

STATE OF LOUISIANA

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NO. 2014-KA-0408

VERSUS

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COURT OF APPEAL

KENDRICK BOYD

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 491-628, SECTION "H"
Honorable Camille Buras, Judge

Judge Tiffany G. Chase

(Court composed of Judge Rosemary Ledet, Judge Paula A. Brown, Judge Tiffany G. Chase)

ON APPLICATION FOR REHEARING

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**APPLICATION FOR REHEARING DENIED
SEPTEMBER 12, 2018**

On application for rehearing, Kendrick Boyd (hereinafter “Mr. Boyd”) reurges his previous assignments of error. Specifically, that his sentence was excessive and he received ineffective assistance of counsel at sentencing. On rehearing, Mr. Boyd asserts two new arguments. Namely that he received ineffective assistance of counsel at the evidentiary hearing held on August 24, 2017; and this Court failed to rule on his motion to file supplemental brief and fix new briefing schedule.

In *State v. Boyd*, 2014-0408 (La.App. 4 Cir. 2/11/15), 164 So.3d 259, we remanded the matter for an evidentiary hearing regarding Mr. Boyd’s ineffective assistance of counsel claim and retained jurisdiction of the case. The evidentiary hearing was held on August 24, 2017. On remand, the trial court conducted an evidentiary hearing and concluded that trial counsel’s representation of Mr. Boyd was not ineffective. Mr. Boyd filed a motion to supplement the record following remand and a motion to file supplemental brief and fix new briefing schedule on November 13, 2017. On November 27, 2017, we granted Mr. Boyd’s motion to supplement the record ordering the record supplemented with the following: (1) the transcript and minute entry of the hearing held on August 24, 2017; (2) all

exhibits submitted by the defense and the State in regards to that hearing and; (3) the written judgment dated October 16, 2017. The record was supplemented with the requested documentation on various dates; specifically, February 16, 2018, June 26, 2018 and June 27, 2018. After supplementation of the record was complete, this Court issued its opinion on July 25, 2018, affirming Mr. Boyd's sentence finding that it is not excessive and he did not receive ineffective assistance of counsel at sentencing. For the following reasons, we deny the application for rehearing.

Mr. Boyd asserts that we should reconsider our opinion of July 25, 2018 which affirmed his sentence and the trial court's ruling on his ineffective assistance of counsel claim. We held Mr. Boyd was sentenced within the statutory guidelines and found no error in the trial court's finding that Mr. Boyd had adequate representation at sentencing. As such, rehearing on these issues is not warranted.

Mr. Boyd next asserts that rehearing is warranted in order for this Court to consider his new claim of ineffective assistance of counsel at the August 24, 2017 hearing. "As a general rule claims of ineffective assistance of counsel are more properly raised by application for post-conviction relief in the trial court where a full evidentiary hearing may be conducted if warranted." *State v. Howard*, 1998-0064, p. 15 (La. 4/23/99), 751 So.2d 783, 802 (citations omitted). Mr. Boyd contends this is his only opportunity to raise this claim and relies on our previous opinion in *State v. Boyd*, 2014-0408 at p. 8, 164 So.3d at 264, that ineffective assistance of counsel claims cannot be raised in post-conviction proceedings. His reliance on our previous opinion in *Boyd* is misplaced as his ineffective assistance of counsel claim at that time dealt with representation at sentencing. This Court specifically opined that ineffective assistance of counsel claims, at sentencing,

were not cognizable in post-conviction proceedings. *Id.* Mr. Boyd's new claim involves ineffective assistance of counsel at the evidentiary hearing conducted on remand. We find his claim would be more properly raised by application for post-conviction relief in the trial court where, if necessary, a full evidentiary hearing can be conducted. *State v. Howard*, 98-0064, p. 15 (La. 4/23/99), 751 So.2d 783, 802.

Lastly, Mr. Boyd asserts this Court erred in failing to rule on his motion for leave to file supplemental brief and fix new briefing schedule prior to rendering our opinion. It is well settled that appellate courts render decisions based upon the record on appeal, which includes pleadings, court minutes, transcripts, judgments and other rulings. *Bd. of Directors of Indus. Dev. Bd. of City of New Orleans v. Taxpayers, Prop. Owners, Citizens of City of New Orleans*, 2003-0827, p. 4 (La.App. 4 Cir. 5/29/03), 848 So.2d 733, 737; *See* La. C.C.P. art. 2164. Briefs are not considered part of the record on appeal. *State in the Interest of Solomon*, 1995-0638, p. 6 (La.App. 4 Cir. 3/27/96), 672 So.2d 1039, 1042. Although Mr. Boyd sought to file a supplemental brief, his motion fails to adequately demonstrate a need for supplementation. His motion to file supplemental brief and motion to supplement the record both articulate identical requests regarding documentation needed for a complete record. Once the record was supplemented with the requested documentation it was complete and sufficient for this Court to render an opinion. As briefs are not considered part of the record on appeal, a supplemental brief could not have been utilized in the rendition of our opinion. Additionally, "[i]t is true as a general rule that where a judgment is silent with respect to any demand which was an issue in the case under the pleadings such silence constitutes an absolute rejection of such demand." *Sun Financial Co, Inc. v. Jackson*, 525 So.2d 532, 533 (La. 1988). Therefore, once our opinion in this matter was issued,

Mr. Boyd's motion for leave to file supplemental brief and fix new briefing schedule was deemed denied.

For the foregoing reasons, the application for rehearing is denied.

APPLICATION FOR REHEARING DENIED