

SUPREME COURT OF GEORGIA
Case No. S20H0894

August 10, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

RICO WALKER v. VANCE LAUGHLIN, WARDEN.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

All the Justices concur.

Trial Court Case No. 18CV029

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 N. Barnes

, Clerk

**IN THE SUPERIOR COURT OF WHEELER COUNTY
STATE OF GEORGIA**

RICO WALKER,
GDC 974743

PETITIONER,

VS

VANCE LAUGHLIN, WARDEN,
WHEELER CORRECTIONAL FACILITY
DEFENDANTS

CIVIL ACTION NO: 18CV029

CERTIFICATE OF SERVICE

I, Janet Ashley, Deputy Clerk of the Superior Court of Wheeler County, Georgia, certify that I have this day served the within and foregoing FINAL ORDER by mailing a true and accurate copy of the same via electronic mail to the address on record, to the following.

Rico Walker, GDC 974743
Wheeler Correctional Facility
P. O. Box 466
Alamo, GA 30411

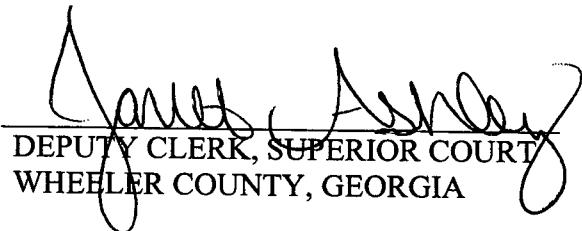
Vance Laughlin
Wheeler Correctional Facility
P. O. Box 466
Alamo, GA 30411

I further certify that I have served a true and accurate copy of the above document(s) to the individual(s) below via electronic mail to the address on record:

Georgia Department of Corrections
State Offices South at Tift College
P. O. Box 1529
Forsyth, GA 31029

THE KING LAW GROUP
Daniel M. King, Jr., SAAG
P. O. Box 4329
Dublin, GA 31040

This the 29th day of January, 2020


DEPUTY CLERK, SUPERIOR COURT
WHEELER COUNTY, GEORGIA

IN THE SUPERIOR COURT OF WHEELER COUNTY
STATE OF GEORGIA

WHEELER COUNTY, GEORGIA
FILED IN OFFICE

2020 JAN 29 AM 10: 18

RICO WALKER,)
Petitioner,)
GDC No. 974743,)
v.) Habeas Corpus
VANCE LAUGHLIN, Warden,) File No. 18CV029
Respondent.)

Carol A. Bragg
CLERK SUPERIOR COURT

FINAL ORDER

Petitioner, RICO WALKER, filed the instant Application for Writ of Habeas Corpus on April 3, 2018 challenging the validity of his September 22, 2016 Thomas County guilty plea. Evidentiary hearings were held on October 1, 2018 and May 30, 2019. After reviewing the Petition, the entire record of the case, and applicable law, the Court makes the following findings:

PROCEDURAL HISTORY

A Thomas County grand jury indicted Petitioner on charges of incest, child molestation, aggravated child molestation, and sodomy on February 4, 2016. (Transcript of Habeas Corpus Evidentiary Hearing held on October 1, 2018, hereinafter "HT," pp. 50-54). Petitioner entered a negotiated guilty plea on September 22, 2016 to the offense of incest and the State entered a *nolle prosequi* to the remaining counts. (HT 55).

In his Application for Writ of Habeas Corpus, Petitioner raised the following grounds for relief:

1. Failure to disclose evidence in violation of Brady. Specifically, Petitioner was not consulted or informed of his case and evidence against him or the forensic examination results which would have exonerated him;

2. Petitioner was convicted on a void indictment. Specifically, the indictment omitted the essential elements of venue and an exact date of the crime alleged;
3. The trial court abused its discretion by failing to advise Petitioner of his Boykin rights during a mass plea hearing; and,
4. Petitioner received ineffective assistance of counsel in that defense counsel failed in his duties to file a motion to suppress illegal warrants, demur a defective indictment, and advise Petitioner of the nature of the crime.

At the October 1, 2018 evidentiary hearing, attorney Ronald Beckstrom testified and documentary evidence was admitted. The evidentiary portion of the case concluded on May 30, 2019 with additional testimony by attorney Ronald Beckstrom and the entry of additional documentary evidence.

GROUND ONE

In Ground One, Petitioner alleges that he suffered a Brady violation from the failure to disclose evidence. Specifically, Petitioner was not consulted or informed of his case and evidence against him or the forensic examination results which would have exonerated him.

The entry of a valid guilty plea waives all known or unknown defenses. Tollett v. Henderson, 411 U.S. 258 (1973). “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 (1989). A defendant cannot raise independent claims relating to the deprivation of rights which occurred before his entry of a guilty plea, and can only attack the voluntary nature of his plea and the advice he received from his attorney. Bradshaw v. Stump, 545 U.S. 175 (2005); Burns v. State, 291 Ga. 547 (2012); Kennedy v. State, 319 Ga. App. 498 (2012).

Counsel testified that he obtained discovery from the State, reviewed the discovery with Petitioner, and that there was no question that he obtained full discovery from the State. (HT 8). Counsel testified that the forensic examination results were included in the discovery file. (Transcript of Habeas Corpus Evidentiary Hearing held on May 30, 2019, hereinafter “HT2,” p.

11). Contrary to Petitioner's assertions, the forensic results did not exculpate Petitioner but rather were inconclusive in identifying the source. (HT2 12, 20). Counsel testified that the forensic report was still damaging to Petitioner's defense when coupled with the testimony of the victim. (HT2 12). Counsel reiterated that he provided Petitioner with copies of discovery and reviewed the discovery with Petitioner answering any questions he may have had. (HT2 14-15, 21). At the guilty plea hearing, Petitioner affirmed that counsel had reviewed the case with him and that he had received discovery. (HT 89). Therefore, Petitioner has failed to show that a Brady violation occurred as the forensic results in question were provided by the State to defense counsel who in turn provided the documents to Petitioner.

Accordingly, Ground One provides no basis for relief.

GROUND TWO

In Ground Two, Petitioner alleges that he was convicted on a void indictment. Specifically, the indictment omitted the essential elements of venue and an exact date of the crime alleged.

The entry of a valid guilty plea waives all known or unknown defenses. Tollett v. Henderson, 411 U.S. 258 (1973). "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 (1989). A defendant cannot raise independent claims relating to the deprivation of rights which occurred before his entry of a guilty plea, and can only attack the voluntary nature of his plea and the advice he received from his attorney. Bradshaw v. Stump, 545 U.S. 175 (2005); Burns v. State, 291 Ga. 547 (2012); Kennedy v. State, 319 Ga. App. 498 (2012).

The indictment against Petitioner alleged in pertinent part:

COUNT 1

The Grand Jurors aforesaid, on their oaths aforesaid, in the name and behalf of the citizens of Georgia, charge and accuse **RICO RECHAE WALKER** with the offense of **Incest** for that the said accused in Thomas County, Georgia, **between the 20th day of May, 2014 and the 20th day of May, 2015, the exact date and time being unknown to**

the Grand Jury, but known to the accused, then and there did unlawfully engage in sodomy with Asiana Bryant, accused's stepdaughter, knowing that he is related to the said stepdaughter by marriage, contrary to the laws of said State, the good order, peace, and dignity thereof.

(HT 54)(emphasis in original). Contrary to Petitioner's assertions, the indictment clearly include a statement that venue lies in Thomas County. While the State did not provide an exact date, the indictment did include a range of dates. Counsel testified in reviewing the case that the criminal acts were alleged to have on multiple occasions over a range of time. A range of dates is not improper where the State is unable to narrow the dates listed in the indictment. Blanton v. State, 324 Ga. App. 610 (2013); Boddie v. State, 327 Ga. App. 667 (2014)(range of dates alleged were not material elements to the offense). The indictment against Petitioner included all the essential elements for the offense. Therefore, Petitioner has failed to show that the indictment was void. To the extent that Petitioner could have filed a special demurrer to narrow the range of dates in the indictment, Petitioner waived this claim by pleading guilty to the charged offense.

Accordingly, Ground Two provides no basis for relief.

GROUND THREE

In Ground Three, Petitioner alleges that the trial court abused its discretion by failing to advise Petitioner of his Boykin rights during a mass plea hearing.

"A guilty plea must be 'voluntary, knowing, and intelligent'" in order to constitute a valid plea. Raheem v. State, 333 Ga. App. 821 (2015). In Boykin v. Alabama, the Supreme Court clarified that a defendant pleading guilty must be advised of "the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers." 395 U.S. 238 (1969); Hayes v. State, 344 Ga. App. 248 (2018). Petitioner bears the burden of proving that his plea was not voluntary, knowing, and intelligent. Lejeune v. McLaughlin, 296 Ga. 291 (2014).

Counsel testified that he advised Petitioner of his constitutional rights, including the right to a trial by jury, the right to confront witnesses, and the privilege against self-incrimination, and that by pleading guilty Petitioner would waive those rights. (HT 13). Counsel testified that he

was satisfied that Petitioner understood those rights. (HT 13). Counsel further testified that it was common in Thomas County to take mass pleas but that the trial court still advises the defendants of their constitutional rights and asks each defendant if he understands said rights. (HT 13-14). In addition, counsel had Petitioner sign a form acknowledging his rights. (HT 14). A review of the transcript of the guilty confirmed that the trial court reviewed with Petitioner his Boykin rights including the right to remain silent, the right to a trial by jury, the right to testify and subpoena witnesses to testify, and the right to cross-examine the State's witnesses and Petition affirmed his understanding of these rights. (HT 71-82). While the court reviewed these rights with Petitioner during a mass proceeding, Petitioner affirmed his understanding of each of these rights and the court then engaged in an individual colloquy with Petitioner. (HT 89). Therefore, Petitioner has failed to prove the trial court failed to advise Petitioner of his Boykin right or that his guilty plea was not freely, knowingly, or intelligently entered.

Accordingly, Ground Three provides no basis for relief.

GROUND FOUR

In Ground Four, Petitioner alleges that he received ineffective assistance of counsel in that defense counsel failed in his duties to file a motion to suppress illegal warrants, demur a defective indictment, and advise Petitioner of the nature of the crime.

The test for establishing ineffective assistance of counsel was set forth in Strickland v. Washington, 466 U.S. 668 (1984). Under the Strickland two-prong test, Petitioner must show that (1) the attorney's performance was deficient, meaning that counsel made errors so serious that he was not functioning as "counsel" as guaranteed by the Sixth Amendment and (2) that this deficient performance prejudiced the defense thereby depriving Petitioner of a fair trial with a reliable result. In the context of a guilty plea, petitioner must "show that 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." Hill v. Lockhart, 106 S.Ct. 366 (1985); Tillman v. Gee, 284 Ga. 416 (2008). Petitioner must overcome the presumption that counsel's conduct "falls within the wide range of reasonable professional conduct and that all significant decisions were made in the exercise of reasonable professional judgment." Brown v. State, 245 Ga. 277 (1987).

Petitioner was represented by attorney Ronald Beckstrom. (HT 44). Counsel graduated from Florida State University law school and was admitted to the Georgia Bar in 1995. (HT 6). Counsel initially worked as a general practitioner before eventually working strictly in criminal defense. (HT 6). In his practice, counsel regularly tries felony criminal cases. (HT 7). Counsel testified that he met with Petitioner, reviewed discovery, and discussed the discovery with Petitioner. (HT 7-8). Counsel testified that the evidence against Petitioner included statements that he destroyed a phone containing incriminating text messages, Petitioner admitted to destroying the phone, the recovery of seminal fluid, and a similar transaction involving the same victim. (HT 9-10). The State issued a plea offer to Petitioner but counsel testified that the district attorney was inflexible in negotiating a resolution to the case. (HT 10). Based on the evidence and his consultation with Petitioner, counsel testified that he was unable to develop a theory of defense. (HT 11). In accepting the guilty plea, counsel testified that Petitioner greatly reduced his sentencing exposure. (HT 12). Despite anticipating difficulties at trial, counsel testified that he was prepared for trial. (HT 13).

Petitioner has failed to show that counsel was ineffective for failing to file motions relating to the warrants issued in his case. Petitioner has failed to show that he had a meritorious claim relating to the issuance of the warrants that would have led to the suppression of evidence or a bar to prosecution or that, but for the alleged ineffectiveness of counsel, Petitioner would not have pleaded guilty and would have insisted on proceeding to trial.

Counsel testified that he reviewed the indictment and saw no issues with said indictment. (HT 14). As discussed *supra*, Petitioner has failed to show that the indictment was void. Counsel further testified that the events in question were alleged to have occurred over a period of time. (HT 27). Petitioner has failed to show that the range of dates provided in the indictment were improper or that a special demurrer would have been successful. Petitioner has not proffered any possible defense to the offenses were alleged to have occurred over a period of a year. Had Petitioner prevailed on a special demurrer, the State would have had the opportunity to re-indict Petitioner with a narrower range of dates. Moore v. State, 319 Ga. App. 766 (2013). Therefore, Petitioner has failed to establish that he received ineffective assistance of counsel by failing to challenge the indictment or that he was prejudiced by the alleged deficiency. At no point has

Petitioner shown that had counsel filed a demurrer he would not have pleaded guilty and would have insisted on proceeding to trial.

Petitioner has not established that counsel did not review the nature of the charges with him. Counsel testified that he full reviewed the terms of the plea with Petitioner and that Petitioner affirmatively accepted the plea. (HT 12). At the plea hearing, Petitioner confirmed that he had adequate time to meet with counsel and that he was satisfied with counsel's representation. (HT 90). Petitioner acknowledged that counsel had reviewed discovery with him and had gone over the case with him. (HT 89). Correspondence between Petitioner and counsel indicate that they reviewed discovery and the testimony indicates that Petitioner met with counsel to review the case. Therefore, Petitioner has failed to show that counsel failed to review the case with him or that, but for the alleged ineffectiveness of counsel, Petitioner would not have pleaded guilty and would have insisted on proceeding to trial.

Accordingly, Ground Four provides no basis for relief.

ADDITIONAL GROUNDS

In his Brief filed subsequent to the close of evidence, Petitioner raises additional grounds that he received ineffective assistance of counsel in that counsel failed to investigate his case or inform him of sex offender registration requirements. However, these claims have been raised after the close of evidence and Petitioner has not obtained leave of the Court to amend his Petition. The Civil Practice Act applies to amendments to habeas corpus petitions. Giles v. Ford, 258 Ga. 245 (1988). A party's unfettered right to amend his pleadings ceases upon the taking of evidence. Jackson v. Paces Ferry Dodge, Inc., 183 Ga.App. 502 (1987).

Accordingly, the additional grounds raised in Petitioner's Brief provide no basis for relief.

CERTIFICATION

Petitioner received a copy of the transcript of the October 1, 2018 evidentiary hearing on January 25, 2019 and the May 30, 2019 evidentiary hearing on November 20, 2019. Copies of the Sheriff's Entry of Service Forms are attached hereto.

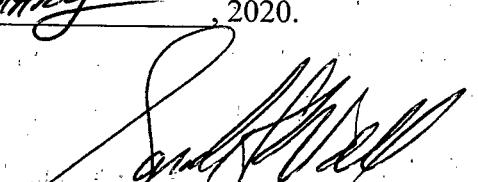
CONCLUSION

WHEREFORE, the instant Petition for Writ of Habeas Corpus is **DENIED**.

If Petitioner desires to appeal this Order, Petitioner must file a written application for certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within thirty (30) days from the date of this Order. Petitioner must also file a Notice of Appeal with the Clerk of the Superior Court of Wheeler County within the same thirty (30) day period.

The Clerk of the Superior Court of Wheeler County is hereby DIRECTED to mail a copy of this Order to Petitioner, Petitioner's attorney of record, Respondent, and Special Assistant Attorney General Daniel M. King, Jr.

SO ORDERED, this 27 day of January, 2020.


Sarah F. Wall, Chief Judge
Wheeler County Superior Court

9 days Left

SHERIFF'S ENTRY OF SERVICE — SC-85-2

Register from Clyde Castleberry Co., P.O. Box 1187, Covington, GA 30016 - 1-800-222-1250

SHERIFF'S ENTRY OF SERVICE

SC-85-2

CLYDE CASTLEBERRY CO., COVINGTON, GA 30016

Civil Action No. 18CV029Date Filed 10/29/19

Return to:

Attorney's Address:

Jennifer Anderson
1909 Scotland Rd
Dublin, GA 31021

Name and Address of Party to be Served.

Rico WalkerGDC: 974743Wheeler CorrectionalSuperior Court
State Court
Juvenile Court Magistrate Court
 Probate Court
Georgia, Wheeler COUNTYRico WalkerGDC: 974743

Plaintiff

vs.

Vance LaughlinWarden

Defendant

GDC:

Garnishee

SHERIFF'S ENTRY OF SERVICE

PERSONAL

NOTORIOUS

CORPORATION

TACK & MAIL

NON EST

I have this day served the defendant Rico Walker personally with a copy of the within action and summons.Habeas transcript from hearing on 5/30/19.

I have this day served the defendant _____ by leaving a copy of the action and summons at his most notorious place of abode in this County.

 Delivered same into hands of _____ described as follows: _____
age, about _____ years; weight _____ pounds; height, about _____ feet and _____ inches. Domiciled _____ in the residence of _____
defendant.RECEIVED
CLYDE CASTLEBERRY CO., COVINGTON, GA
FILED
NOV 20 2019
CLERK SUPERIOR COURT
2019 NOV 20 PM 12:06
Bobby Johnson
DEPUTY Served the defendant _____ by leaving a copy of the within action and summons with _____ in charge of the office and place of doing business of said Corporation in this County. I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit, and on the same day of such posting by depositing a true copy of same in the United States Mail, First Class in an envelope properly addressed to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons. Diligent search made and defendant _____ not to be found in the jurisdiction of this Court.This 20 day of Nov, 20 19.

Book 12 Page 106

Bobby Johnson

DEPUTY

**Additional material
from this filing is
available in the
Clerk's Office.**