

SUPREME COURT OF LOUISIANA

No. 16-KH-0542

STATE EX REL. BERTRAM BAKER

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE THIRTY-SECOND
JUDICIAL DISTRICT COURT, PARISH OF TERREBONNE**

PER CURIAM:

Denied. The claim of insufficient evidence is repetitive. La.C.Cr.P. art. 930.4. In addition, 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 relief.

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.

DUPLICATE

RESPONSE TO REQUEST
RESPONSE TO REQUEST

16 KH 542

SUPREME COURT
OF LOUISIANA

43
STATE OF LOUISIANA

32ND JUDICIAL DISTRICT COURT

VS. NO. 505,623 "B"

PARISH OF TERREBONNE

BERTRAM BAKER

STATE OF LOUISIANA

2016 MAR 29

DENIAL OF REQUEST FOR POSTCONVICTION RELIEF

Defendant, Bertram Baker, was found guilty of aggravated rape of his daughter on September 29, 2009 after a two (2) day jury trial. His conviction was affirmed by the First Circuit Court of Appeal on November 9, 2011 in case No. 2011-KA-0528.

Considering defendant's motions for postconviction relief and the state's response, the Court dismisses and denies defendant's claims making the following findings of fact and law:

1. All issues before the Court can be resolved on the entirety of the record without the presence of the defendant and without the necessity of further proceedings (La.C.Cr.P. Art. 929);
2. The issue of insufficiency of evidence was fully litigated on appeal. The decision of the First Circuit Court of Appeal affirming defendant's conviction is entitled to a presumption of correctness (La.C.Cr.P. Art. 930.4). This claim is dismissed.
3. Defendant claims that he was denied the right to testify. At no time did the defendant make his desire to testify known to the court. A defendant's unsupported claim that he wanted to testify is insufficient to rebut the presumption that the defendant voluntarily waived his right to testify. Defendant has failed to meet his burden of proof on this issue. State v. Hampton, 818 So.2d 720 (La. 3/22/02). This claim is denied.
4. Defendant claims ineffective assistance of counsel as a result of the following:
 - a) Failure of trial counsel to conduct pretrial investigation;
 - b) Defense counsel denied defendant the right to testify; and
 - c) Failure to request special jury instructions concerning a mandatory life sentence upon conviction of aggravated rape.

INPUT BY: RB

8/04/2017 "See News Release 039 for any Concurrences and/or Dissents."

In addition to the reasons given in paragraph three (3), the above claims are denied. Defendant has failed to state any facts which support the above claims. He has not shown how he was prejudiced or how the outcome of the trial would have changed.

These claims do not meet the requirements of Strickland v. Washington 466U.S. 668, 104 S.Ct. 2025 (1984) and are denied.

Further, there were no objections at trial to the above claims. These are also claims of trial error which cannot be raised on postconviction application (State v. Parker 711 So. 2d 694 (La. 5/8/98)). These claims are dismissed.

- 5. Defendant's claim that he is entitled to free copies of the record is denied. La.Cr.P. Art. 930.3 sets forth the exclusive grounds for granting postconviction relief. This request is not listed as grounds for postconviction relief. Also, the request for records should be instituted in a civil proceeding pursuant to the Public Records Law (State ex rel. McKnight v. State, 742 So.2d. 894 (La. App. 1st Cir. 12/3/98)).

Considering the above, defendant's motions/claims for postconviction relief are denied and dismissed.

ORDER RENDERED AND SIGNED this 27th day of March, 2015, at Houma, Louisiana.

John R. Walker

 JOHN R. WALKER
 JUDGE - 32ND JUDICIAL DISTRICT
 DIVISION "B"

PLEASE SERVE:

Mr. Bertram Baker - DOC #530843
 General Delivery
 Louisiana State Penitentiary
 Angola, LA 70712

Terrebonne Parish District Attorney's Office

FILED

MAR 27 2015
[Signature]
 DEPUTY CLERK OF COURT
 PARISH OF TERREBONNE, LA

I HEREBY CERTIFY THAT

mailed

 has received a conformed copy of this pleading

on *4-10-15*

 Deputy Clerk of Court
 Parish of Terrebonne
 Houma, Louisiana

Page 2 of 2

SERVICE ACCEPTED - CITATION
 AND OTHER NOTICES WAIVED -
 ALL OTHER RIGHTS RESERVED

Celeste Green

 APR 10 2015
 District Attorney's Office

DUPLICATE

RESPONSE TO REQUEST
RESPONSE TO REQUEST

16 KH 542

SUPREME COURT
OF LOUISIANA

43
STATE OF LOUISIANA

32ND JUDICIAL DISTRICT COURT

VS. NO. 505,623 "B"

PARISH OF TERREBONNE

BERTRAM BAKER

STATE OF LOUISIANA

2016 MAR 29

DENIAL OF REQUEST FOR POSTCONVICTION RELIEF

Defendant, Bertram Baker, was found guilty of aggravated rape of his daughter on September 29, 2009 after a two (2) day jury trial. His conviction was affirmed by the First Circuit Court of Appeal on November 9, 2011 in case No. 2011-KA-0528.

Considering defendant's motions for postconviction relief and the state's response, the Court dismisses and denies defendant's claims making the following findings of fact and law:

1. All issues before the Court can be resolved on the entirety of the record without the presence of the defendant and without the necessity of further proceedings (La.C.Cr.P. Art. 929);
2. The issue of insufficiency of evidence was fully litigated on appeal. The decision of the First Circuit Court of Appeal affirming defendant's conviction is entitled to a presumption of correctness (La.C.Cr.P. Art. 930.4). This claim is dismissed.
3. Defendant claims that he was denied the right to testify. At no time did the defendant make his desire to testify known to the court. A defendant's unsupported claim that he wanted to testify is insufficient to rebut the presumption that the defendant voluntarily waived his right to testify. Defendant has failed to meet his burden of proof on this issue. State v. Hampton, 818 So.2d 720 (La. 3/22/02). This claim is denied.
4. Defendant claims ineffective assistance of counsel as a result of the following:
 - a) Failure of trial counsel to conduct pretrial investigation;
 - b) Defense counsel denied defendant the right to testify; and
 - c) Failure to request special jury instructions concerning a mandatory life sentence upon conviction of aggravated rape.

INPUT BY: RB

8/04/2017 "See News Release 039 for any Concurrences and/or Dissents."

In addition to the reasons given in paragraph three (3), the above claims are denied. Defendant has failed to state any facts which support the above claims. He has not shown how he was prejudiced or how the outcome of the trial would have changed.

These claims do not meet the requirements of Strickland v. Washington 466U.S. 668, 104 S.Ct. 2025 (1984) and are denied.

Further, there were no objections at trial to the above claims. These are also claims of trial error which cannot be raised on postconviction application (State v. Parker 711 So. 2d 694 (La. 5/8/98)). These claims are dismissed.

- 5. Defendant's claim that he is entitled to free copies of the record is denied. La.Cr.P. Art. 930.3 sets forth the exclusive grounds for granting postconviction relief. This request is not listed as grounds for postconviction relief. Also, the request for records should be instituted in a civil proceeding pursuant to the Public Records Law (State ex rel. McKnight v. State, 742 So.2d. 894 (La. App. 1st Cir. 12/3/98)).

Considering the above, defendant's motions/claims for postconviction relief are denied and dismissed.

ORDER RENDERED AND SIGNED this 27th day of March, 2015, at Houma, Louisiana.

John R. Walker

 JOHN R. WALKER
 JUDGE - 32ND JUDICIAL DISTRICT
 DIVISION "B"

PLEASE SERVE:

Mr. Bertram Baker - DOC #530843
 General Delivery
 Louisiana State Penitentiary
 Angola, LA 70712

Terrebonne Parish District Attorney's Office

FILED

MAR 27 2015
[Signature]
 DEPUTY CLERK OF COURT
 PARISH OF TERREBONNE, LA

I HEREBY CERTIFY THAT

mailed

 has received a conformed copy of this pleading

on *4-10-15*

 Deputy Clerk of Court
 Parish of Terrebonne
 Houma, Louisiana

Page 2 of 2

SERVICE ACCEPTED - CITATION
 AND OTHER NOTICES WAIVED -
 ALL OTHER RIGHTS RESERVED

Celeste Green

 APR 10 2015
 District Attorney's Office