registration as a sex offender was part of the plea agreement in Ascension Parish and assumed, on his own, that the time requirement would only be fifteen (15) years. Mr. Robert testified that he did not recall if he specified to the Petitioner the length of time he would have to register as a sex offender.

#### V. CONCLUSION

After reviewing the pleadings and hearing the arguments, this Court finds that Petitioner has failed to meet his burden to prove his ineffective assistance of counsel claim under the *Strickland*

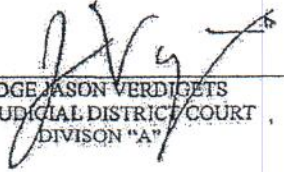
<sup>10</sup> *State v. Frosclair*, 2011-2302 (La. 5/8/12), 89 So. 3d 340, 350.

<sup>11</sup> *Id.* citing *State ex rel. Olivier v. State*, 2000-0172 (La. 2/21/01), 779 So. 2d 735, 747

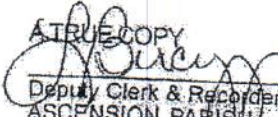
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framework. Therefore, the Petitioner's Application for Post Conviction Relief filed on February 5, 2015 is DENIED.

Signed at Gonzales, Louisiana, this 30<sup>th</sup> day of August, 2016.

  
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JUDGE JASON VERDIGETS  
23<sup>RD</sup> JUDICIAL DISTRICT COURT  
DIVISION "A"

NOTICE ALL COUNSEL OF RECORD

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JUDGMENT

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THIS MATTER came before the court on August 8, 2016, for an evidentiary hearing in connection with Petitioner's Application for Post Conviction Relief. After hearing the testimony and arguments made in open court, the matter was taken under advisement. For the reasons set forth above:

IT IS ORDERED, ADJUDGED AND DECREED Petitioner's Application for Post-Conviction Relief filed on February 5, 2015 is DENIED.

Signed at Gonzales, Louisiana, this 30<sup>th</sup> day of August, 2016.

*[Signature]*  
JUDGE JASON VERDIGETS  
23<sup>RD</sup> JUDICIAL DISTRICT COURT  
DIVISION "A"

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