IN THE SUPERIOR COURT OF COFFEE COUNTY

STATE OF GEORGIA

Paul Bruce,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2019-SUS-644
	)	
Steve Upton, Warden,	)	
	)	
Respondent.	)	

FINAL ORDER

Petitioner seeks habeas corpus relief from guilty pleas in Walker County in 2016. The pleas from three separate charging documents were to the offenses of aggravated child molestation, aggravated sexual battery and five separate counts of child molestation. Other counts were nolle prossed. The overall sentence was life in prison, serve thirty years with the remaining time on probation. His claims in habeas consist of eight counts, laid out in his original petition and two amendments. Counts 1, 2, 3, 5, 7 and 8 claim ineffective assistance of counsel. Count 4 asserts a denial of rights for failure to administer *Miranda* warnings during a police interview. Count 6 asserts a deprivation of rights for failure to be granted bail. For the reasons that follow the petition is denied.

Ineffective assistance of counsel invokes the familiar standard of *Strickland v. Washington*, 466 U.S. 688 (1984), which sets forth a two-pronged test, both of which must be proven in order to prevail on a claim of ineffective assistance. The test of *Strickland* applies in the guilty plea context. *Lafler v. Cooper*, 566 U.S. 156, 165 (2012); *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). Petitioner has the burden to establish both prongs of ineffective assistance of counsel in order to prevail. *Strickland*, 466 U.S. at 687. In order to prevail on an ineffective assistance of counsel claim, Petitioner must show that (1) counsel's performance was deficient, i.e., counsel's representation fell below an objective standard of reasonableness and (2) actual prejudice, i.e., "there is a reasonable probability that, but for counsel's errors, he would not have

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pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 58-59; *Upton v. Johnson*, 282 Ga. 600 (2007); *Smith v. Williams*, 277 Ga. 778 (1) (2004). Moreover, "[t]here is a strong presumption that trial counsel provided effective representation and, generally, matters of reasonable trial strategy do not amount to ineffective assistance of counsel. See *Berry v. State*, 267 Ga. 476 (4) (480 S.E.2d 32) (1997)." *Radford v. State,* 281 Ga. 303 (2006). As well, the "habeas court [is] entitled to believe trial counsel's testimony over that of [petitioner]." *Cammer v. Walker*, 290 Ga. 251 (2011), citing *McDaniel v. State*, 279 Ga. 801 (2) (a) (2005).

1. Taking the above into account, along with the testimony of petitioner and his trial counsel, the court is entirely satisfied that there was no ineffective assistance of counsel. In count 1 petitioner complains that trial counsel failed to adequately consult with him. Trial counsel, Robert Patten, a public defender with substantial experience, refuted this claim and the court has no difficulty accepting his version of events over that of petitioner. Trial counsel recounted meeting with petitioner several times while going over discovery, including records and incident reports. He discussed the evidence with petitioner and went over what appeared to be the most damaging evidence. Patten also recounted his trial preparation and discussions with petitioner about potential outcomes at trial. The court is satisfied that petitioner's bare contention of failure to consult does not satisfy the *Strickland* test. "Contrary to appellant's argument, 'there exists no magic amount of time which counsel must spend in actual conference with his client. [Cit.]' *Morgan v. State*, 275 Ga. 222, 228 (10) (564 S.E.2d 192) (2002)." *Mitchell v. State*, 279 Ga. 158, 160 (2005).

2. Petitioner next alleges ineffective assistance of counsel in that his plea was not voluntarily entered because of counse's ineffectiveness. Petitioner fails to specify exactly how his plea was involuntary. The record, however, shows that petitioner and counsel both signed a lengthy form entitled "Affidavit-Plea of Guilty" listing the rights which petitioner would waive by pleading guilty and affirming that his plea was "freely and voluntarily made." Petitioner acknowledged the form and his signature on it. Trial counsel also testified that he specifically explained petitioner's rights to him and answered any questions he had about the negotiated plea.

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Considering the totality of the circumstances, including that the jury had already been selected and the case was ready for trial, the adverse result of the *Jackson-Denno* hearing, the recitation of explicit testimony from child witnesses in open court, the guilty plea affidavit and the guilty plea transcript, the court concludes that petitioner's guilty was knowing and intelligent. The trial court made a similar finding. ("The Court finds he understands the consequences of the guilty pleas, there is a factual basis for the pleas, the pleas are freely and voluntarily made...."). Thus the plea satisfied the requirements recently announced in *Green v. State,* 318 Ga. 610 (2024). See also *McClain v. State*, 311 Ga. 514 (2021); *Oliver v. State*, 308 Ga. 652 (2020). Based on this evidence, the court finds that trial counsel was not ineffective as alleged by petitioner. This ground is without merit.

3. Next petitioner alleges that trial counsel failed to adequately investigate the case or to provide proper advice to him and as a result his plea was involuntary. Again, trial counsel's testimony describes his actions including the fact that he had been unable to interview the child witnesses prior to trial, but that he had been able to quash the statement of one of them. He also testified to the *Jackson-Denno* hearing and the results thereof. On the other hand, petitioner has not shown what else trial counsel should have done. Under these circumstances the court is satisfied that petitioner has failed to carry his burden under *Strickland*. Moreover, based on trial counsel's testimony the court finds that he was not ineffective. This contention lacks merit.

4. In grounds 4 and 5 petitioner claims his counsel was ineffective for not challenging the failure of police to administer *Miranda* warnings prior to a statement he gave, and as a separate claim that the failure to administer the warnings was a violation of rights by police. These claims fail. Mr. Patten testified that petitioner gave an incriminating statement to police. Prior to the beginning of trial the court held a *Jackson-Denno* hearing for the purpose of determining whether the statement would be admissible. The trial court ruled that the statement would be admitted, although there is no transcript of this hearing in the record in this case. Nevertheless, according to trial counsel it was at that point that petitioner decided to enter a guilty plea. Although it is apparent that petitioner misunderstood that a *Jackson-Denno* hearing is the functional equivalent

of a motion to suppress hearing regarding the statements, the fact is that there is nothing to show that trial counsel was ineffective. Thus there is no basis upon which to find ineffective assistance of trial counsel or trial court error.

5. In ground 6 petitioner claims he was denied his rights because he was deprived of bail. Trial counsel testified that he applied for bail and it was denied by the trial court. This contention is a bare allegation with no evidence to show ineffective assistance of trial counsel or trial court error. There is no merit to this contention.

6. Ground 7 harks back to grounds 4 and 5 regarding the *Jackson-Denno* hearing. Petitioner claims he was never informed of the "suppression hearing." The testimony of trial counsel refutes this allegation. He testified that the hearing was held in open court after the jury was selected and prior to the beginning of trial. Petitioner was present for the hearing. This claim has no merit and affords no relief in habeas.

7. Finally, in ground 8 petitioner claims he was denied the right to appeal. The plea transcript clearly shows that the trial court advised petitioner of his right to appeal. "Once I sign those...you will have 30 days to file an appeal." Moreover, there is no evidence to show that petitioner asked his counsel to file an appeal. Petitioner has failed to carry his burden of proof in this regard and this claim also lacks merit.

For the foregoing reasons the petition for writ of habeas corpus is denied.

Appeal Rights

If Petitioner desires to appeal this order, he 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 of the date this order is filed. Petitioner must also file a notice of appeal with the Clerk of Superior Court of Coffee County within the same thirty (30) day period. As well, petitioner is notified that Supreme Court Rule 26.1 requires the filing of a Certificate of Interested Person which must be filed separately at the time of the initial submission to the Court.

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SO ORDERED this 3rd day of July, 2024.

Michael L. Karpf, Senior Judge
Superior Courts of Georgia

cc: Paul Bruce
Eric Peters, Esq.

SUPREME COURT OF GEORGIA
Case No. S25H0085

May 6, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

PAUL BRUCE v. STEVE UPTON, WARDEN

The habeas court denied Paul Bruce's habeas petition. In order to obtain appellate review of that order, he was required to timely file both a notice of appeal in the habeas court and an application for a certificate of probable cause to appeal in this Court. See OCGA § 9-14-52 (b). Although Bruce timely filed a notice of appeal in the habeas court, he did not timely file an application for a certificate of probable cause to appeal in this Court. Because the failure to comply with OCGA § 9-14-52 (b) is jurisdictional, this matter is dismissed. See *Crosson v. Conway*, 291 Ga. 220, 222 (728 SE2d 617) (2012); *Fullwood v. Sivley*, 271 Ga. 248, 250 (517 SE2d 511) (1999).

Peterson, CJ, Warren, PJ, and Bethel, Ellington, McMillian, LaGrua, Colvin, and Pinson, JJ, 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.

, Clerk

APPF

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