

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-2024**

**STATE EX REL. JAMARIO ALEXANDER**

**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). As to the remaining claims, relator fails to show that the District Court erred in finding them impermissibly omitted from his earlier pleadings, *see* La.C.Cr.P. art. 930.4, and also fails to carry his post-conviction burden of proof. Cf. La.C.Cr.P. art. 930.2. We attach hereto and make a part hereof the District Court's written ruling 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.

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DIVISION "N"

TWENTY FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON  
STATE OF LOUISIANA

NO. 11-4660

STATE OF LOUISIANA

VERSUS

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JAMARIO ALEXANDER

AUG 10 2015

FILED: Legal Programs Department



DEPUTY CLERK

ORDER

This matter comes before the court on petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED APRIL 6, 2015, and STATE'S RESPONSE TO POST CONVICTION APPLICATION, STAMPED AS FILED JUNE 18, 2015.

On May 10, 2012, petitioner was convicted of count #1, LSA-R.S. 14:30.1, second degree murder, and count #2, LSA-R.S. 14:95.1, convicted felon with a weapon. On May 17, 2012, the court sentenced him on count #1 to life imprisonment at hard labor, and on count #2 to 20 years imprisonment at hard labor, to be served consecutively. Petitioner's conviction and sentence was upheld on direct appeal. *State v. Alexander*, 12-KA-807 (La.App. 5 Cir., 5/16/1103), 118 So.3d 1138, writ denied, 13-KO-1354 (La. 1/10/14), 130 So.3d 320.

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

1. Abuse of discretion in Motion to Sever.
2. Ineffective assistance of counsel.
3. Violation of equal protection and 14<sup>th</sup> Amendment with allowance of non-unanimous jury verdicts, and motivation to racially discriminate.
4. Violation of right to fair trial with grand jury and petit jury pool participation and selection.

Claim #1 – Motion to Sever

The court finds this claim procedurally barred under LSA-C.Cr.P. art. 930.4(C), which states that if the application alleges a claim of which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.

Additionally, the court finds that under *State ex rel. Rice v. State*, 749 So.2d 650 (La. 1999), defendant's proper use of the Uniform Application satisfies the requirement of LSA-C.Cr.P. art. 930.4(F). The court finds this claim procedurally denied.

Claim #3 – Non-unanimous jury verdict

The court finds this claim procedurally barred under LSA-C.Cr.P. art. 930.4(B), which states that if the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.

Additionally, the court finds that under *State ex rel. Rice v. State*, 749 So.2d 650 (La. 1999), defendant's proper use of the Uniform Application satisfies the requirement of LSA-C.Cr.P. art. 930.4(F).

Claim #4 – Grand jury and petit jury selection and discrimination

**Claim #2 – Ineffective assistance of counsel**

The petitioner has a Sixth Amendment right to effective counsel. Counsel's performance will be evaluated under the well-known test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Under the standard set out in *Strickland* 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 ineffective assistance of counsel, a 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. Both prongs of the *Strickland* test must be established before relief will be granted.

There is a strong presumption that counsel's performance is within the wide range of effective representation. Effective counsel does not mean errorless counsel and the reviewing court does not judge counsel's performance based on 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.

In order to prevail on his claim of ineffective assistance of counsel, the petitioner must show both a constitutionally deficient performance and prejudice. The court will address each of petitioner claims:

**Petitioner claims that counsel was ineffective in failing to investigate the initial suspect.** The court finds this claim speculative. Petitioner fails to prove what further investigations would prove, and presents no evidence in support. Petitioner fails to prove any prejudice.

**Petitioner claims that counsel was ineffective in failing to further investigate the allegations of corruption of the cab industry as a possible defense.** Petitioner's claim is speculative, as petitioner fails to prove what such investigation would render. Petitioner fails to prove prejudice.

**Petitioner claims that appellate counsel was ineffective in failing to assign as an error the trial court's denial of motion to sever counts #1 and #2.** Petitioner does not prove that the court would have granted relief had counsel raised this claim as an assignment of error on direct appeal.

Under LSA-C.Cr.P. art 493, two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offense is charged, whether felonies or misdemeanors, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan; provided that the offenses joined must be triable by the same mode of trial. As the State surmises in its response, petitioner does not establish that the evidence of the gun found in the closet confused the jury or made the jury unable to segregate the charges and evidence. The jury returned two separate verdicts. Petitioner fails to present any evidence of how he would have been successful had this issue been raised on appeal. On the showing made, petitioner is not entitled to relief, as he fails to meet the requirements or burden established in *Strickland*.

**Petitioner claims that counsel was ineffective in failing to request a gun powder residue test on the vehicle and on clothing introduced into evidence.** Petitioner fails to prove what such gun powder residue tests would prove. Petitioner does not prove that such tests would exonerate him, or overturn his conviction. Petitioner fails to prove prejudice.

**Petitioner claims that counsel was ineffective in failing to request crime scene expert to rebut the State's theory as to the sequence of events.** Petitioner fails to provide any information, facts, or evidence as to what such expert would provide. The court finds petitioner's claim speculative and conclusory. Petitioner fails to prove prejudice.

**Petitioner claims that counsel was ineffective in failing to investigate the firearm**

**Petitioner argues the cumulative effect of all ineffective assistance of counsel claims.** The court has addressed each of the individual claims. The court finds no merit in this claim. Louisiana jurisprudence has repeatedly denied cumulative error arguments. In *State v. Rochon*, 98-717 (La. App. 5 Cir. 3/10/99), 733 So.2d 624, the Fifth Circuit Court of Appeal rejected cumulative error argument:

The combined effect of assignments of error, none of which warrant reversal, do not deprive a defendant of his right to a constitutionally fair trial. See *State v. Strickland*, 94-0025 (La.11/1/96), 683 So.2d 218, 239, and the cases cited therein. As all of defendant's other assignments have been fully addressed herein, defendant presents nothing new for this Court to review by this assignment of error. A defendant is not entitled to a perfect trial, only a fair one. *Id.* We have thoroughly reviewed the record before us and have determined that defendant received a constitutionally fair trial. Accordingly, this assignment is without merit.

*State v. Rochon*, pp. 14-15, 733 So.2d at 633.

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. The petitioner has not presented sufficient evidence in support of any of these claims, and thus has not met his burden.

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 and accompanying motions be and is hereby **DENIED**.

Gretna, Louisiana this 18 day of July, 2015.

  
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JUDGE

S/STEPHEN D. ENRIGHT, JR.

PLEASE SERVE:

Defendant: Jamario Alexander, DOC # 492058, Louisiana State Penitentiary, Angola, LA 70712

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