

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-1225**

**STATE EX REL. TERRY D. HARRIS**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE TWENTY-FOURTH  
JUDICIAL DISTRICT COURT, 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). 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 La.C.Cr.P. art. 930.4 to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in state collateral proceedings in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless relator 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. 04-6108

DIVISION "I"

STATE OF LOUISIANA

RECEIVED

VERSUS

APR 04 2014

TERRY HARRIS

EAST FELICIANA  
SHERIFF'S OFFICE  
*M. Victoria*  
DEPUTY CLERK

FILED: 326-14

ORDER

This matter comes before the Court on petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED MARCH 21, 2013, SUPPLEMENTAL CLAIMS TO PENDING APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED NOVEMBER 22, 2013, STATE'S RESPONSE, STAMPED AS FILED JANUARY 31, 2014, and MOTION TO ENFORCE, STAMPED AS FILED FEBRUARY 6, 2014.

On January 17, 2009, the petitioner was found guilty of LSA-R.S. 14:42.1, relative to forcible rape. On January 7, 2010, the court sentenced him to 38 years imprisonment at hard labor. On March 19, 2010, the court found the petitioner to be a second-felony offender and sentenced him to 76 years imprisonment at hard labor under the multiple bill. His conviction was affirmed on appeal, and remanded for re-sentencing as his sentence was indeterminate as to parole restrictions. *State v. Harris*, 11-253(La. App. 12/28/11), 83 So.3d 269; writ denied, *State ex rel. Harris v. State*, 2012-0401 (La. 8/22/12), 97 So.3d 376. On January 20, 2012, the court re-sentenced him to 76 years, without benefits of probation, parole, or suspension of sentence, under the multiple bill.

Petitioner filed an application for post-conviction relief, alleging the following claims:

1. Denial of right to a fair trial by trial court allowing a correctional officer who worked in the parish jail where defendant was housed to serve as a juror.
2. Denial of a right to a fair trial when trial court allowed pictures to go into the jury room during deliberations and counsel's failure to object.
3. Ineffective assistance of appellate counsel for failing to object to pictures going into jury room.
4. Denial of right to fair trial and due process when the District Attorney solicited false testimony from L.C. and M.B. at trial.
5. Denial of right to fair trial when the judge denied his right to present a defense by not allowing defense counsel to properly lay a foundation for impeaching statements when court denied to wait longer than 30 minutes to recall a detective to establish inconsistency of statements from victim and others victim spoke with.
6. Denial of right to fair trial when counsel failed to object to modified Allen charge when jury sent a note to the judge informing that it was "8-4" and the judge replied that it has to be 10-2.
7. Ineffective assistance of counsel in conflict between petitioner and court appointed counsel.

Claim #4a

As to petitioner's claim in #4, pertaining to soliciting false testimony, the court finds it procedurally barred from review under LSA-Cr.P. Art. 930.4(C), which states that 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. This claim (and/or issues within this claim) was previously argued in defendant's writ to the Fifth Circuit Court of Appeal. Because the Fifth Circuit Court of Appeal has ruled on this issue, the merits of the claim shall not be reviewed by this court.

Claims #1, 2, 4b, 5, and 6

As to claims #1, #2, #4 (pertaining to the State showing the witness evidence), #5, and #6, the court finds these claims procedurally barred from review. If the application raises a claim the petitioner knew about, but inexcusably failed to raise prior to conviction, the court may deny

05/27/2016 "See News Release 030 for any Concurrences and/or Dissents."

relief. LSA-C.Cr.P. art. 930.4(B). Additionally, if the application alleges a claim that was raised at trial, but was inexcusably not pursued on appeal, the court may deny relief. LSA-C.Cr.P. art. 930.4(C). The petitioner's claims are barred because they could have been, but were not, raised on appeal. Under LSA-C.Cr.P. art. 930.4, such claims should be denied.

Furthermore, the court finds that under *State ex rel. Rice v. State*, 749 So.2d 650 (La. 1999), petitioner's use of the Uniform Application satisfies the requirement of LSA-C.Cr.P. art. 930.4(F). The court finds these claims procedurally barred from review in post-conviction relief.

Claims #3, 6, and 7

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.

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

In claim #3, petitioner argues that counsel was ineffective for failure to object to photographs being taken into the jury room. The court finds no merit to this claim. As the State points out in its response, the jury is entitled to view photographic evidence introduced during trial, and there would be no basis in law for counsel to lodge an objection. The court finds no deficiency in counsel's performance, and no prejudice resulting.

In claim #6, petitioner argues that counsel was ineffective for failing to object to the modified *Allen* charge when the jury sent a note, "It's 8-4 what is that" and the judge responded that it had to be 10-2. As the State surmises in its response, the court finds that this does not constitute an impermissible *Allen* charge, as the court may instruct a twelve-person jury that ten must agree to reach a verdict. *State v. McMahon*, 391 So.2d 1120 (La. 1980). The court finds that any objection by counsel would have been without merit. The court finds no deficiency in counsel's performance, and no prejudice resulting.

In claim #7, petitioner argues that he was denied effective counsel due to a conflict, but does not state the nature of said conflict, or how he was prejudiced in that it affected the outcome of the trial. Petitioner provides no evidence or proof of any actual conflict of interest existed at the time of representation. Petitioner fails to meet his burden, as required under LSA-C.Cr.P. art. 930.2, and this claim will be denied.

Accordingly,

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

Gretna, Louisiana this 26<sup>th</sup> day of March, 2014  
*[Signature]*  
JUDGE

**PLEASE SERVE:**

Defendant: Terry Harris, DOC # 433105, Dixon Correctional Center, P.O. Box 788, Hwy 68, Jackson, LA 70748

**PLEASE ELECTRONICALLY-SERVE:**

Terry Boudreux, Gail Schlosser, District Attorney's Office, 200 Derbigny St, Gretna, LA 70053

A TRUE COPY OF THE ORIGINAL  
ON FILE IN THIS OFFICE  
*[Signature]*  
DEPUTY CLERK  
24TH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, LA

Received on \_\_\_\_\_ and on \_\_\_\_\_  
 served a true copy within \_\_\_\_\_  
 on \_\_\_\_\_  
 at the distance of \_\_\_\_\_ miles from the Courthouse  
 in the parish of East Feliciana, State of Louisiana  
 Personal \_\_\_\_\_ Domiciliary \_\_\_\_\_  
 Deputy \_\_\_\_\_  
 Cost of Service \$ \_\_\_\_\_  
 Mileage Cost \$ \_\_\_\_\_  
 Total Due \$ \_\_\_\_\_

**DUE AND DILIGENT**

After diligent search and inquiry was unable to locate  
 the within NAMED Terry Harris or  
 his/her domicile, or anyone legally authorized to  
 represent him/her. Moved to LSP

Returned: Parish of East Feliciana  
 This 9 day of April, 2014  
[Signature]  
 Deputy Sheriff  
 Parish of East Feliciana