

**SUPREME COURT OF LOUISIANA**

**No. 16-KP-0585**

**STATE OF LOUISIANA**

**v.**

**SIDNEY WILLIAMS, III**

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

**PER CURIAM:**

Denied. 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). As to his remaining claims, relator fails to show any factual issues of significance are sharply contested and therefore fails to show the district court abused its discretion when it resolved his claims without an evidentiary hearing. La.C.Cr.P. art. 928; La.C.Cr.P. art. 929(A); *State ex rel. Tassin v. Whitley*, 602 So.2d 721, 722–23 (La. 1992). 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  
V.  
SIDNEY WILLIAMS, III  
DOCKET NUMBER 544060

\* 32ND JUDICIAL DISTRICT COURT  
\* PARISH OF TERREBONNE  
\* STATE OF LOUISIANA  
\* DIVISION D

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REASONS FOR JUDGMENT DENYING POST CONVICTION RELIEF

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On February 25, 2010, following a three-day jury trial, the defendant Sidney Williams, III, was convicted of seven felony offenses, to wit, aggravated battery, possession with intent to distribute hydrocodone, possession with intent to distribute oxycodone, possession of propoxyphene, possession of butalbital, possession with intent to distribute cocaine, and attempting to disarm a peace officer. Subsequently, the state filed a bill of information charging the defendant as an habitual offender under La. R.S. 15:529.1 based on the February 25, 2010, convictions as well as additional prior felony convictions.

On September 1, 2010, the defendant filed a motion seeking to quash the habitual offender bill of information. The motion became moot when the state thereafter abandoned the habitual offender proceeding, and the defendant was sentenced on December 6, 2010, for the original convictions of February 25, 2010.

For the convictions of aggravated battery, possession with intent to distribute hydrocodone, and possession with intent to distribute oxycodone, the court sentenced the defendant to three concurrent terms of imprisonment at hard labor for ten years.

For the convictions of possession of propoxyphene and possession of butalbital, the court sentenced the defendant to two concurrent terms of imprisonment at hard labor for five years.

For the conviction of possession with intent to distribute cocaine, the court sentenced the defendant to thirty years at hard labor. The court ordered that the first two years of the sentence were to be served without benefit of probation, parole, or suspension of sentence.

Finally, for the conviction of attempting to disarm a peace officer, the court sentenced the defendant to two and one-half years at hard labor.

The court ordered that all the sentences described above, except as otherwise indicated, were to be served concurrently with each other and with credit for any time served by the defendant since the date of his arrest on February 17, 2009.

On April 26, 2013, the Louisiana First Circuit Court of Appeal affirmed the defendant's convictions and sentences. On December 2, 2013, the Louisiana Supreme Court vacated the defendant's conviction and five-year sentence for possession of butalbital, but otherwise declined to grant writs to review the defendant's remaining convictions and sentences, thus rendering the defendant's remaining convictions and sentences final on that day.

On February 26, 2015, the defendant filed an application for post conviction relief and the court ordered the custodian of the defendant, through the Terrebonne Parish District Attorney's Office, to respond to the same. The state's response was filed with the clerk's office on June 5, 2015. The state has asserted no valid procedural objection to the defendant's post conviction relief application, but it does object to the relief sought by Mr. Williams.

The defendant's application for post conviction relief filed February 26, 2015, is timely.

The court has reviewed the allegations of the defendant in his application for post conviction relief, the answer of the state thereto, and the entire record of the proceedings in this court. The court is of the opinion that all material questions of fact can be properly resolved without an evidentiary hearing for the taking of testimony or other evidence. It appears that all of the factual and legal issues can be resolved based upon the record described above and that an evidentiary hearing in this case is not necessary.

The defendant's post conviction relief application

alleges three assignments of error, to wit:

(1) "The failure to disclose favorable information violated Petitioner's right to due process and principles of Brady, Napue and Giglio, because the information was material to the issue of the accused's guilt or innocence."

(2) "Petitioner's Sixth Amendment guarantee to the effective assistance of counsel, his right to present a defense and due process rights were violated when trial counsel failed to move for mistrial after the improper introduction during trial proceedings, of evidence which had been withheld from the defense-evidence which was material to the issue of Petitioner's guilt or innocence. Consequently, Petitioner was further denied the right to subject the State's case to meaningful, adversarial testing."

(3) "Trial counsel was ineffective for failing to call witnesses at trial concerning the injuries sustained by Mr. Williams, and for failing to retain a medical expert to rebut the State's theory that Mr. Williams was shot in defense."

The relevant facts of this case are summarized in the April 26, 2013, opinion of the Louisiana First Circuit Court of Appeal:

"On the evening of February 17, 2009, Trooper Brian Harding of Louisiana State Police, Troop C, was patrolling in Terrebonne Parish in a marked unit. At approximately 7:15 p.m., while traveling northbound on Louisiana Highway 315 (Bayou Dularge Road), Trooper Harding approached a Chevrolet GMC truck as it also traveled northbound. Trooper Harding noticed that the driver, later identified as the defendant, was veering off of the roadway causing the passenger side tires to cross the fog line to the shoulder of the road. Trooper Harding began to observe the defendant as he continued northbound. When defendant made a right turn to cross the Houma Navigational Canal Bridge and stopped on the shoulder before approaching the bridge, Trooper Harding passed him. After the defendant got right back on the road behind him, Trooper Harding, suspicious, pulled onto the shoulder himself and allowed the defendant to pass ahead of him. After crossing bridge, Trooper Harding activated his police lights and DVD and audio recording device, and conducted a traffic stop in an adjacent parking lot."

"After they pulled into the parking lot, Trooper Harding exited his unit, approached the defendant's vehicle, told him to step out, and informed the defendant of his identity and the reason for the stop. Trooper Harding further requested the defendant's driver's license, insurance information, and proof of vehicle registration. The defendant immediately began to attempt to explain his erratic driving and informed the officer that his driver's license was expired. Trooper Harding used his portable communication radio to report the traffic stop and request a canine. As Trooper Harding continued to collect information and question and observe the defendant, the defendant abruptly fled into an adjacent field. Trooper Harding followed him, and a physical struggle took place. As they struggled, the defendant gained possession of Trooper Harding's taser, placed it directly to the officer's neck, and pulled the trigger. Trooper Harding used his legs to break the contact of the

taser. As Trooper Harding felt the defendant tugging his holstered handgun, Trooper Harding rolled over, kicked the defendant, drew his weapon, and shot the defendant. After the defendant fell to the ground, Trooper Harding re-holstered his handgun and was eventually able to handcuff the defendant as he continued to struggle with the officer. At that point, the backup officers began to arrive on the scene and tended to Trooper Harding and the defendant until they were taken to the hospital. The officers also secured the scene and marked several evidentiary items for collection by the Louisiana State Police Crime Laboratory personnel who arrived on the scene. Among the items were a wide assortment of tablets and a white crystalline substance."

ASSIGNMENT OF ERROR NO. 1:

In his first assignment of error, the defendant alleges that the state failed to disclose to him favorable information in its possession material to his guilt or innocence, in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and its progeny. According to the defendant, he was unarmed and posed no threat to Trooper Harding. He asserts that he was chased by the trooper and tasered "repeatedly" during the chase, as evidenced by photographs of taser bruising and the police audio recording of the chase. Contrary to all testimony presented at trial, the defendant asserts that Trooper Harding shot him in the back, not the abdomen, as he ran away from "the officer's violent confrontation." Furthermore, the defendant alleges that he had no drugs in his possession at the scene.

The defendant's memorandum filed in connection with his post conviction relief application elaborates on his view of the circumstances leading to his arrest and the trial held in this case. He claims the jury "never heard what actually happened during the trooper's confrontation" with him, and that he was "chased-down like an animal and shot in the back as he tried to escape from being killed." He repeatedly claims he was convicted on "false evidence." He alleges that the prosecution "systematically suppressed information that would have undermined the State's case and impeached the State's sole witness linking the Petitioner to the attempted first degree murder charge."

The defendant makes it clear that he does not believe the testimony of any of the state's witnesses at his trial. He claims that the state "possessed evidence that contradicted its

own theory of the case." Particularly, he alleges that "[p]hotographs of the crime scene, including narcotics allegedly strewn along the chase-path, were admitted at trial without any notice or production to the defense." In his memorandum submitted in connection with his claims, the defendant does not mention these photographs, but repeatedly reasserts that he was shot in the back, not the abdomen.

The defendant's claim based on an alleged Brady violation is without merit. The court assumes for purposes of argument only that trial counsel did not have access to the photographs prior to trial. The nine photographs referred to by the defendant were admitted into evidence as State Exhibit No. 16. The photographs purported to reflect the crime scene shortly after the police arrived to assist Trooper Harding. Brady evidence is evidence favorable to a defendant suppressed by the state which causes prejudice to the defendant. In this case, the nine photographs of the scene were offered into evidence. Even if late revelation of the evidence constitutes suppression of the evidence, the fact remains that if the evidence was unfavorable to the defendant, the rules of Brady do not apply. If the evidence was favorable to the defendant, he suffered no prejudice. In either event, the rules of Brady were not violated. The defendant has not pointed out to this court any other evidence that he believes was suppressed by the state.

Any allegation that the state in violation of the Brady rules suppressed evidence tending to show that the defendant was shot in the back, and not the abdomen, is ludicrous. The defendant certainly knew where on his body he was shot.

The court also notes that the defendant presented a Brady claim to the First Circuit Court of Appeal by way of his appeal in this matter. That court found the claim meritless. Article 930.4(A) of the Louisiana Code of Criminal Procedure provides that, unless required in the interest of justice, no claim in any application for post conviction relief shall be considered by the court if such claim was fully litigated in an appeal from the proceedings leading to the judgment of conviction

and sentence. To the extent the defendant's present claim with regard to suppression of evidence by the state was raised by him before the First Circuit Court of Appeal, this court does not believe the interests of justice require reconsideration of the same.

ASSIGNMENT OF ERROR NO. 2:

The defendant claims certain evidence against him offered at trial was withheld by the prosecution until trial. He now asserts his trial counsel was ineffective because she failed to move for a mistrial when the evidence was offered and introduced during the trial.

The evidence referred to by the defendant is described in general terms by him as "critical statements by officers responding to the scene" and "photographs taken of the scene and purportedly taken of the defendant." In his memorandum in support of this claim, the defendant again points out his allegation that he was shot in the back, not the abdomen. He accuses his treating physicians at Chabert Hospital, where he was treated for his injuries, of a "cover-up," and claims doctors performed a laparotomy on his abdomen in an effort to support the state's position that he was shot in the abdomen, not the back.

Even now, the defendant has not pointed out what statements of what witnesses were false, and in what respect photographic evidence and medical reports were, in fact, wrong. He merely thinks that his trial counsel was ineffective because she did not request a mistrial when the evidence was admitted.

Claims of ineffective assistance of counsel are reviewed under the two-part test of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.ED2d 674 (1984). In order to prevail, the defendant must show both that (1) counsel's performance was deficient and (2) he was prejudiced by the deficiency. With regard to the second element, i.e., prejudice, the defendant must show that any error was so serious as to deprive him of a fair trial or other proceeding. To carry this burden, the defendant must show that there is a reasonable probability that but for counsel's deficient performance, the result of the proceeding



would have been different.

In the absence of any explanation by the defendant as to exactly what evidence was faulty and why, the court will not declare that trial counsel's performance was deficient. Any request for a mistrial would have been denied. The defendant had an opportunity to cross-examine all witnesses and contest all evidence introduced. Even now he cannot point out exactly why any of the evidence received at trial would not and should not have been admitted.

ASSIGNMENT OF ERROR NO. 3:

In his third assignment of error the defendant claims his trial counsel was ineffective because she did not call to testify at the defendant's trial, witnesses who could have attested to the injuries suffered by Mr. William's during his encounter with Trooper Harding. He also alleges trial counsel should have presented expert medical testimony to rebut the state's claim that Trooper Harding was trying to defend himself when he shot Mr. Williams. Again, the defendant repeats his claim that he was shot in the back, not the abdomen.

This assignment of error is without merit as well. As pointed out above, in order to prevail on a claim of ineffective assistance of counsel, the defendant must show both deficient performance on the part of trial counsel, and prejudice. Even if the court assumes only for purposes of argument that trial counsel was deficient as alleged by the defendant, it is clear no prejudice occurred as a result thereof because there is no reasonable probability that but for counsel's alleged deficient performance, the result of the proceeding would have been different.

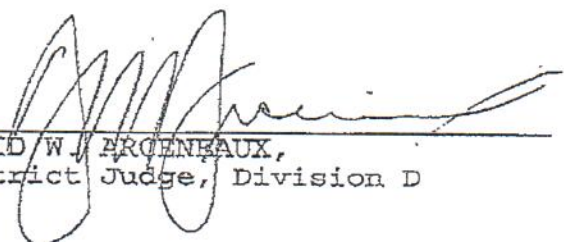
Firstly, the court notes as pointed out by the defendant in his memorandum, his treating doctors at Chabert Hospital considered his injury as a gunshot to the abdomen, not the back. Secondly, the defendant would have the court believe that because he was shot in the back, Trooper Harding intended to kill him, thus justifying his aggravated battery of Trooper Harding as self-defense. The defendant overlooks the possibility that if he

was shot in the back, Trooper Harding was justified in doing so in his own self-defense, i.e., to prevent the defendant's attempt to gain control of his gun after the defendant dry stunned him with his own taser.

Other than the alleged gunshot to his back, the defendant has not pointed to the existence of any other evidence that would remotely suggest that he did not commit the crimes for which he was convicted under the factual circumstances described by the First Circuit Court of Appeal and quoted hereinabove. Even if trial counsel's performance was deficient as claimed by the defendant, there is no reasonable probability that the result of the trial in this case would have been any different.

For all of the foregoing reasons, judgment has been entered denying the defendant all relief sought by way of his post conviction relief petition.

REASONS GIVEN this 10th day of October, 2015, in chambers at Houma, Louisiana.

  
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DAVID W. ARCENEAUX,  
District Judge, Division D

Please serve:

(1) The defendant Sidney Williams, III, through his attorney of record, Nisha Sandhu, 2125 St. Charles Avenue, New Orleans, LA 70130.

(2) The Terrebonne Parish District Attorney, Attention: Marian M. Hamilton, Assistant District Attorney, Terrebonne Parish Courthouse Annex, Second Floor, Houma, Louisiana.

**FILED**

OCT 13 2015

  
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Deputy Clerk of Court  
Parish of Terrebonne, LA