

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-1152**

**STATE EX REL. ROBERT WILLIAMS**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE CRIMINAL  
DISTRICT COURT, PARISH OF ORLEANS**

**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). Additionally, relator fails to show the state withheld material exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Relator's 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.

STATE OF LOUISIANA

VERSUS

ROBERT WILLIAMS

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

CASE NO.: 476-208 "F"

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JUDGMENT

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The defendant, Robert Williams, hereinafter referred to as Petitioner, has filed with this Court an *Application for Post-Conviction Relief*, *Motion to Compel Answer*, and a *Petition and Order for Writ of Habeas Corpus Ad Testificandum* on or about July 17, 2014. On or about August 1, 2014, Petitioner filed a *Motion to Supplement Pending Application for Post-Conviction Relief*. It is the ruling of this Court that Petitioner's application and motions are hereby denied.

Petitioner was charged with two counts of Armed Robbery with a Firearm in violation of La. Rev. Stat. Ann. art. §14:64.3. On November 5, 2008 after trial by jury, Petitioner was found guilty as charged as to both counts. On December 4, 2008, Petitioner was sentenced, as to both counts, to ninety-nine (99) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of sentence. Counts one and two were to run concurrent with each other and Petitioner was given credit for time served. On or about November 24, 2010, the Louisiana Court of Appeal, Fourth Circuit affirmed Petitioner's conviction. The sentence was vacated and the matter was remanded to this Court for resentencing. See *State v. Williams*, 2010 WL 8972035 (La. App. 4 Cir. 2010).

As a result, on August 26, 2011, Petitioner was resentenced to as to count one to ninety-four (94) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of sentence. As to count two—the firearm enhancement—Petitioner was sentenced to five (5) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of sentence. Counts one and two were to run consecutive with each other. The Louisiana Supreme Court denied writs in case number 2010-KO-2837. However, in *State v. Williams*, 108 So.3d 319 (La. App. 4 Cir. 2013), the Louisiana Court of Appeal, Fourth Circuit affirmed Petitioner's conviction, but vacated and remanded the matter to this Court for resentencing again. Therefore, on March 22, 2013, Petitioner appeared for resentencing. As to count one, Petitioner was sentenced to ninety-four (94) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of

APPENDIX

B

sentence as to La. Rev. Stat. Ann. art. §14:64. Petitioner was sentenced to five (5) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of sentence as to La. Rev. Stat. Ann. art. §14:64.3—the firearm enhancement; this sentence was to run consecutive with the sentence pursuant to La. Rev. Stat. Ann. art. §14:64.

As to count two, Petitioner was sentenced to ninety-four (94) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of sentence as to La. Rev. Stat. Ann. art. §14:64. Petitioner was sentenced to five (5) years in the Department of Corrections at hard labor without the benefit of probation, parole or suspension of sentence as to La. Rev. Stat. Ann. art. §14:64.3—the firearm enhancement; this sentence was to run consecutive with the sentence pursuant to La. Rev. Stat. Ann. art. §14:64. As to both counts, Petitioner was assessed \$35.00 in court costs to the JEF pursuant to La. Rev. Stat. Ann. art. §13:1381.4(A)(2). Counts one and two were to run concurrent with each other and Petitioner was recommended for any and all programs he qualifies for while serving his time in the Department of Corrections.

In Petitioner's application, he asserts two assignments of error: (1) ineffective assistance of counsel and (2) prosecutorial misconduct. First, Petitioner asserts that counsel was ineffective in that counsel failed to perform proper pre-trial discovery, investigation and interview of witnesses. In *State v. Seals*, 83 So.3d 285 (La. App. 5 Cir. 2011), the Court held that counsel's actions or inactions during the pre-trial process falls within the ambit of trial strategy and such assertions are conclusory. Therefore, a defendant making such an allegation cannot demonstrate that, but for counsel's alleged unprofessional conduct, the outcome of the trial would have been different. *Id.* at 328.

Also, Petitioner asserts that counsel was ineffective because he failed to present a proper defense and he was denied a fair and reasonable trial. Louisiana case law provides that the failure to call witnesses or present a defense is a reasonable trial strategy and does not render counsel ineffective. See *State v. Myers*, 888 So.2d 1002 (La. App. 4 Cir., 2004) and *State v. Monroe*, 513 So.2d 323 (La. App. 4 Cir., 1987). As a result, since Petitioner has not shown that counsel's representation fell below an objective standard of reasonableness and that but for counsel's errors, the result(s) of the trial would have been different. Thus, this claim is without merit.

Second, Petitioner asserts prosecutorial misconduct in that the State made improper, prejudicial and inflammatory comments during closing arguments. On appeal in this matter, this

issue was the fifth assignment of error and the Fourth Circuit found that the State has wide latitude in closing arguments and that the assignment had no merit. See *State v. Williams*, 2010 WL 8972035 (La.App. 4 Cir.). Louisiana Code of Criminal Procedure article 930.4(A) states "unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered". Therefore, since this claim was fully litigated in an appeal, this Court will not consider this assertion.

In Petitioner's *Motion to Supplement Pending Application for Post-Conviction Relief*, he asserts that the State threatened one of the victims to positively identify Petitioner at trial. Petitioner asserts that the State failed to disclose this information. To support his assertion, Petitioner provides an affidavit executed by the victim and points out that prior to giving his testimony, the State asked him if he was forced or promised anything in exchange for his testimony. Petitioner also attached portions of transcripts from this proceeding. However, the affidavit and pages from different transcripts do not support Petitioner's claim and he has failed to establish that there was any violation of *Brady*, *Kyles* or *Giglio* by the State.

Concerning Petitioner's *Motion to Compel Answer*, Louisiana Code of Criminal Procedure article 927(A) states, in pertinent part, that "if an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, through the district attorney in the parish in which the defendant was convicted, to file any procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days." (emphasis added). Since this Court does not find that the application alleges a claim that would entitle Petitioner to relief, this Court is not going to order the State to respond. Moreover, article 928 states "the application may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief".

Finally, since this Court has found that there is no merit to Petitioner's application, his *Petition and Order for Writ of Habeas Corpus Ad Testificandum* is moot.

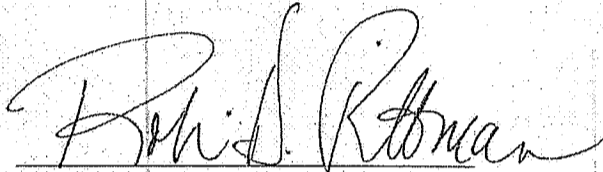
THEREFORE, IT IS THE JUDGMENT OF THIS COURT that Petitioner's *Application for Post-Conviction Relief* is without merit and is hereby denied.

FURTHERMORE, IT IS THE JUDGMENT OF THIS COURT that Petitioner's *Motion to Supplement Pending Application for Post-Conviction Relief* is without merit and is hereby denied.

FURTHERMORE, IT IS THE JUDGMENT OF THIS COURT that Petitioner's *Motion to Compel Answer* is hereby denied.

FURTHERMORE, IT IS THE JUDGMENT OF THIS COURT that Petitioner's *Petition and Order for Writ of Habeas Corpus Ad Testificandum* is moot and is hereby denied.

New Orleans, Louisiana, this the 27<sup>th</sup> day of August 2014.



JUDGE ROBIN D. PITTMAN  
Criminal District Court  
Section "F"