STATE OF LOUISIANA

VERSUS

DANIEL SALAZAR

NO. 25-KH-126

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

June 27, 2025

Curtis B Pursell
Clerk Of Court

IN RE DANIEL SALAZAR

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE LAUREN D. ROGERS, DIVISION "E", NUMBER 20,236

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT DENIED

In this writ application, Relator, Daniel Salazar, seeks to have us reverse the district court's judgment denying his First Application for Post-Conviction Relief ("APCR"). In his First APCR and in this writ application, Relator raises a claim of ineffective assistance of counsel at his sentencing hearing. Specifically, Relator asserts that his trial counsel was ineffective in that counsel (1) failed to present any evidence of mitigating factors at Relator's sentencing hearing; (2) failed to conduct any investigation into defenses to the underlying criminal charges; and (3) failed to file a written motion to reconsider sentence. For the reasons set forth below, Relator's application is denied.

On August 19, 2020, Relator was charged with the following offenses: fifteen counts of possession of child pornography (La. R.S. 14:81.1, Counts 1–15); one count of possession of child pornography with intent to distribute (La. R.S. 14:81.1, Count 16); one count of distributing child pornography (La. R.S. 14:81.1,

Count 17); one count of promotion of pornography involving juveniles (La. R.S. 14:81.1, Count 18); two counts of computer aided solicitation of minors (La. R.S. 14:81.3, Counts 19 – 20); three counts of indecent behavior with juveniles (La. R.S. 14:81, Counts 21 – 23); two counts of sexual battery upon juveniles under the age of 13 (La. R.S. 14:43.1, Counts 24 – 25); two counts of molestation of juveniles under the age of 13 (La. R.S. 14:81.2, Counts 26 – 27); and two counts of contributing to the delinquency of juveniles (La. R.S. 14:92, Counts 28 – 29). Relator initially pled "not guilty" to all of the charges against him. He subsequently changed his plea and, on January 19, 2022, after being Boykinized, pled guilty to all charges. Following Relator's guilty pleas, the trial judge ordered a pre-sentence investigation report, to include a psychosexual evaluation, to be prepared and filed with the court at least ten days prior to the sentencing hearing.

Relator appeared before the district court for sentencing on May 11, 2022. At that time, the district court received four victim impact statements and a lengthy statement from Relator.

In his statement, Relator expressed remorse, regret, embarrassment, shame and humiliation as a result of his actions. Relator informed the district court that he had suffered from depression and anxiety since he was at least 16 years old. He had been hospitalized at 16 for his problems and was medicated for his emotional issues throughout high school. After high school, the Relator felt that he could live a "normal life," and, apparently, ceased taking his medications. Relator stated that when he was 19, he was wrongfully charged with the sexual battery of a 14-year-old girl. The charges against him were dropped, but during this period he began to self-medicate with alcohol and drugs. Relator claimed that he stopped doing drugs in 2001, but also stated that his drug use was "on and off" after Hurricane Katrina. His alcohol use, he stated, never stopped, but got progressively worse.

Relator stated that in 2017, he was accused of sexual abuse against his ex-wife's daughter, one of the victims in this case. Relator stated that he and the girl's mother underwent custody evaluations, personality tests and depositions. The ex-wife's husband also underwent evaluations and testing. Relator stated that his ex-wife's testing showed "mild deception, and her husband's showed "extreme deception." Relator also stated that his ex-wife's accounts of the allegations "differed tremendously" from the daughter's story and that the ex-wife threatened in her deposition to "get even." Relator also said that some of the allegations made against him by his ex-wife and her daughter were "fictitious lies made to make [him] look worse." Relator then told his own version of what had transpired in conjunction with an allegation made by his ex-wife that he peered at the daughter when she was undressed. Relator stated that his alcohol addiction took his life over and caused him to make terrible decisions.

The trial court sentenced Relator to 20 years on each of Counts 1-15; to 40 years on each of Counts 16 - 17; to 40 years on Count 18; to 20 years on each of Counts 19 - 20; to 25 years on each of Counts 22 - 23; to 44 years on each of Counts 24 - 27; and to 2 years on each of Counts 28 - 29. All sentences were to run concurrently, were imposed without benefits of probation, parole or suspension of sentence and were imposed without hard labor. Relator was given credit for time served and was notified of his sex offender registration requirements and the time for filing an APCR. Relator's counsel orally objected to the sentence. The pre-sentence investigation report was introduced and filed into the record under seal. Subsequently, the district court, on its own motion, amended Relator's sentences to impose the requirement that they were to be served at hard labor.

On May 13, 2024, Relator filed his First APCR in the district court, claiming ineffective assistance of counsel at his sentencing hearing. The district court denied Relator's APCR on November 22, 2024, finding that Relator did not

provide "any facts or evidence in support of any of his allegations" and that Relator's allegations were "purely speculative, self-serving, and conclusory." This writ timely follows.

DISCUSSION

The Sixth Amendment to the United States Constitution and Article 1, § 13 of the Louisiana Constitution guarantee a defendant's right to counsel and to effective assistance of counsel. *State v. Casimer,* 12-678 (La. App. 5 Cir. 3/13/13), 113 So.3d 1129, 1141. In order to prove that his counsel was ineffective, a defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Casimer,* 113 So.3d at 1141. An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or a trial, the result of which, is reliable. *Strickland*, 466 U.S. at 687. In order to prove prejudice, the claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional conduct, the outcome of the trial or, the result of the proceeding, would have been different. *Id.* at 694, 696; *Casimer,* 113 So.3d at 1141.

The right to effective assistance of counsel applies at each critical step of a defendant's prosecution where the defendant is charged with an offense punishable by imprisonment. La. Const. Art. 1, § 13. "Sentencing is a critical stage of the proceeding, as which there is a right to the effective assistance of counsel … ." *State v. Harris,* 18-1012 (La. 7/9/20), 340 So.3d 845, 856. Where a person pleads guilty to criminal acts, with advice of counsel, the counseled guilty plea does not waive the person's post-conviction claims of ineffective assistance of counsel if it is shown that counsel's performance was so deficient that the guilty plea is rendered involuntary. *State ex rel. Knight v. Frederick,* 21-1061 (La. 11/23/21),

328 So.3d 71 (*per curium*); *Hill v. Lockhart,* 474 U.S. 52, 58 (1985); *State v. West,* 09-2810 (La. 12/10/10), 50 So.3d 148, 149 (*per curium*).

An "objectively reasonable standard of performance" at sentencing requires that "counsel be aware of the sentencing options in the case and ensure that all reasonably available mitigating information and legal arguments are presented in court." *Harris,* 340 So.3d at 858. Louisiana law "prohibits excessive sentences, and requires that individual circumstances be considered … ." *Id.* Counsel thus "acts unprofessionally when he fails to conduct a reasonable investigation into factors which may warrant a downward departure from the mandatory minimum." *Id.* The *Strickland* test of ineffective assistance, however, "affords a 'highly deferential' standard of review to the actions of counsel to eliminate, as far as possible, 'the distorting effects of hindsight, to reconstruct the circumstances of counsel's conduct and to evaluate the conduct from counsel's perspective at the time.'" *Id.* at 856, quoting *Strickland,* 466 U.S. at 689.

Relator's First Claim

In this case, Relator contends that his counsel was ineffective first, because counsel did not present mitigating evidence at his sentencing hearing. Relator asserts that his counsel should have introduced character evidence and evidence of family support, his work history, his lack of an extensive criminal record, his history of drug and alcohol abuse and his mental health issues, including depression, obsessive-compulsive disorders, anxiety and bipolar disorder. He further complains that the psychosexual evaluation that was ordered by the trial court was not introduced at the sentencing hearing.

Contrary to Relator's contentions, evidence of mitigating circumstances was presented at the hearing through Relator's own lengthy statement wherein he informed the court of his mental and emotional issues, dating back to his teenage years, and his substance abuse issues. Relator also informed the court that his

actions were out of character and that he had been struggling with mental health issues and alcohol abuse during the time he committed the crimes to which he pled guilty. Relator also made the court aware of other factors that he asserted were mitigating, such as the psychological testing results showing that his ex-wife and her husband were prone to deception, the testimony of his ex-wife that she would "get even," and alleged discrepancies between his ex-wife's and her daughter's versions of certain events. Relator expressed extreme remorse, a desire to make amends, stated that he had no significant criminal history prior to engaging in the criminal activities to which he pled guilty and stated that if given a second chance, he would not engage in any such activities going forward.

In addition to Relator's statements, the trial court had also ordered a pre-sentence investigation report, including a psychosexual evaluation, which had been presented to the trial court and which were filed into the record under seal. Further, the trial court heard four victim impact statements.

Considering all of the circumstances, we find that the trial court was provided with sufficient evidence of both aggravating and mitigating circumstances prior to imposing sentence on Relator. The record does not contain any evidence indicating whether Relator's counsel conducted any investigation into the existing of mitigating evidence. Relator did not provide the trial court with any evidence of mitigating factors in his APCR that were not called to the trial court's attention by Relator at the sentencing hearing. Relator also made no showing of how his counsel's alleged inadequate performance prejudiced him to the extent that his sentencing hearing was unfair, or called into question the validity of his sentences.

The sentences imposed by the trial court were all well within the statutory sentencing ranges for each offense to which Relator pled guilty. His sentences were made to run concurrently, resulting in a total sentence of forty-four years.

Relator has not demonstrated how any additional evidence of mitigating circumstances would have caused him to receive a lesser sentence. After Relator completed his statement, the trial judge stated as follows prior to imposing sentence on Relator:

> We judges sit as the conscience of our communities. Our words are the perspective of society. There are circumstances where our words are inadequate to express the sadness and the outrage. No child, no family should have experienced what has presented this morning. . . .
>
> Mr. Salazar, you have been convicted of detestable, heinous, disgusting, reprehensible acts. The harm to these vulnerable victims and to society is immeasurable. The sentence imposed this morning will reflect your taking responsibility for your actions, which avoids having these victims relive their trauma in an adversarial proceeding.
>
> The purpose of this sentence is to ensure that you will not have the opportunity to victimize another human being in a free society. It is the intention of this sentence that you remain excluded from society until you're an elderly man.

In light of the trial court's comments, we do not believe that any additional evidence of mitigating factors would have caused the trial court to impose a lesser sentence on Relator as to the criminal acts to which he pled guilty.

Under the circumstances, Relator did not demonstrate in the trial court in his APCR, and has not demonstrated to this Court in his writ application, that his counsel was ineffective under the *Strickland* standards for failing to present additional evidence of mitigating factors at Relator's sentencing hearing.

Relator's Second Claim

Relator's second claim of ineffectiveness of his counsel is that counsel failed to adequately investigate possible defenses to the underlying allegations against Relator and the existence of mitigating information. Relator claims that his counsel should have interviewed the attorney who represented him in an "acrimonious [child] custody dispute" with his ex-wife,

whose daughter was one of the victims. Relator contended that his counsel ignored evidence of personality tests allegedly showing a propensity for deception on the part of his ex-wife and her husband and his ex-wife's statements regarding "getting even."

As stated above, these allegations were brought before the trial court in conjunction with Relator's sentencing. By pleading guilty, Relator waived any right he may have had to question the merits of the allegations against him. Relator was appropriately and adequately Boykinized prior to entering his guilty pleas and indicated to the trial court that he knew and understood his rights, including the right to call and cross-examine witnesses and that he was voluntarily waiving them. Relator also confirmed that his counsel had answered all of his questions about the case and signed a Waiver of Rights form, indicating that he was satisfied with the way his attorney had handled his case up to that point.

Relator's guilty pleas preclude him from challenging the merits of the underlying case against him unless he can prove that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. See *State v. Crosby,* 338 So.2d 584 (La. 1996); *State v. Lemon,* 05-567, 05-568 (La. App. 5 Cir. 2/14/06), 923 So.2d 794; *State v. Bourgeois,* 406 So.2d 550, 552 (La. 1981); *State v. Lewis,* 01-490 (La. App. 5 Cir. 10/30/01), 800 So.2d 1032, 1035; *Hill v. Lockhart*, 474 U.S. at 59 ("[I]n order to satisfy [*Strickland's*] 'prejudice' requirement, the defendant 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.") Where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on

whether the affirmative defense likely would have succeeded at trial or would likely have resulted in the defendant receiving a lesser sentence. *Id.*

La. C.Cr.P. art. 930.4(B) provides that a petitioner is precluded from obtaining relief by way of an APCR, based on an issue or a claim of which he had knowledge and inexcusably failed to raise at trial. Here, Relator had knowledge of the "contentious" child custody proceedings all along and, in fact, raised this issue in his sentencing hearing. Relator failed to raise these issues prior to pleading guilty. Further, Relator has not demonstrated prejudice, as required by *Strickland* and *Lockhart.* Only three of the twenty-nine counts of criminal conduct against the defendant involved his ex-wife's daughter. The information relative to the "contentious" child custody hearing, his ex-wife's deceptive personality traits and her testimony relative to "getting even," would not have served as a viable defense to the numerous other counts involving other victims unrelated to Relator's ex-wife.

Accordingly, we find, as did the district court, that Relator has not demonstrated that his counsel was ineffective for allegedly failing to investigate the facts surrounding this custody proceeding.

Relator's Third Claim

Finally, Relator contends that his counsel was ineffective in that counsel failed to file a motion to reconsider his sentence, thus, preventing him from challenging his sentences on appeal. The record reflects that Relator's counsel orally moved to reconsider Relator's sentences but does not reflect that counsel ever followed up by filing a written motion to reconsider sentence and having it set for hearing.

This Court has held that "the mere failure to file a motion to reconsider sentence does not in and of itself constitute ineffective assistance of counsel." *Casimer*, 113 So.3d at 1142, citing, *State v. Fairley*, 02-168 (La. App. 5 Cir.

6/26/02), 822 So.2d 812, 816. A defendant must also "show a reasonable probability that, but for counsel's error, his sentence would have been different." *Id.*

In this case, Relator pled guilty to twenty-nine counts of sexual offenses, involving multiple victims, including two counts of sexual battery with juveniles under the age of 13 (La. R.S. 14:43.1) and two counts of sexual molestation of juveniles under the age of 13 (La. R.S. 14:43.2). He was sentenced to 44 years on each of those counts, far less than his maximum exposure on each of them, which was 99 years. Further, his sentences on all 29 counts were made to run concurrently with one another. Considering these facts, and given the comments of the trial judge made immediately prior to imposing sentence on Relator, it is inconceivable that Relator's sentences would have been reduced had his counsel filed a motion to reconsider his sentences. We find, as did the district court, that Relator failed to meet his burden of proving ineffective assistance of counsel on the ground that his counsel failed to file a motion to reconsider his sentences.

For the reasons stated above, Relator's Application for Supervisory Writs is denied.

Gretna, Louisiana, this 27th day of June, 2025.

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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 **06/27/2025** 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:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-KH-126

E-NOTIFIED
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No Attorney(s) were ENOTIFIED

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