

SUPREME COURT OF LOUISIANA

No. 15-KH-1043

STATE EX REL. BENJAMIN WALKER

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-FOURTH
JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

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.

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TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 09-1172

DIVISION "H"

STATE OF LOUISIANA

VERSUS

BENJAMIN WALKER

FILED: *January 21, 20 15*


DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED OCTOBER 30, 2014, AND THE STATE'S RESPONSE, STAMPED AS FILED JANUARY 20, 2015.

On May 24, 2012, the defendant pled guilty to an amended charge of forcible rape, a violation of LSA-R.S. 14:42.1, to aggravated burglary, in violation of LSA-R.S. 14:60, and to attempted burglary of a residence, a violation of LSA-R.S. 14:(27)62.2. The court sentenced him to serve 30 years imprisonment at hard labor on the first two counts and to 6 years on the third, all sentences to run concurrently. The petitioner admitted to being a two-time felony offender and for this, he was resentenced to serve thirty years in the Department of Corrections, with the first two years to be served without benefit of probation, parole, or suspension of sentence.

The petitioner's convictions and sentences were upheld on direct appeal. *State v. Walker*, 13-KA-340 (La.App. 5 Cir. 10/30/13), 128 So.3d 1205. The petitioner now files an application for post-conviction relief, raising the single claim of ineffective assistance of counsel. The state has responded to the merits of this claim.

The petitioner contends his plea was based on him being eligible for parole. On appeal, the Court scrutinized constitutionality and legality of the petitioner's plea:

Turning now to defendant's guilty pleas and multiple offender adjudication, we find that the record does not reveal any irregularities. Once a defendant is sentenced, only those guilty pleas that are constitutionally infirm may be withdrawn by appeal or post conviction relief. A guilty plea is constitutionally infirm if it is not entered freely and voluntarily, if the *Boykin* colloquy is inadequate, or when a defendant is induced to enter the plea by a plea bargain, or what he justifiably believes was a plea bargain, and that bargain is not kept.

The record reflects that, during the guilty plea proceeding, defendant was informed in writing through the waiver of rights form and verbally by the trial judge that he was charged with and pleading guilty to three counts: one count of forcible rape, one count of aggravated burglary, and one count of attempted simple burglary of an inhabited dwelling. Further, on the waiver of constitutional rights form and during the colloquy with the trial judge, defendant was advised of his *Boykin* rights—his right to a trial, to confrontation, and to remain silent. On the waiver of rights form, defendant initialed next to each of these rights and signed the form, indicating that he understood he was waiving these rights by pleading guilty. During the colloquy with the trial judge, defendant also indicated that he understood that he was waiving these rights.

During this proceeding, defendant stated that he had not been forced, coerced, or threatened to enter a guilty plea. Defendant indicated that he understood the possible legal consequences of pleading guilty, and wished to plead guilty at that time. He also indicated that he understood that these guilty pleas could be used to enhance the penalty for future felony convictions. Defendant also was informed

that, if he is not a United States citizen, these guilty pleas could result in his deportation.

Additionally, defendant was told during the colloquy and by means of the waiver of rights form of the sentencing ranges that he faced for each count as well as the sentence that would be imposed, if his guilty pleas were accepted. After a thorough examination, the trial judge accepted defendant's guilty pleas as knowingly, intelligently, freely, and voluntarily tendered.

With respect to defendant's stipulation to the multiple offender bill, which was filed immediately after defendant's pleas in the underlying matter, the record shows that defendant was adequately advised of his multiple offender rights. The trial court advised defendant that by stipulating to the multiple bill, he was giving up his right to a hearing, at which the State would have to prove his multiple offender status. Defendant was also advised of the possible sentence that he could receive after his adjudication as a multiple offender as well as the actual sentence that would be imposed upon acceptance of his stipulation to the bill. Throughout the colloquy with the trial court, defendant indicated that he understood his rights relating to the multiple offender proceedings and that he wished to waive those rights. In addition, with respect to the multiple offender adjudication, the record contains a well-executed waiver of constitutional rights form signed by defendant, his attorney, and the trial court indicating that he understood his rights and the consequences of his plea. Thus, the record does not reveal any irregularities in those proceedings.

Moreover, all of defendant's sentences were imposed pursuant to plea agreements set forth in the record at the time of the agreement. As such, defendant is precluded by law from seeking review of those sentences. Even if review was not precluded, we find no appealable issue because defendant's sentences fall within the sentencing range set forth in each relevant statute.

First, in the underlying matter, defendant pled guilty to forcible rape, a violation of La. R.S. 14:42.1, which specifies a sentencing range from 5 to 40 years, with at least 2 years to be served without benefit of probation, parole, or suspension of sentence. On that count, defendant was sentenced to 30 years, of which 2 years are to be served without benefit of probation, parole, or suspension of sentence, which is within the range listed in the statute. This sentence was later vacated, pursuant to defendant's multiple offender adjudication, which is discussed below. Second, in the underlying matter, defendant pled guilty to aggravated burglary, a violation of La. R.S. 14:60, which enumerates a sentencing range from 1 to 30 years. On that count, defendant was sentenced to 30 years, which is the longest sentence allowed by the statute.

In the final count of the underlying matter, defendant pled guilty to attempted simple burglary of an inhabited dwelling, in violation of La. R.S. 14:27(D)(3) and 14:62.2, which together allows for a sentence of not less than one year, without benefit of probation, parole, or suspension of sentence, and not more than 6 years. On that count, defendant was sentenced to 6 years, with the first year to be served without benefit of probation, parole, or suspension of sentence, which is the longest sentence allowed by law.

Next, defendant's enhanced sentence as a second felony offender was within the sentencing range as well. According to La. R.S. 15:529.1(A)(1), "If the second felony is such that upon a first conviction the [offense] would be punishable by imprisonment for any term less than his natural life, then" the sentence "shall be ... a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction." As noted above, the longest statutory prison term for a forcible rape conviction is 40 years, with at least 2 of the years being served without the benefit of probation, parole, or suspension of sentence. Thus, as a second felony offender, defendant was exposed to a sentencing range of 20 to 80 years of imprisonment. Defendant's enhanced

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sentence of 30 years, which was imposed pursuant to a plea agreement set forth in the record, is within the sentencing range.

Id., at 1209-1212, citations omitted.

The court has reviewed the plea forms in the record and finds no place wherein the petitioner was promised parole eligibility. In addition, the state points out that the petitioner pled guilty to a charge in case number 08-2857 and was sentenced to ten years at hard labor, "without the benefit of parole, probation, or suspension of sentence." Thus, the state argues, the petitioner could not reasonably have believed he would be eligible for parole in two years. The court finds this reasoning well warranted and further finds that the petitioner has failed to meet his burden of proof under ISA-C.Cr.P. art. 930.2.

Trial counsel in this case, Tracy Sheppard, was an effective advocate, achieving a major reduction on the petitioner's behalf. The charge of aggravated rape, which carries a life sentence, was reduced to the charge of forcible rape, punishable by a maximum of forty years incarceration, with two years to be without the benefit of parole. Similarly, the habitual offender admission was only to being a two-time felon, when the record reveals additional convictions. Thus, contrary to the petitioner's claims, his trial attorney performed with a high degree of competence.

In order to establish an ineffective assistance of counsel claim, in cases where the defendant has pled guilty, he must prove that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The voluntariness of the guilty plea depends on whether counsel's advice was within the wide-range of competence demanded of attorneys in criminal cases. *State ex rel Graffagnino v. King*, 436 So2d 559 (La. 1983).

Proving ineffective assistance of counsel in connection with a guilty plea, particularly one as favorable as in the instant case, is a heavy burden. The petitioner has failed to meet this burden and his application will be denied.

Accordingly,

IT IS ORDERED BY THE COURT that the petitioner's application for post-conviction relief be and is hereby DENIED.

Gretna, Louisiana, this 21st day of January, 2015.

JUDGE

PLEASE SERVE:

PRISONER: Benjamin Walker, DOC # 336073, Dixon Correctional Center, P.O. Box 788, Hwy 68, Jackson, LA 70748

DISTRICT ATTORNEY: Paul Connick, Terry Boudreaux, Juliet Clark, 200 Derbigny St., Gretna, LA 70053

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON