



SUPREME COURT OF GEORGIA
Case No. S17H1155

May 4, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

GEOFFREY GRAHAM v. GRADY PERRY, WARDEN et al.

The superior court denied the underlying petition for writ of habeas corpus on December 27, 2016. To obtain appellate review of that order, applicant was required to file both a notice of appeal in the superior court and an application for a certificate of probable cause to appeal in this Court no later than January 26, 2017. See OCGA § 9-14-52 (b). Neither applicant's notice of appeal, nor his application for a certificate of probable cause to appeal could be deemed filed until February 9, 2017, however—the date on his certificates of service. See *Massaline v. Williams*, 274 Ga. 552 (554 SE2d 720) (2001); Supreme Ct. R., 13 (2). Therefore, this application must be and hereby is dismissed. See *Fullwood v. Sivley*, 271 Ga. 248 (517 SE2d 511) (1999).

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa S. Bauer, Clerk

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JAN 13 2017

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Coffee Correctional Facility

IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

GEOFFREY GRAHAM,
GDC #1000694046,

Petitioner,

v.

GRADY PERRY, Warden,
and GREG DOZIER¹,
Commissioner,

Respondents.

CIVIL ACTION NO.
2014S06-414

HABEAS CORPUS

Filed in Office this
27 day of Dec 16
Clerk, Superior Court & State Court
Coffee County, Georgia

Coffee Correctional Facility
JAN 12 2017
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FINAL ORDER

Petitioner Geoffrey Graham filed this petition for a writ of habeas corpus challenging the validity of his October 2011 McDuffie County convictions and sentences for two counts of child molestation, arising from an Alford² plea. Upon consideration of the record as established at the evidentiary hearing in this case³, this Court denies relief based on the following findings of fact and conclusions of law.

PROCEDURAL HISTORY

Petitioner was indicted by the McDuffie County grand jury on December 8, 2010, for two counts of child molestation and aggravated child molestation. (HT

¹ Commissioner Dozier is substituted for his predecessor in office, Homer Bryson.

² North Carolina v. Alford, 400 U.S. 25 (1970).

³ Citations to testimony and evidence at the May 6, 2015, habeas corpus hearing are referred to as "HT."

APPENDIX C
(31 pages)

116-18). Petitioner pled guilty to the two counts of child molestation on October 31, 2011, and was sentenced to concurrent terms of twenty years for count one and thirty years for count two, with Petitioner to serve fifteen years and the balance on probation. (HT 129-30). The charge of aggravated child molestation was merged into the charges of child molestation. (HT 129).

Petitioner filed this habeas corpus petition pro se on June 5, 2014, and raised 41 grounds for relief. At the evidentiary hearing on May 6, 2015, Petitioner's former attorney testified and was subjected to cross-examination.

GROUND 1

In ground 1, Petitioner alleges state misconduct and ineffective assistance of counsel in that, at his bond hearing, his parents and Navy command representatives were excluded from the proceedings despite having relevant evidence, to which his counsel failed to object.

Findings of Fact and Conclusions of Law

The claim of state misconduct was waived by the entry of the guilty plea. "A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence." United States v. Broce, 488 U.S. 563, 569 (1989). Once a conviction entered upon a guilty plea has become final, challenges to it are "ordinarily

confined to whether the underlying plea was both counseled and voluntary.” Id.

In addition:

A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.

Tollett v. Henderson, 411 U.S. 258, 267 (1973).

As to the ineffective assistance claim, Petitioner was represented on his criminal charges by Lucy Bell. (HT 130). Plea counsel was admitted to the Georgia Bar in 1990. (HT 7). Since being admitted, the nature of her practice has mostly been criminal work. (HT 7). She worked as a prosecutor in the Waycross Judicial Circuit from 1991 to 1993 and in the Northern Judicial Circuit until 1994, at which time she went into private practice in McDuffie County. (HT 7).

At the time Petitioner retained counsel to represent him, a bond hearing had already been conducted with Petitioner being represented by a public defender. (HT 8). Bell was unaware of the circumstances of the bond hearing or of the bond conditions. (HT 20, 69).

The test for establishing ineffective assistance of counsel was set forth in Strickland v. Washington, 466 U.S. 668 (1984), and requires a showing that counsel’s performance was deficient, meaning that counsel made errors so serious that she was not functioning as counsel guaranteed by the Sixth Amendment, and

that the deficient performance prejudiced the defense, meaning that there is a reasonable probability that but for counsel's errors, the results of the proceeding would have been different. This test applies in guilty plea cases. Hill v. Lockhart, 474 U.S. 52, 58 (1985). The first prong of attorney performance is the same standard of competence previously announced in Tollett v. Henderson, 411 U.S. 258 (1973), and McMann v. Richardson, 397 U.S. 759 (1970), which is that counsel's advice must be within the range of competence demanded of attorneys in criminal cases. Hill at 58. The actual prejudice prong in the plea context requires a showing that there is a reasonable probability that, but for counsel's errors Petitioner would not have pleaded guilty and would have insisted on going to trial. Id. at 59. See also Zant v. Means, 271 Ga. 711, 712, 522 S.E.2d 449 (1999); Thompson v. Greene, 265 Ga. 782, 785, 462 S.E.2d 747 (1995). Petitioner has the burden to establish both prongs of the test in order to prevail on his claim. Strickland at 687.

Petitioner has not shown that his attorney's performance was deficient, and has also failed to show that, but for these alleged errors by his attorney, he would not have pleaded guilty and would have insisted upon going to trial. The issue of whether he was entitled to bond became moot when he entered his guilty plea. Accordingly, ground 1 provides no basis for relief.

GROUND 2 AND 3

In grounds 2 and 3, Petitioner alleges that he received ineffective assistance of plea counsel in that: (2) plea counsel only met with him for less than five hours, in that he repeatedly called counsel's office to request investigation and assistance but was denied until the week immediately preceding trial, in that counsel was unprepared for trial, in that counsel insisted that he plead guilty and promised that the trial court would be very lenient, and in that Petitioner would have opted to go to trial had counsel been prepared; and (3) plea counsel failed to investigate the case.

Findings of Fact

In the course of investigating the case, counsel obtained discovery from the State, and discussed the discovery and the weight of the State's evidence with Petitioner. (HT 12-13, 45-46). Petitioner stated to law enforcement that the incident involving his son that led to that charge actually stemmed from his son assisting him with a medical condition. (HT 11). Counsel advised Petitioner that he needed to find a medical professional who could discuss the condition if he wanted to advance that as a defense, but Petitioner never provided her with one. (HT 14, 44-45). Counsel discussed with Petitioner the possibility of going to trial, but ultimately Petitioner decided to ask for an Alford plea in the interest of not putting the victims (his children) through a trial. (HT 14-15). Petitioner stated

on his plea petition that no one had used threats, force, pressure, or intimidation to make him enter a plea. (HT 120).

Counsel and Petitioner watched the videotaped interviews of the victims together. (HT 15). She communicated the terms of the plea offer to Petitioner. (HT 16). Counsel advised Petitioner of the rights that he would be waiving by entering a plea, including the right to a jury trial, the right to confront adverse witnesses, and the privilege against self-incrimination. (HT 17-18). Ultimately Petitioner made the decision to enter a plea. (HT 18). Counsel and Petitioner had a lot of communication, both in person and over the telephone. (HT 19, 54).

Counsel spoke to several witnesses, including the investigator, a GBI agent, and the DFCS workers who interviewed the victims. (HT 21). The victims' mother would not speak to her. (HT 21).

The practice regarding guilty pleas in the judicial circuit was that the State did not recommend specific sentences, but would merge offenses or agree to lesser included offenses, leaving the sentence determination to the trial court. (HT 15-16). Counsel did not promise Petitioner that the trial court would give him a sentence of five to ten years. (HT 49-50).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Counsel had ample communication with

Petitioner during the pendency of his criminal case, both in person and via telephone, and she thoroughly investigated the case. Petitioner presented no credible evidence to this Court showing there were witnesses or information favorable to the defense that counsel did not uncover. Counsel did not coerce Petitioner into pleading guilty and did not promise him a lenient sentence. Accordingly, grounds 2 and 3 provide no basis for relief.

GROUND 4

In ground 4 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel filled in the answers on the petition to enter a plea of guilty after Petitioner signed the blank form.

Findings of Fact

Counsel's standard practice when reviewing plea petitions with clients was to go through the questions with the client before having the client sign the form, after which she would certify that she has reviewed the questions with the client. (HT 22-23). She followed this practice in Petitioner's case. (HT 58-59).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Accordingly, ground 4 provides no basis for relief.

GROUND 5

In ground 5 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel presented no mitigating evidence at sentencing, despite being in possession of a fairly extensive stack of character reference statements, details of Petitioner's military awards and commendations, and other personal information, and failed to object to contrary hearsay evidence presented by the State as aggravating factors for sentencing.

Findings of Fact

Petitioner brought plea counsel some certificates, but counsel felt that, since the case involved Petitioner's own son, none of that would have made any difference to the trial court. (HT 24, 54-56). Having known the trial judge for a while, counsel felt that she said what needed to be said in this regard at the plea hearing. (HT 24-25).

Both the prosecutor and plea counsel were given the opportunity to present their arguments prior to the imposition of sentence, and Petitioner was given the opportunity to speak as well. (HT 25-26, 212-16).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Accordingly, ground 5 provides no basis for relief.

GROUND 6

In ground 6 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel used prejudicial comments that proved that she was not working on Petitioner's behalf, including: when asked for Petitioner's defense, "None that I'm aware of at this point, your honor -- I mean ever. I didn't mean to say that;" "It's my duty to represent my client;" "That's just the way it is, your honor" prior to adjudication of guilt and sentencing; and "It is what it is."

Findings of Fact

Plea counsel felt that she said everything at the plea hearing that needed to be said and that she had a feel for how the trial court was considering the case. (HT 26-27). She felt that it was appropriate to say, upon being asked by the trial court during the plea hearing, that she was not aware of any defenses because there was no viable defense. (HT 48-49).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Accordingly, ground 6 provides no basis for relief.

GROUND 7

In ground 7 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel was not prepared for a trial by a judge or jury, did not

know the sentencing range for the charges, and promised him a sentence of five to ten years if he pled guilty, but did not put it in writing or make a deal with the district attorney.

Findings of Fact

Plea counsel received discovery from the State and reviewed it with Petitioner. (HT 13). She was not able to formulate any potential defenses. (HT 13). She discussed with Petitioner the possibility of going to trial and watched the videotaped interviews with Petitioner, subsequent to which Petitioner decided to enter a plea. (HT 15, 42). Counsel did not make plans to try the case because Petitioner chose to plead guilty. (HT 20-21). Counsel spoke to several witnesses, including the investigator, a GBI agent, and the DFCS workers who interviewed the victims. (HT 21). The victims' mother would not speak to her. (HT 21).

Counsel did not promise Petitioner any specific sentence, and specifically told him that the State does not make a recommendation and that the sentence is up to the trial court. (HT 28-29, 49-50). There was a discrepancy on the waiver of rights form regarding what was filled in as the maximum punishment for the offenses to which Petitioner was pleading guilty, but this was cleared up at the plea hearing prior to entry of the plea. (HT 120, 201). The trial court also confirmed that Petitioner understood the maximum sentences for the offenses. (HT 205).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Accordingly, ground 7 provides no basis for relief.

GROUND 8

In ground 8 Petitioner alleges that he received ineffective assistance of counsel because during the plea hearing, plea counsel refused to listen to him when he repeatedly tried to address her, and did not object to anything said by either the trial court or the State, including hearsay, other than to the State's allegation that Petitioner had confessed to the crimes.

Findings of Fact

Plea counsel had no recollection of Petitioner trying to address her during the plea hearing. (HT 27-28). The trial court asked Petitioner at the plea hearing if he had any other questions or if there was any information or advice he wanted before entering his plea, and Petitioner responded in the negative. (HT 206).

Counsel did not object to the prosecutor stating at the plea hearing that the victims were, at that time, in the district attorney's office and "so upset that they're almost beside themselves" because she did not see anything improper in the prosecutor giving that opinion. (HT 81-82, 85-86).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient

and that he was prejudiced by it. Accordingly, ground 8 provides no basis for relief.

GROUND 9

In ground 9 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel promised him a sentence of five to ten years if he would plead guilty, but made no deal with the State or the trial court to this effect, and in that Petitioner was coerced into pleading guilty due to plea counsel's inaction.

Findings of Fact and Conclusions of Law

Based on the analysis in ground 7 above, Petitioner's claim that plea counsel promised him a sentence of five to ten years is without merit. Petitioner indicated on the petition to enter plea of guilty that no one had used threats, force, pressure or intimidation to make him enter a plea. (HT 120).

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Accordingly, ground 9 provides no basis for relief.

GROUND 10

In ground 10 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel abandoned him, refused to contact him or take his parents' telephone calls after sentencing, neglected to send him copies of

paperwork, including the final disposition, failed to send him the discovery until she received a notarized request eleven months after the plea, failed to inform him of any redress options, and has had no other contact with him since the plea.

Findings of Fact

Plea counsel spoke to Petitioner's mother after the entry of the Alford plea because Petitioner had asked for a Bible. (HT 63). Counsel sent Petitioner his file pursuant to his request. (HT 64-65).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it, as the majority of claims are about matters arising after the Alford plea was entered and the criminal case ended. As for the claim of "abandonment," "[a] criminal defendant has no unqualified right to file a direct appeal from a judgment of conviction and sentence entered on a guilty plea."

Smith v. State, 266 Ga. 687, 470 S.E.2d 436 (1996). Accordingly, ground 10 provides no basis for relief.

GROUND 11

In ground 11 Petitioner alleges that he received ineffective assistance of counsel in that plea counsel failed to enlist the services of an expert witness to testify regarding the behavioral patterns of sexually abused children or regarding forensic interviews.

Findings of Fact

Plea counsel did not feel that this was an issue, and was more interested in the medical condition Petitioner told law enforcement about. (HT 30). She felt that the victims were highly believable in their videotaped interviews. (HT 30, 65).

Conclusions of Law

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. He presented no testimony to this Court from an expert to show what counsel could have been presented from an expert. Accordingly, ground 11 provides no basis for relief.

GROUND 12, 13, 14

In ground 12 Petitioner alleges State misconduct in that he was not permitted to view in their entirety the forensic interviews of the victims, nor was he ever provided a copy of the video interviews.

In ground 13 Petitioner alleges State misconduct in that statements made or read by the State at his bond hearing, and a transcript of the bond hearing, have not been made available to him.

In ground 14 Petitioner alleges State misconduct in that statements made by his accuser (his ex-wife) directly contradict statements made by her under oath at the divorce hearing and at a Navy administrative hearing, which shows a pattern of

dishonesty and false accusations against him of committing crimes against his children.

Findings of Fact and Conclusions of Law

Petitioner waived these claims by entering an Alford plea. Broce, 488 U.S. at 569; Tollett v. Henderson, 411 U.S. at 267. Accordingly, grounds 12, 13, and 14 provide no basis for relief.

GROUND 15

In ground 15 Petitioner alleges state misconduct in that false and circumstantial “evidence” of the victims’ emotional state was presented by the State at trial, claiming that the victims were “almost beside themselves” for fear of Petitioner, which statement was not true and was used only to prejudice the trial court’s opinion and sentencing.

Findings of Fact and Conclusions of Law

After the trial court’s acceptance of the Alford plea, the State presented argument in aggravation of sentence, in which the prosecutor stated, *inter alia*, that the victims were at that moment in the district attorney’s office and were so upset that they were almost beside themselves. (HT 212). Plea counsel and Petitioner then were given an opportunity to address the trial court before sentence was imposed. (HT 213-16). Plea counsel did not feel that the prosecutor’s statement

was improper because it constituted his opinion and because he had seen the victims and could give an impression regarding them to the trial court. (HT 82). More importantly, the prosecutor's statements were argument, and not evidence, which Petitioner had the opportunity to counter before the trial court pronounced sentence. This ground lacks merit.

GROUND 16, 17, 18, 19, 20

In ground 16 Petitioner alleges state misconduct in that Investigator Reeves repeatedly lied to him each time he spoke with him.

In ground 17 Petitioner alleges state misconduct and insufficiency of evidence in that only the final twenty minutes of his three-and-a-half hour interrogation were recorded; he did not sign a Miranda⁴ waiver until an hour and a half after he was arrested; he informed the interrogators that he was on prescription narcotic painkillers but they had him say that he was not on any type of drugs, in that the first (unrecorded) interrogation was carefully twisted and reworded so that the final recorded interrogation was completely different from both fact and Petitioner's first testimony; and both interrogators repeatedly forced Petitioner to say on the record things that were not true.

In ground 18 Petitioner alleges state misconduct in that at his interrogation he repeatedly asked the interrogators if he needed a lawyer, but each time the

⁴ Miranda v. Arizona, 384 U.S. 436 (1966).

question was skirted, he was promised that he could go home if he would just tell the truth, he was told that he should have nothing to fear if he would cooperate with them, and one of the interrogators told Petitioner that he would lock up Petitioner's house and buildings, but failed to do so.

In ground 19 Petitioner alleges state misconduct and illegal search and seizure in that while he was in jail awaiting bond, his estranged wife provided entry to his house to investigators without Petitioner's knowledge or permission, where they copied and corrupted the hard drives of Petitioner's computers and installed illegal tracking software.

In ground 20 Petitioner alleges state misconduct and insufficiency of evidence in that at interrogation, investigators repeatedly and intentionally used vague and obscure phrases unknown to Petitioner in an attempt to coerce him into admitting to masturbation and sodomy without his knowledge.

Findings of Fact and Conclusions of Law

Petitioner waived these claims by pleading guilty under Alford. Broce, 488 U.S. at 569; Tollett v. Henderson, 411 U.S. at 267. They provide no basis for relief.

GROUND 21

In ground 21 Petitioner alleges state misconduct and ineffective assistance of counsel in that evidence at trial concerning the psychological state of the victims

was in error and trial counsel failed to object.

Findings of Fact and Conclusions of Law

This claim is based on statements of the prosecutor in arguing what punishment the court should impose, and not "evidence" as found in connection with ground 15. Plea counsel did not feel that this statement by the prosecutor warranted an objection, and felt that the prosecutor could convey to the trial court the victims' mental state and what they had told him. (HT 82, 85-86). Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Accordingly, ground 21 provides no basis for relief.

GROUND 22

In ground 22 Petitioner alleges state misconduct and judicial bias in that his Fifth Amendment privilege in his divorce case was violated by the same judge who presided over the criminal case when the plaintiff's attorney in the divorce case repeatedly belabored the charges proffered by her client as grounds for her no-fault divorce, which was used solely to prejudice the judge, who should have recused himself.

Findings of Fact and Conclusions of Law

Petitioner waived this claim by pleading guilty. Broce, 488 U.S. at 569; Tollett v. Henderson, 411 U.S. at 267. Alternatively, these allegations on their face do not state a claim for recusal, as in order to be disqualifying, the alleged bias must

come from an extrajudicial source and result in a decision on the merits on some basis other than what the judge learned from his participation in the case. See, e.g., Birt v. State, 256 Ga. 483, 485(4), 350 S.E.2d 241 (1986). This ground provides no basis for relief.

GROUND 23

In ground 23 Petitioner alleges judicial bias in that the same judge who heard his divorce case presided over his criminal case.

Findings of Fact and Conclusions of Law

Petitioner waived this claim by pleading guilty. Broce, 488 U.S. at 569; Tollett v. Henderson, 411 U.S. at 267. Alternatively, these allegations on their face do not state a claim for recusal, as in order be disqualifying, the alleged bias must come from an extrajudicial source and result in a decision on the merits on some basis other than what the judge learned from his participation in the case. See, e.g., Birt v. State, 256 Ga. at 485(4). This ground provides no basis for relief.

FOUNDATIONS 24, 25, 26, 27

In ground 24 Petitioner alleges judicial bias in that the trial court used erroneous bases in denying his motion for sentence modification.

In ground 25 Petitioner alleges judicial misconduct in that no pre-sentence report was prepared.

In ground 26 Petitioner alleges judicial misconduct in that the alleged victims were not addressed by the trial court prior to sentencing in accordance with Federal Rule 32.

In ground 27 Petitioner alleges judicial misconduct in that the courtroom should have been closed due to the ages of the alleged victims.

Findings of Fact and Conclusions of Law

These grounds fail to state a claim upon which relief can be granted, as they do not allege a violation of Petitioner's constitutional rights in the proceedings which resulted in his conviction to fall within the scope of O.C.G.A. § 9-14-42(a). Accordingly, grounds 24 through 27 provide no basis for relief.

GROUND 28

In ground 28 Petitioner alleges judicial and state misconduct in that a sentence of thirty years is grossly out of proportion to his character and that the sentence was enhanced in part due to hearsay evidence by the State and in part due to comments made by trial counsel.

Findings of Fact and Conclusions of Law

Petitioner entered an Alford plea to two counts of child molestation, and the sentences he received are not outside the range that could be imposed. For a conviction for a first offense of child molestation, the range of sentence is not less than five nor more than twenty years; for a second or subsequent conviction of

information not disclosed by the victim, thereby altering the victim's story, and that plea counsel did not object to the methods or the questioning, nor did she investigate any of the claims.

Findings of Fact and Conclusions of Law

Plea counsel did not see any basis on which to challenge the way the forensic interviews were conducted and felt that they were very professionally done. (HT 34). The Court has already found as fact that plea counsel thoroughly investigated the case. Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. The claim of insufficient evidence was waived by entry of the plea. Accordingly, ground 30 provides no basis for relief.

GROUND 31 THROUGH 36

In these grounds, Petitioner alleges the evidence was insufficient. Specifically, he alleges insufficiency of the evidence in that: (31) the alleged victim's statement is attributed to Blake Montgomery, but no such alleged victim exists; (32) two letters that were attributed to him were used as evidence against him, but there is no evidence on the faces of the letters that he wrote them; (33) at the conclusion of alleged victim S.G.'s statement, she plainly states that Petitioner "has not tried to touch [her] in any wrong spots"; (34) an investigation into the allegations would have easily proven that the allegations were impossible

as put forth by the State because Petitioner could not be in two different locations at the same time committing crimes against two different persons; (35) he was ordered to undergo a mental evaluation in preparation for trial, the written communicate following the evaluation stated that the results could be communicated to the trial court and to the defense and prosecutor, Petitioner was not informed of this at any time before, during, or after the evaluation, Petitioner was not read his Miranda rights nor asked or afforded any opportunity to confer with his attorney before, during, or after the interview, and he was ordered to answer all questions in violation of his Fifth Amendment rights; and (36) the original arrest warrant placed him in two different locations at the same time, there are discrepancies in relevant time periods between the warrant and the statements of Petitioner's ex-wife, Petitioner's ex-wife claimed that Petitioner and one of the victims came out of a locked room when that room has never had any locking mechanism, the younger victim did not admit to him touching her improperly, and his ex-wife did not report the alleged crimes until three days after the supposedly witnessed them.

Findings of Fact and Conclusions of Law

Petitioner waived these claims by entering the Alford plea. Broce, 488 U.S. at 569; Tollett v. Henderson, 411 U.S. at 267. They provide no basis for relief.

GROUND 37

In ground 37 Petitioner alleges that his sentence is void in that: the trial court's oral pronouncement was ten years to serve eight years on count one and twenty years to serve fifteen years on count two, but the written sentence sheet shows twenty years to serve fifteen years on count one and thirty years to serve twenty years on count two; the online Court Case Summary and a printout he received from the prison counselor have inaccurate information about the sentence; and the final disposition does not have a check mark beside the line stating that Petitioner was advised of his right to file habeas corpus.

Findings of Fact and Conclusions of Law

Petitioner's assertion that the oral pronouncement does not match the written sentence factually lacks merit. The trial court's oral pronouncement of sentence was twenty years to serve fifteen for count one and thirty years to serve fifteen for count two, with the sentences to run concurrently. (HT 216). This matches the sentence on the final disposition. (HT 129-30).

Whether the prison counselor has inaccurate information does not state a claim for relief under O.C.G.A. § 9-14-42(a), as it does not allege a violation of a constitutional right in the proceedings giving rise to the convictions.

The claim about whether there was a "check mark" on the sentence form similarly fails to allege a violation of a constitutional right under O.C.G.A. § 9-14-

42(a). The record also shows that the trial court orally advised Petitioner at the end of the plea hearing that he had four years in which to file such a petition. (HT 129, 220). Ground 37 provides no basis for relief.

GROUND 38

In ground 38 Petitioner alleges that he was unlawfully detained in that he was not read his Miranda rights until more than an hour after he was arrested.

Findings of Fact and Conclusions of Law

Petitioner waived this claim by entering an Alford plea. Broce; Tollett. Accordingly, ground 38 provides no basis for relief.

GROUND 39

In ground 39 Petitioner alleges that (a) he was not provided any opportunity to withdraw his guilty plea after it was accepted by the trial court, (b) he was misinformed about the consequences of an Alford plea by trial counsel, and (c) he was not informed about the advantages or disadvantages of an Alford plea by the trial court.

Findings of Fact and Conclusions of Law

The entitlement to withdraw a guilty plea under state law arises from statute, O.C.G.A. § 17-7-93, and the scope of habeas corpus relief as noted is limited under O.C.G.A. § 9-14-42(a) to violations of a petitioner's constitutional rights in the proceedings giving rise to the conviction. Whether a state statute was violated is

not cognizable in habeas corpus. See Britt v. Smith, 274 Ga. 611, 612, 556 S.E.2d 435 (2001). Thus, claim (a) does not state a claim for relief.

As to claim (b), Petitioner did not indicate to plea counsel that he wanted to withdraw his plea. (HT 100). The trial court's oral pronouncement of sentence ended any entitlement under O.C.G.A. § 17-7-93(b) to withdraw the guilty plea. See, e.g., State v. Germany, 246 Ga. 455, 271 S.E.2d 851 (1980). In addition, the purpose of this statutory withdrawal provision is to give the accused the chance to withdraw his plea in light of the developments at the plea hearing when the accused finds that the bargain as struck is not going to be fulfilled by the prosecution. See, e.g., Smith v. State, 221 Ga. 23, 25, 200 S.E.2d 119 (1973). In this case, Petitioner had no negotiated sentence agreement with the State.

Petitioner and plea counsel discussed entering an Alford plea and decided that they would pursue one because Petitioner did not want to admit to having committed the acts with which he was charged. (HT 14-15, 35-36, 61-62). Both Petitioner and plea counsel stated at the beginning of the plea hearing that Petitioner wanted to pursue an Alford plea. (HT 201-02). The trial court questioned plea counsel as to why Petitioner would want to enter a plea while maintaining his innocence, and plea counsel explained Petitioner's reasons for doing so. (HT 207). The trial court then questioned Petitioner to ensure that he understood that while an Alford plea allows a defendant to maintain his innocence,

it is still treated as a guilty plea for all purposes under the law, it would be subject to the same punishment as a guilty plea, and it could be used subsequently for enhancement or recidivist purposes in a later criminal prosecution. (HT 207-08). Petitioner expressed that he understood this. (HT 208).

Petitioner has failed to show that plea counsel's performance was deficient and that he was prejudiced by it. Pretermitted the question of whether the trial court had a constitutional duty to inform Petitioner of the pros and cons of entering an Alford plea, the record shows that the trial court did so. Accordingly, 39 provides no basis for relief.

GROUND 40

In ground 40 Petitioner alleges that his sentence is void because the trial court signed a waiver of psychological/psychiatric privilege that states that Petitioner agreed and consented to waive all privileges relating to communications, but Petitioner was never made aware of, nor did he accept any such waiver.

Findings of Fact and Conclusions of Law

On the date of the plea hearing, the trial court executed documents imposing additional conditions of probation. (HT 131-36). One of these documents provided that as a condition of his probation, Petitioner agreed and voluntarily consented to waive this privilege relating to communications between himself and

any professional providing approved sex offender treatment during Petitioner's probation. (HT 135).

After imposing sentence, the trial court outlined on the record the conditions of Petitioner's probation, during which it advised:

You shall attend and actively participate in sex offender evaluation and treatment at a program approved by your probation officer. You will abide by the rules of the treatment program and successfully complete the program to the satisfaction of the probation officer and the treatment provider. You shall not change treatment programs without prior approval of the probation officer. You will be financially responsible for all evaluations and treatment unless other arrangements have been made by your probation officer or treatment provider.

You shall submit, at your own expense, to any program of psychological or physiological assessment at the direction of the probation officer or treatment provider – this includes the polygraph and/or the plesmograph – to assist in treatment, planning, and case monitoring.

You shall sign releases of information to allow the probation officer or designee to communicate with other professionals involved in your treatment program and to allow all professionals involved to communicate with each other. This will include a release of information to the therapist of the victims.

(HT 218-19).

It is clear that the trial court advised Petitioner regarding this waiver at the plea hearing. Accordingly, ground 40 provides no basis for relief.

GROUND 41

Petitioner alleges that the trial court informed him that by pleading guilty he would be giving up the right to confront any witnesses called to testify against him, but did not inform him that he would forfeit the right to confront his accusers.

Findings of Fact and Conclusions of Law

At the plea hearing, the trial court advised Petitioner that he would be giving up his right to trial by jury, his right to confront any witnesses called to testify against him, and his right not to incriminate himself; Petitioner stated that he understood. (HT 203-04). The petition to enter plea of guilty also advised Petitioner of these rights, and Petitioner expressed through his answers on the form that he understood that he had these rights and that he would be waiving them by entering a plea. (HT 119-20). Plea counsel also reviewed these rights with Petitioner and was satisfied that he understood those rights. (HT 17-18).

For a guilty plea to be valid, it must be intelligently and voluntarily entered. Boykin v. Alabama, 395 U.S. 238, 242 (1969); Parke v. Raley, 506 U.S. 20, 28 (1992). This is because a guilty plea constitutes a waiver of three constitutional rights: the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Parke at 29. The petitioner has the burden to establish that a guilty plea was not knowingly, voluntarily, and intelligently made. LeJeune v. McLaughlin, 296 Ga. 291, 294, 766 S.E.2d 803 (2014).

The fact that the trial court did not use the specific term “accusers” does not render Petitioner’s Alford plea unknowing or involuntary, as the language used by the trial court adequately conveyed the core principles of Petitioner’s right to confront his accusers. Adams v. State, 285 Ga. 744, 745, 683 S.E.2d 586 (2009). “[N]othing in Boykin requires [the trial court] during a guilty plea proceeding to use any precisely-defined language or ‘magic words.’” Hawes v. State, 281 Ga. 822, 824, 642 S.E.2d 92 (2007) (overruled on other grounds). Ground 41 provides no basis for relief.


CONCLUSION

Wherefore, the petition for a writ of habeas corpus is denied.

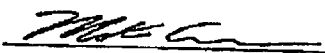
If Petitioner desires to appeal this order, Petitioner must file an application for a certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within thirty (30) days from the date of the filing of this order. Petitioner must also file a notice of appeal with the Clerk of the Superior Court of Coffee County within the same thirty (30) day period.

The Clerk of the Superior Court is hereby DIRECTED to mail a copy of this order to ~~counsel for~~ Petitioner, Respondents, and the office of the Attorney General.

SO ORDERED this 23 day of December, 2016.


CLARENCE D. BLOUNT
Senior Judge, Superior Courts
Sitting by Designation

Prepared by:


Matthew B. Crowder
Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334-1300
(404) 656-5172