

SUPREME COURT OF LOUISIANA

No. 17-KH-0066

STATE EX REL. GREGORY REAUX

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). Relator must file any post-conviction claims relating to his St. Tammany Parish convictions in the 22nd Judicial District Court. La.C.Cr.P. art. 925. 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 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.

W. J. L. L. L.
RECEIVED

AUG 03 2016

Legal Programs Department

NO. 09-4002

TWENTY FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON
STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

GREGORY REAUX

FILED: 7/27/16

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AUG 03 2016

DIVISION M.F.P.S.O.

DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED JANUARY 26, 2016, SUPPLEMENTAL CLAIM TO POST-CONVICTION RELIEF, STAMPED AS FILED FEBRUARY 11, 2016, STATE'S RESPONSE, STAMPED AS FILED JUNE 24, 2016, AND PETITIONER'S TRAVERSE, STAMPED AS FILED JULY 13, 2016.

On July 24, 2013, the petitioner was convicted of three counts of LSA-R.S. 14:64, armed robbery. On September 4, 2013, the court sentenced him on each count to 99 years imprisonment at hard labor, to run consecutively. The Fifth Circuit Court of Appeal affirmed the convictions and sentences. *State v. Reaux*, 14-KA-215 (La. App. 5th Cir. 11/25/14), 165 So.3d 944, writ denied, 2014-K-2639 (La. 10/9/15), 178 So.3d 1000.

Petitioner now files this Application for Post-Conviction Relief, alleging the following claims:

1. Ineffective assistance of counsel for failing to object or challenge subject matter jurisdiction.
2. Prosecutorial misconduct.
3. Denial of right to testify. (supplemental claim)

Claim #1

Under the standard set out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), 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, however, 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.

Mindful of controlling jurisprudence, the court now turns to the instant application and the petitioner's memorandum in support.

Petitioner claims that trial counsel was ineffective for failing to object, file a motion to quash, or challenge the trial court's subject matter jurisdiction in relation to the attempted armed robbery occurring in St. Tammany Parish.

The court finds no merit to this claim, as petitioner was not charged, tried or convicted in this case with the attempted armed robbery charge or any charges occurring in St. Tammany Parish. All three counts included in the bill of information occurred in Jefferson Parish, and were properly tried in the appropriate venue. The court notes that petitioner was also tried and convicted of similar charges in St. Tammany, also the proper venue for those charges.

The evidence of the attempted armed robbery occurring in St. Tammany, as well as other crimes, was lawfully introduced under La. C.Cr.P. art. 720, with the State providing notice of other crimes in its *Notice of Intent to Use Evidence of Other Crimes*, filed on August 5, 2010. In a pre-trial hearing conducted on July 22 2013, the court granted the State's motion under La.C.E. 404B, allowing evidence of other crimes. Petitioner fails to prove any deficiency in counsel's performance, or any prejudice resulting.



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Furthermore, petitioner's complaints involving the convictions of charges from other jurisdictions are not properly raised in post-conviction in this case. Under La.C.Cr.P. art. 925, applications for post-conviction relief shall be filed in the parish in which petitioner was convicted. Under La.C.Cr.P. art. 926, an application for post-conviction relief shall be written petition addressed to the district court for the parish in which the petitioner was convicted.

As to petitioner's claim regarding the expert in police interrogations, the court finds this claim speculative and conclusory, and also that the issue goes to trial counsel's strategy. The Supreme Court has emphatically directed that, "in evaluating the performance of counsel, strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-691, 104 S.Ct. 2052, 80 L.Ed.2d 674. Petitioner fails to prove any deficiency in counsel's performance, or any prejudice resulting.

Claim #2

Petitioner claims that he was denied a fair trial due to prosecutorial misconduct, violating his right to due process. He claims that no judges signed affidavits for petitioner's arrest, and that the signature of Judge Fendlason was forged. Petitioner claims he was prejudiced by an illegal stop, arrest, and all that followed which would be considered "fruit of the poisonous tree."

Petitioner failed to raise this claim at trial or on appeal. This claim is procedurally barred from review in post-conviction relief as this claim should have been, but was not, raised at trial or on appeal. If the application raises a claim the petitioner knew about, but inexcusably failed to raise prior to conviction, the court may deny relief. La.C.Cr.P. art. 930.4(B). Additionally, if the application alleges a claim that was raised at trial, but was inexcusably not pursued on appeal, the court may deny relief. La.C.Cr.P. art. 930.4(C). As the State points out in its response, the petitioner's claim is barred because it could have been, but was not, raised on appeal. Under La.C.Cr.P. art. 930.4, such claims should be denied.

Additionally, the court finds that under *State ex rel. Rice v. State*, 749 So.2d 650 (La. 1999), petitioner's proper use of the Uniform Application satisfies the requirement of LSA-C.Cr.P. art. 930.4(F). Furthermore, petitioner alludes in his *Traverse* that trial counsel was ineffective for failing to object or raise this issue. However, petitioner fails to prove deficiency of counsel, or prejudice. Also, as the State points out, petitioner failed to raise this issue in his *pro se* supplemental appellate brief. The court finds this claim procedurally barred from judicial review.

Claim #3 (supplement)

Petitioner claims that counsel was ineffective for refusing to allow petitioner to testify at trial, and claims that had he been allowed to testify at trial, the outcome would have been different.

The court finds petitioner's allegation conclusory and self-serving, as petitioner fails to prove that he was not allowed to testify at trial. Petitioner does not provide evidence that his right to testify was violated. Furthermore, he fails to provide any deficient performance of counsel, or any prejudice resulting.

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 petitioner's Application for Post-Conviction relief be and is hereby **DENIED**.

Gretna, Louisiana this 27 day of July, 2018



JUDGE

PLEASE SERVE:

PRISONER: GREGORY REAUX, DOC # 574124, Louisiana State Penitentiary, Angola, LA 70712

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




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