

SUPREME COURT OF LOUISIANA

No. 15-KH-1862

STATE EX REL. BARNEY NOEL HOLT, III

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE FIRST
JUDICIAL DISTRICT COURT, PARISH OF CADDO**

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). As to the remaining claims, relator fails to satisfy his post-conviction burden of proof. La.C.Cr.P. art. 930.2. We attach hereto and make a part hereof the district court's written reasons denying relator's application.

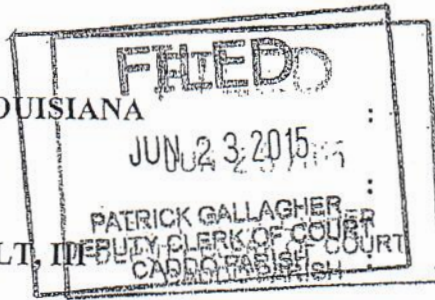
Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. 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 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

BARNEY HOLT, III



NUMBER: 274385; SECTION 5

1st JUDICIAL DISTRICT

CADDO PARISH, LOUISIANA

RULING

Currently before the Court is a "Uniform Application for Post Conviction Relief" ("Motion") filed on March 31, 2015 by Barney Holt, III ("Petitioner"). For the reasons that follow, Petitioner's Motion is **DENIED**.

On March 10, 2010, the Petitioner was convicted of possession of a Schedule II Controlled Dangerous Substance, methamphetamine, over 28 grams. The Petitioner was found to be a third felony habitual offender and was sentenced to mandatory life imprisonment. His conviction and sentence were affirmed on appeal and the Louisiana Supreme Court denied writs. *State v. Holt*, 47,734 (La. App. 2 Cir. 4/10/13), 112 So. 3d 1008, 1011 writ denied, 2013-1090 (La. 1/17/14), 130 So. 3d 339. Petitioner now raises six assignments of error.

I.

Petitioner first contends that he "was not provided a copy of his trial transcripts on direct appeal...the Appellate Court 'loaned' a copy of the record to the Legal Programs Department of the Louisiana State Prison for a limited period of time. However, Petitioner was not allowed to copy any pages or to show the transcripts to anyone, including his inmate counsel substitute." Motion p. 5. However, "[t]he petitioner in an application for post conviction relief shall have the burden of proving that relief should be granted." La. Code Crim. Proc. Ann. art. 930.2. Here, the Petitioner admits that he was allowed access to the record. His inability to allow access to his "inmate counsel substitute" is not a grounds upon which relief can or should be granted. Petitioner was not denied his right to review the record. This claim is without merit.

II.

failed to ascertain during the continuance which of the pending charges the State intended to prosecute – even though there were five (5) open charges on the docket.” *Id.* at 6.

To show that his counsel was ineffective such that it denied him of his Sixth Amendment Rights, the Petitioner must make two showings. “First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.” *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984).

“For purposes of an ineffective assistance of counsel claim, the filing of pretrial motions is squarely within the ambit of the attorney's trial strategy, and counsel is not required to engage in futility.” *State v. Pendelton*, 96-367 (La. App. 5 Cir. 5/28/97), 696 So. 2d 144, 156 (La. Ct. App.) *writ denied*, 97-1714 (La. 12/19/97), 706 So. 2d 450. Petitioner has neither sufficiently identified the merited motions that should have been filed nor has he demonstrated that had they been filed, the result of the trial would have been different. Even assuming *arguendo* that the attorneys were deficient in their performance, the Petitioner has still not shown that the error was so serious as to deprive the defendant of a fair trial. As such, this claim is without merit.

III.

In his third claim, the Petitioner argues that “[a]fter being paid for representation on appeal, Mr. Clark did not show up for a court date...[t]he trial court erroneously relieved and replaced Petitioner’s paid attorney with a court appointed attorney...[t]his

Petitioner was appointed an attorney. The Petitioner has supplied no evidence that the Petitioner had obtained funding and had retained Clark. "An indigent defendant does not have the right to have a particular attorney appointed to represent him...[a]n indigent's right to choose his counsel only extends so far as to allow the accused to retain the attorney of his choice, if he can manage to do so..." *State v. Harper*, 381 So. 2d 468, 470 (La. 1980). As such, the Petitioner has not met his burden of proving that relief should be granted. La. Code Crim. Proc. Ann. art. 930.2. This claim is without merit.

IV.

"Petitioner contends that he received ineffective assistance of counsel where trial counsel failed to challenge the search warrant in this case, as it was obtained using false statements by police...and that the 'no-knock' search violated the 14th Amendment according to the United States Supreme Court." Motion p. 7. However, the Petitioner has failed to provide any evidence in support of his contention that the affidavit contained false statements. "A defendant making a claim of ineffective assistance of counsel must identify certain acts or omissions by counsel which led to the claim; general statements and conclusory charges will not suffice." *State v. Jordan*, 35,643 (La. App. 2 Cir. 4/3/02), 813 So. 2d 1123, 1134 *writ denied*, 2002-1570 (La. 5/30/03), 845 So. 2d 1067.

Unsubstantiated assertions are insufficient as a basis to meet the Petitioner's burden under Louisiana Code of Criminal Procedure Article 930.2.

Further, an officer "need not announce his authority and purpose when to do so would imperil the arrest." La. Code Crim. Proc. Ann. art. 224. The Petitioner has not proven that the "no knock" entry was unreasonable at the trial or appellate level. Similarly, the Petitioner has not shown that the "no knock" entry was unreasonable given the circumstances. Finally, and most significantly, the Petitioner has not shown that his attorney was so deficient in not proving that the "no knock" entry was unreasonable as to deprive the Petitioner of a fair trial. This claim is without merit.

he should have been allowed to cross-examine her. This, in conjunction with "the trial testimony by proxy of Ms. Coffey via police, violated the Confrontation Clause."

Memorandum, p. 26.

"Louisiana has a strong public policy in favor of protecting the identity of confidential informants." *State v. Bernard*, 44,859 (La. App. 2 Cir. 10/28/09), 26 So. 3d 181, 191-92. "The defendant bears the burden of showing exceptional circumstances which would require divulging a confidential informant's identity; the trial court has much discretion in deciding whether disclosure is warranted." *Id.* The Petitioner has not proven that exceptional circumstances exist that would require divulging the confidential informant's identity beyond the mere assertion that "[s]he had strong motivation to point fingers..." Memorandum, p. 26.

Significantly, even if the Petitioner knew the identity of the confidential informant, the "...election to call or not to call a particular witness is a matter of trial strategy and is not, per se, evidence of ineffective assistance." *State v. Butler*, 41,985 (La. App. 2 Cir. 6/20/07), 960 So. 2d 1208, 1213 *writ denied sub nom. State ex rel. Butler v. State*, 2007-1678 (La. 5/9/08), 980 So. 2d 685. "A reviewing court must give great deference to trial counsel's judgment, tactical decisions, and trial strategy, strongly presuming he has exercised reasonable professional judgment." *Id.* In this regard, the Petitioner has not met the burden established under *Strickland*. The Petitioner has not proven that the choice to not call the person who the Petitioner *believes* is the confidential informant was not a matter of trial strategy rather than a deficient performance. Further, even if it was a deficiency, the Petitioner has not made the required showing that the counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. This claim is similarly without merit.

VI.


The Petitioner's final claim is that the "...Louisiana Legislature repealed La. R.S.

solely to the executive branch of state government." *State v. Surry*, 48,464 (La. App. 2 Cir. 8/2/13), 121 So. 3d 804, 806, *reh'g denied* (Aug. 22, 2013), *writ denied sub nom. State ex rel. Surry v. State*, 2013-2293 (La. 5/14/14), 139 So. 3d 1018. "Thus, the provisions of La. R.S. 15:308 do not render any inmate's sentence illegal within the meaning of La. C. Cr. P. arts. 881.5 or 882." *Id.* This claim is likewise without merit.

Conclusion.

Accordingly, this Motion by the Petitioner is **DENIED**. The Clerk of Court is directed to provide a copy of this Ruling to the District Attorney and the Petitioner.

Signed this 23 day of June, 2015, in Shreveport, Caddo Parish, Louisiana.



Charles G. Tutt
DISTRICT JUDGE

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