

10/09/2017 "See News Release 048 for any Concurrences and/or Dissents."

**SUPREME COURT OF LOUISIANA**

**No. 16-KH-0806**

**STATE EX REL. SAMUEL L. WILLIAMS**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE CRIMINAL  
DISTRICT COURT, PARISH OF ORLEANS**

**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). We attach hereto and make a part hereof the district court's written reasons denying relief.

STATE OF LOUISIANA

CRIMINAL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

SAMUEL WILLIAMS

NO. 443-906 SECTION "A"

FILED: 7/19/16

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DEPUTY CLERK

**RULING ON PETITIONER'S APPLICATION FOR POST CONVICTION RELIEF**

On December 4, 2003, petitioner Samuel Williams was charged by bill of indictment with one count of first degree rape in violation of La. R.S. 14:42. He was found guilty as charged by a jury on August 11, 2011 and sentenced to August 31, 2011 to a life sentence in the Department of Corrections. Petitioner filed a counseled appeal, and the Fourth Circuit affirmed petitioner's conviction and sentence. *State v. Williams*, 2012-0252 (La.App. 4 Cir. 4/17/13), 115 So.3d 600. Writs were denied by the Louisiana Supreme Court on November 22, 2013. *State v. Williams*, 2013-1141 (La. 11/22/13), 126 So.3d 477).

Petitioner filed a pro se *Application for Post Conviction Relief* on March 12, 2015 asserting multiple claims of ineffective assistance of counsel. On January 3, 2016, this Court denied six of those claims, leaving one ineffective assistance of counsel claim. In the same ruling, the state was ordered to submit its procedural objections or answer on the merits to petitioner's remaining ineffective assistance of counsel claim. The state submitted an answer on the merits, and petitioner responded.

The remaining claim for adjudication from petitioner's *Application for Post Conviction Relief* is whether petitioner's trial counsel was ineffective by failing to object to the introduction of DNA evidence presented at trial by Gina Pineda, a person who did not actually conduct the DNA test, in violation of the Confrontation Clause. Petitioner claims this evidence to be inadmissible hearsay testimony as the actual technician who conducted the DNA test did not testify at trial. He contends that the state failed to show that the technician was unavailable for trial and that he, petitioner, was not able to cross examine the analyst before trial.

The Sixth and Fourteenth Amendments to the U.S. Constitution as well as Article I, Section 13 of the Louisiana Constitution guarantee a defendant the right to effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial could be

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relied on as having produced a just result.” *Id.* at 686, 104 S.Ct. 2052. An applicant must first show that his counsel’s performance was so deficient and made errors so serious that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. a 688. Second, it must be shown that any deficiencies in counsel’s performance prejudiced the defense with those deficiencies being so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Id.* at 687. Only then shall an ineffective assistance of counsel claim be granted.

A fact finder’s credibility determination is entitled to great weight and should not be disturbed unless it is contrary to the evidence. *State v. Meyers*, 11-1145 (La.App. 4 Cir. 9/19/12), 100 So.3d 938; *State v. Johnson*, 09-0259, (La.App. 4 Cir. 9/16/09), 22 So.3d 205. Gina Pineda was accepted by this Court as an expert in the field of DNA analysis at trial. She was an assistant lab director and technical leader at Reliagene, the facility which conducted the DNA testing that was conducted on the fetal tissue sample and petitioner’s DNA. Her testimony at trial consisted of her opinion drawn from the conclusions of the DNA results. The Supreme Court in *Williams v. Illinois*, \_\_\_\_ U.S. \_\_\_\_, 132 S.Ct. 2221, 2228, 183 L.Ed.2d 89 (2012) held:

    this form of expert testimony does not violate the Confrontation Clause because that provision has no application to out-of-court statements that are not offered to prove the truth of the matter asserted...Out-of-court statements that are related by the expert solely for the purpose of explaining the assumption on which that opinion rests are not offered for their truth and thus fall outside the scope of the Confrontation Clause.

*Id.*, \_\_\_\_ U.S. at \_\_\_\_, 132 S.Ct. at 2228.

This Court does not find that the presentation of DNA evidence via Gina Pineda was violative of the Sixth Amendment’s Confrontation Clause. Ms. Pineda’s history as an expert in this Court as well as other sections of Criminal District Court is well-documented. The jury and this Court were convinced of Ms. Pineda’s credibility when she testified about her opinion regarding the DNA testing results which indicated that petitioner’s DNA profile matched that tested against the fetal tissue. Moreover, petitioner’s trial counsel was allowed to cross examine Ms. Pineda extensively at trial. That cross examination was unable to sway the jury that Ms. Pineda was wrong in her assessment of the DNA test results.

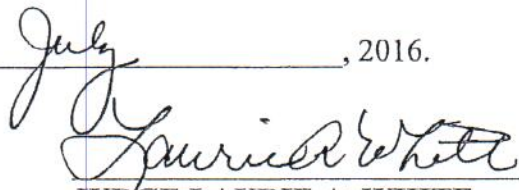
“Review of the sufficiency of the evidence as a matter of the Due Process Clause under *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), encompasses all of the evidence introduced at trial, inadmissible as well as admissible.”

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Gina Pineda

10/26/12), 108 So.3d 1159, 1161. (Emphasis added.) The Bolden court found that use of a computer printout of profiles developed from the victims' samples in that case did not constitute statements of a declarant for purposes of La. C.E. art. 801. Instead, that court found that the profiles and factual assertions made by the technicians at trial were admissible despite their hearsay character under the business or public records exceptions to the hearsay rule in La. C.E. art. 803. *Bolden*, 1162. Thus, this Court finds that the records used by Gina Pineda during her testimony were properly admitted under the hearsay exception, La. C.E. art. 803(6). Moreover, even if the records were incorrectly admitted into the evidence, the DNA evidence would not be subtracted and petitioner would still be linked and most probably the father of the fetus.

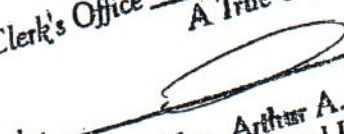
Based on the foregoing, petitioner has failed to state a claim upon which relief may be granted, and his *Application for Post Conviction Relief* is **DENIED**. This concludes this Court's review of petitioner's entire application.

New Orleans, Louisiana, this 18<sup>th</sup> day of July, 2016.

  
**JUDGE LAURIE A. WHITE**  
Criminal District Court, Section "A"

**PLEASE SERVE:**

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