

WALLACE DUCOTE

NO. 21-KH-742

VERSUS

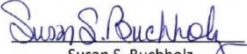
FIFTH CIRCUIT

STATE OF LOUISIANA

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Susan S. Buchholz
First Deputy, Clerk of Court

February 04, 2022

Susan Buchholz
First Deputy Clerk

IN RE WALLACE DUCOTE

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE SCOTT U.
SCHLEGEL, DIVISION "D", NUMBER 15-2889

Panel composed of Judges Marc E. Johnson,
Robert A. Chaisson, and Stephen J. Windhorst

WRIT DENIED

Relator, Wallace Ducote, seeks review of the trial court's October 12, 2021 denial of his application for post-conviction relief ("APCR"). In his APCR, Relator argued that he received ineffective assistance of counsel, pursuant to *State v. Harris*, 18-1012 (La. 7/9/20), 2020 WL 3867207, because his counsel, Allyson M. Billeaud, advised him to agree to an illegal and absolutely null negotiated habitual offender plea agreement. He argued that the negotiated habitual offender sentence was prohibited by law because neither the charged offense nor the predicate offense were designated as crimes of violence pursuant to 2019 Act No. 386, which amended La. R.S. 15:529.1.

In its denial, the trial court considered Relator's ineffective assistance of counsel claims and found that he failed to meet his burden under *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and *State v. Washington*, 491 So.2d 1337 (La. 1986). The court further found Relator's interpretation of La. R.S. 15:529.1 to be erroneous. The court reasoned that the statute requires that a conviction that is not a crime of violence, **and** has been set aside and dismissed cannot serve as a predicate offense. The court noted that Relator's prior conviction of possession of heroin has never been set aside and dismissed. The court then found that Relator's counsel was not deficient in her advice to him.

According to La. R.S. 15:529.1(C)(3), "a conviction for a felony offense that is not a crime of violence as defined by R.S. 14:2(B) and that has been set aside and dismissed pursuant to Code of Criminal Procedure Article 893(E)(2), (3), or (4), shall not be considered as a prior conviction." In the instant case, the habitual

offender bill of information charging relator as a second-felony offender indicates that his predicate offense was possession of heroin, and the underlying offense was possession of a firearm by a convicted felon. While Relator’s predicate and underlying offenses are not crimes of violence, we agree with the trial court that Relator’s interpretation of La. R.S. 15:529.1(C)(3) fails to address the additional requirement that the prior conviction cannot be considered if it was also “set aside and dismissed.” Here, Relator makes no showing that his prior conviction for the possession of heroin offense was dismissed. *See* La. C.Cr.P. art. 930.2.¹ Against that backdrop, we do not find that Relator’s counsel rendered ineffective assistance by failing to challenge his habitual offender sentence on these grounds. *See State v. Williams*, 613 So.2d 252, 256-57 (La. 1992).

Therefore, on the showing made, we find that Relator fails to make a *prima facie* case of ineffective assistance of counsel at sentencing based on *Harris, supra*. Accordingly, the writ application is denied.

Gretna, Louisiana, this 4th day of February, 2022.

MEJ
RAC
SJW

¹ La. C.Cr.P. art. 930.2 states “The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted.”

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **02/04/2022** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

21-KH-742

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Scott U. Schlegel (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

MAILED

Wallace Ducote #498838 (Relator)
Rayburn Correctional Center
27268 Highway 21
Angie, LA 70426