

11/15/04 “See News Release 085 for any concurrences and/or dissents.”

SUPREME COURT OF LOUISIANA

No. 2004-K-1080

STATE OF LOUISIANA

VERSUS

TRACY EUGENE

**ON APPLICATION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL, FIFTH CIRCUIT
PARISH OF JEFFERSON**

CALOGERO, Chief Justice, concurs in the denial of the writ application and assigns reasons.

Although the application is untimely as a matter of La. S.Ct. Rule X, § 5(a), and the court of appeal’s decision is therefore final on direct review, State v. Matthews, 02-1121 (La. 3/25/04), 855 So. 2d 740, this court has the authority to review the merits of a defendant’s constitutional claims because Louisiana law governing collateral attack on a final conviction provides a narrow exception to the finality of claims fully litigated on direct appeal. See La. C.Cr.P. art 930.4(A) (“Unless required in the interest of justice, any claim for [post-conviction] relief which was fully litigated in any appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.”). In this case, a review of the merits reveals no error in the court of appeal opinion which might have prompted this court in the interest of justice to consider the application as one seeking post-conviction review of constitutional claims previously rejected by the court of appeal on direct review. Cf. State v. Jacobs, 504 So. 2d 817, 819, n.1 (La. 1987) (“Since the request for review of the intermediate court’s judgment was untimely, we treated the filing as an application for post-conviction relief . . . grant[ing] the application in order to provide further review of a seemingly meritorious claim.”). Accordingly, the writ application is properly denied.