

SUPREME COURT OF LOUISIANA

No. 16-KH-1894

STATE EX REL. WILLIAM T. CHISOLM

v.

STATE OF LOUISIANA

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

PER CURIAM:

Denied. 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.

exceeds these bounds, the court will not reverse a conviction unless "thoroughly convinced" that the argument influenced the jury and contributed to the verdict. See *State v. Casey, supra*; *State v. Martin*, 645 So. 2d 190, 200 (La. 10/17/94); *State v. Jarman*, 445 So. 2d 1184, 1188 (La. 1984); *State v. Dupre*, 408 So. 2d 1229, 1234 (La. 1982).

The Petitioner has failed to show that the statement in question influenced the jury and contributed to the verdict, and fails to meet his burden of proving that relief should be granted. La. C. Cr. P. 930.2.

The Petitioner next claims that the trial court erred in denying his motion to suppress his confession that was "involuntary, unintelligently, and not knowingly made." Specifically that Detective Jack Miller, of the Shreveport Police Department, did not advise him of his Miranda rights. The Petitioner was questioned by Detective Miller on September 29, 2011 at Caddo Correctional Center.

Detective Miller recorded the interview in its entirety. A transcript of the interview has been provided to the Court. Detective Miller did in fact read the Petitioner his Miranda rights, and the Petitioner agreed to waive his rights. The trial court was correct in denying the Motion to Suppress, and therefore this claim lacks merit.

The final claim raised by Petitioner is that his appellate counsel failed to effectively represent him on direct appeal, by not raising the issue that the trial judge was biased and partial. As previously discussed the statement Petitioner claimed was made by the trial judge, was actually made by the prosecutor during his closing statement. Therefore, Petitioner cannot claim that his appellate counsel failed to raise this issue on direct appeal.

The Petitioner has also filed a supplement to his initial Motion. He raises the issue that he never should have been charged with Armed Robbery. However, in the transcript of Petitioner's interview with Detective Miller, he admitted to being armed with a pellet gun that he threw into the river after committing the robbery. The Louisiana 2nd Circuit Court of Appeals held that a gun capable of firing BB's or pellets and which possessed the capacity to inflict great bodily harm is a dangerous weapon. *State v. Woods*, 494 So. 2d 1258, 1261 (La. App. 2d Cir. 1986). The Court further found that the defendant showing his weapon to the victim, implied a threat that the weapon would be used if the victim did not comply with the defendant's demands. *Id.* The 2nd Circuit has repeatedly held that "a BB gun is a dangerous weapon, i.e., an instrument

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