

SUPREME COURT OF LOUISIANA

No. 15-KP-2197

STATE OF LOUISIANA

v.

TRENT LYONS

**ON SUPERVISORY WRITS TO THE FIFTH CIRCUIT
COURT OF APPEAL, PARISH OF JEFFERSON**

PER CURIAM:

Denied. Relator fails to show he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and fails to show the state withheld evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). His remaining claims are repetitive and/or unsupported. La.C.Cr.P. art. 930.2; La.C.Cr.P. art. 930.4. We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive

application applies, relator has exhausted his right to state collateral review. The District Court is ordered to record a minute entry consistent with this per curiam.

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 12-859

STATE OF LOUISIANA

DIVISION "M"

W.F.P.S.O.
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AUG 28 2015

W.F.P.S.O.

VERSUS

FILED: 8-2475

TRENT LYONS

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DEPUTY CLERK

ORDER

This matter comes before the court on petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED MARCH 16, 2015, AND STATE'S RESPONSE, STAMPED AS FILED JUNE 29, 2015.

Petitioner was convicted of LSA-R.S. 14:30.1, relative to second degree murder, and on January 14, 2013, the court sentenced him to life imprisonment at hard labor. The Fifth Circuit Court of Appeal affirmed his conviction and sentence. *State v. Lyons*, (La. App. 5 Cir. 1/31/14) 134 So.3d 36, writ denied, *State ex rel. Lyons v. State*, (La. 11/7/14) 152 So.3d 170.

Petitioner filed an application for post-conviction relief claiming the following:

1. Ineffective assistance of trial counsel.
2. Court erred in denying defendant to present a defense in self-defense, to present victim's violent propensities and overt acts to defendant.
3. Court erred in violating confrontation clause in limiting trial counsel's cross-examination of State's witnesses.
4. Court erred in findings of LSA-R.S. 14:30.1, guilty as charged, in spite of instructions to the court, of insufficient evidence.
5. Violation of *Brady*, with failure to disclose material evidence, perjured testimony, prosecutorial misconduct.
6. Court erred in denial of Motion for Continuance and Motion for New Trial.
7. Court erred in not resolving and redressing the issue of mitigating evidence lost.

Claim #1

Petitioner claims ineffective assistance of counsel for counsel's failure to file pre-trial motions, to consult investigative facts, failure to cross-examine State's key witnesses, failure to impeach witnesses, failure to present facts of self-defense. Petitioner also claims that appellate counsel was ineffective in failing to raise claims on direct appeal concerning right to present defense, court erred in limiting cross-exam, counsel's deficiency due to illness, and failure to prepare.

It is clear that the petitioner has a Sixth Amendment right to effective legal counsel. Under the well-known standard set out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and *State v. Washington*, 491 So.2d 1337 (La.1986), a conviction must be reversed if the defendant proves (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect. *State v. Legrand*, 2002-1462 (La.12/3/03), 864 So.2d 89.

To be successful in arguing a claim of ineffective assistance of counsel, a post-conviction petitioner must prove deficient performance to the point that counsel is not functioning as counsel within the meaning of the Sixth Amendment. A petitioner must also prove actual prejudice to the point that the results of the trial cannot be trusted. It is absolutely essential that both prongs of the *Strickland* test must be established before relief will be granted by a reviewing court.

Furthermore, there is a strong presumption that counsel's performance is within the wide range of effective representation. Effective counsel, however, does not mean errorless counsel and the reviewing court does not judge counsel's performance with the distorting benefits of hindsight, but rather determines whether counsel was reasonably likely to render effective assistance. *State v. Soler*, 93-1042 (La.App. 5 Cir. 4/26/94), 636 So.2d 1069, 1075.

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Mindful of controlling federal and state jurisprudence, this court now turns to the specific claims of ineffective assistance made in the instant application and argued in the petitioner's memorandum in support.

Failure to fire pre-trial motions

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner does not state which motions counsel failed to file, or how he was prejudiced. The court finds this claim speculative and conclusory. Petitioner fails to meet the standard of *Strickland*. On the showing made, this claim will be denied.

Failure to investigate facts

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner fails to provide what further investigation or meetings with his attorney would render. The court finds this claim conclusory and speculative. Petitioner fails to meet the standard of *Strickland*. On the showing made, this claim will be denied.

Failure to effectively cross-examine witness regarding victim as aggressor

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner does not explain how counsel did not adequately cross examine the witness, Desmond Parker. The State points out in its response that defense counsel brought out several specific examples of the victim being aggressive in cross-examination. Petitioner fails to provide how counsel was deficient, and does not prove prejudice. Petitioner's claim is conclusory, and fails to meet the standard of *Strickland*. On the showing made, this claim will be denied.

Impeachment of witness

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner fails to provide any facts or evidence for this claim. Petitioner fails to provide how counsel was deficient in cross-examining Gary, or how he was prejudiced. Petitioner fails to meet the standard of *Strickland*. On the showing made, this claim will be denied.

Failure to present facts and evidence regarding self-defense

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner's allegation is conclusory, and he does not provide any facts or evidence in evidence in support. Petitioner fails to meet the standard of *Strickland*. On the showing made, this claim will be denied.

Appellate counsel's failure to raise claims on appeal

In reviewing claims of ineffective assistance of counsel on direct appeal, the Supreme Court of the United States has expressly observed that appellate counsel "need not advance every argument, regardless of merit, urged by the defendant. *Evitts v. Lucey*, 469 U.S. 387, 394 (1985). The Court gives great deference to professional appellate strategy and applauds counsel for "winnowing out weaker arguments on appeal and focusing on one central issue if possible, and at most a few key issues. *Jones v. Barnes*, 463 U.S. 745 (1983). This is true even where the weaker arguments have merit. *Id.* at 751-2.

When the claim of ineffective assistance of appellate counsel is based on failure to raise the issue on appeal, the prejudice prong of the *Strickland* test requires the petitioner to establish that the appellate court would have granted relief, had the issue been raised. *United States v. Phillips*, 210 F.3d 345, 350 (5 Cir. 2000).

The court finds no merit to petitioner's claims of ineffective appellate counsel. The court finds petitioner's allegations speculative and conclusory, as petitioner fails to prove any claims that appellate counsel should have presented on appeal, and that would have changed the outcome and caused the appellate court to grant relief. On the showing made, this relief as to this claim will be denied.

Claim #2 – Trial court erred in denying defendant to present a defense in self-defense, to present victim's violent propensities and overt acts to defendant.

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). As the State points out in its response, petitioner references a portion of the transcript describing the victim's violence with the witness's mother, and not of the incident resulting in the charged offense. This is not relevant to the case at hand. Petitioner fails to show how counsel was prevented from presenting overt, hostile or violent acts of the victim towards the defendant.

Furthermore, the record, as well as the appellate decision, reflects that defense counsel did in fact present evidence supporting the defense's theory of self-defense. The court finds no merit to this claim.

Claim #3 – Trial court erred in violating confrontation clause in limiting trial counsel's cross-examination of State's witnesses.

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner claims that the trial court erred in limiting defense counsel's cross-

examination of Desmond Parker in regards to the victim's violence and overt acts. However, as the State points out, the portions of the transcript which are referenced by petitioner refer to the testimony of Warren Mosely, and not Desmond Parker. Petitioner fails to provide any evidence in support of this claim, and fails to show any prejudice. On the showing made, this claim will be denied.

Claim #4 – Insufficient evidence

Petitioner claims that the court erred in its finding defendant guilty as charged, despite instructions of self-defense. As the State points out in its response, the State provided evidence to negate defendant's claim of self-defense beyond a reasonable doubt. The jury heard from three eye-witnesses of the incident. The jury heard testimony that the victim ran away after the defendant pulled out a knife, and also that the victim pulled a knife from his back pocket. However, the forensic death investigator and paramedic testified that he found a knife in the victim's pocket that was folded and closed with no blood. The jury is the ultimate finder of fact, and determines witness credibility. There was clearly sufficient evidence for the jury to reach this conclusion. The court finds no merit to this claim.

Claim #5 – Brady violation

Petitioner claims that the State failed to disclose evidence that witness Gary sought inducements for his testimony at trial. However, petitioner fails to provide any evidence in support of this claim. Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). On the showing made, this claim will be denied.

Claim #6 – Court erred in denial of Motion for Continuance and Motion for New Trial.

Petitioner fails to state with any particularity the factual basis for relief. LSA-C.Cr.P. art. 926(3). Petitioner provides no facts or evidence in support of this claim. He does not provide how a continuance would have affected the outcome, or what would have resulted with a Motion for New Trial, or what this testimony of Ashley Jordan would render. The court finds this claim speculative and conclusory. On the showing made, he is not entitled to relief.

Claim #7 – Court erred in not resolving and redressing issue of mitigating evidence lost.

Petitioner claims that he was prejudiced by the loss of the shirt he wore at the time of the murder, and had Detective Beavers not lost the shirt, and that the shirt was of significant relevance to proving self-defense. He argues that had the evidence not been lost, the outcome of the trial would have been different. The State argues that this claim is procedurally barred under LSA-C.Cr.P. art. 930.4(C), which states that if an application raises a claim which petitioner raised at the trial court and inexcusably failed to pursue on appeal, the court shall deny relief. Thus, the court finds this claim procedurally barred.

Furthermore, the court finds that the missing shirt was not as significant as petitioner claims, as petitioner had photographs taken at the law office prior to turning himself in to Jefferson Parish jail. The shirt would have merely corroborated the photographs.

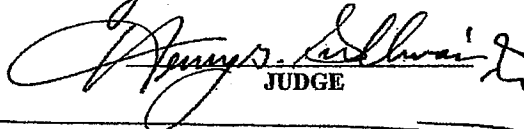
Under LSA-C.Cr.P. art. 930.2, the petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted. Petitioner fails to prove his burden as to any of his aforementioned claims.

Under LSA-C.Cr.P. art. 929, if the court determines that the factual and legal issues can be resolved based upon the application and answer, and supporting documents, the court may grant or deny relief without further proceedings.

Accordingly,

IT IS ORDERED BY THE COURT that the petitioner's application for post-conviction relief be and is hereby **DENIED**.

Gretna, Louisiana this 24 day of August, 2015.

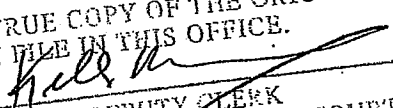

JUDGE

✓ **PLEASE SERVE:**

PETITIONER: Trent Lyons, DOC # 362566, Louisiana State Penitentiary, Angola, LA 70712

Terry Boudreux, Anne Wallis, District Attorney's Office, 200 Derbigny St., Gretna, LA 70053

#1560 ISSUED ON 8-24-15

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24TH JUDICIAL DISTRICT COURT