

SUPREME COURT OF LOUISIANA

No. 17-KP-0825

STATE OF LOUISIANA

VERSUS

HENRI BROADWAY

**ON SUPERVISORY WRITS TO THE NINETEENTH JUDICIAL
DISTRICT COURT, PARISH OF EAST BATON ROUGE**

CRICHTON, J., concurring in part and dissenting in part.

The State presented overwhelming evidence of the defendant's guilt here, and I agree with the per curiam that the majority of defendant's claims lack merit. However, I disagree with the per curiam as to one claim: defendant's assertion that he received ineffective assistance of counsel in the penalty phase. Considering the performance by defense counsel, I conclude that this claim warrants more thorough examination, particularly in light of *State v. Hamilton*, 92-2639, (La. 7/1/97), 699 So. 2d 29.¹ Rather than summarily denying defendant's claim at this juncture, I would grant and docket defendant's application for the limited purpose of determining whether he received ineffective assistance of counsel in the penalty phase of this capital trial.

¹ To show that counsel rendered ineffective assistance at the penalty phase, relator must meet the standard set out by this court in *State v. Hamilton*, 92-2639, p.6 (La. 7/1/97), 699 So.2d 29, 32, and must show that counsel (1) failed to undertake a reasonable investigation which would have uncovered mitigating evidence; (2) that failing to put on available mitigating evidence was not a reasonable strategic decision; and (3) that it resulted in actual prejudice. Given counsel's tepid performance and apparently minimal investigation, I believe the claim of ineffective assistance in the penalty phase merits close scrutiny, particularly with regard to the question of prejudice.