

SUPREME COURT OF LOUISIANA

No. 16-KH-1417

STATE EX REL. BRYAN RUCKER

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-SECOND
JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY**

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.

BRYAN RUCKER

DKT. NO. 534150 DIV. D

V.

22ND JUDICIAL DISTRICT COURT

PARISH OF ST. TAMMANY

N. BURL CAIN, WARDEN

STATE OF LOUISIANA

FILED: 2-29-16

Monica A Cooper
MINUTE CLERK

ORDER DISMISSING APPLICATION FOR POST-CONVICTION RELIEF

Petitioner, Bryan Rucker, was charged with Aggravated Flight from a Police Officer and Aggravated Obstruction of a Highway. On September 5, 2013, a jury found the petitioner guilty on both counts. The state filed a Multiple Offender Bill of Information on September 19, 2013, and the petitioner was adjudicated a fourth felony offender on October 17, 2013, and sentenced to life in prison. Petitioner filed this application for post-conviction relief which was received by the Clerk of Court on January 13, 2016. In the application, petitioner alleges he received ineffective assistance of counsel due to trial counsels' failure to pursue a defense based upon insanity at the time of the offense.

Petitioner did not enter a plea of not guilty and not guilty by reason of insanity. An Application to Determine Defendant's Mental Condition was filed July 12, 2013, and following the petitioner's evaluation by the court-appointed doctors and a hearing on the motion, the Court found the petitioner competent to proceed to trial and to assist counsel. Petitioner was not evaluated by the doctors for insanity at the time of the offense, and trial counsel made it clear prior to jury selection that he would not be raising that as a defense at trial.

Petitioner now contends that his sanity at the time of the offense should have been raised as a defense and relies upon his "irrational" actions that night as a basis for this contention, (*i.e.*, driving away from an officer who pulled him over for not wearing a seatbelt) in addition to his self-reported mental health issues and substance abuse. He contends that he has a history of impairment resulting from years of substance abuse, and at the time of his arrest he was high on drugs. Prior to *voir dire*, the state's attorney asked to clarify petitioner's plea at which time the petitioner's attorney advised the Court and opposing counsel that insanity at the time of the offense would not be a part of the defense. There is also a later colloquy with counsel regarding an offer by the state whereby the petitioner would plead to a 20 year sentence on a multiple bill, which the petitioner refused contrary to the advice of counsel, who stated on the record that he

and co-counsel felt the petitioner did not have a good defense to the charges factually. The law does not require counsel to raise every non-frivolous defense, nor is counsel required to have a tactical reason for recommending a weak claim be dropped as long as the recommendation is based upon a reasonable appraisal of a claim's dismal prospects for success.

After considering the application and memorandum in support thereof, the law and jurisprudence, as well as the entire record in this matter,

IT IS ORDERED that the application for post-conviction relief filed by Bryan Rucker be dismissed. Louisiana Code of Criminal Procedure article 929.

IT IS FURTHER ORDERED that the Clerk of Court of the Parish of St. Tammany give notice of this dismissal to petitioner, the District Attorney for the Parish of St. Tammany, and the petitioner's custodian.

Covington, Louisiana, this 26th day of Feb, 2016.



PETER J. GARCIA, JUDGE