

SUPREME COURT OF LOUISIANA

No. 2019-KP-01008

STATE OF LOUISIANA

VERSUS

KERNELL MONETTE

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

JOHNSON, C.J. would deny and assigns reasons.

I would deny the writ. The State does not show error in the district court's denial of its procedural objections.

Defendant bases his claim of ineffective assistance of counsel in part upon his apparent recent discovery of disciplinary proceedings against defense counsel, Keith A. Lewis. Mr. Lewis represented defendant at his 1999 trial for second degree murder, at which Defendant was convicted and sentenced to life in prison without parole. Soon after Defendant's conviction and life sentence, Mr. Lewis was disbarred by this Court, *see In re Lewis*, 98-2825 (La. 1/29/99), 728 So. 2d 846, and ultimately permanently disbarred, *see In re Lewis*, 03-1245 (La. 10/3/03), 856 So. 2d 1191, based upon Mr. Lewis's pattern of misconduct, failure to communicate with clients, and neglect of legal matters.

Of note, the Hearing Committee found Mr. Lewis's actions "intentional and evidenced a total disregard for the welfare of his clients." *In re Lewis*, 728 So. 2d at 848. The disciplinary proceedings were pending against Mr. Lewis at the time of Defendant's trial. And the misconduct for which Mr. Lewis was ultimately permanently disbarred began soon after Defendant's trial and conviction. It is of course possible that the proceedings against Defendant represented the one case in Mr. Lewis's career in which he was attentive, communicative, and operating

completely within the bounds of the ethical and professional guidelines. But I believe the district court correctly found that Defendant should have the opportunity to show that it was not, that Mr. Lewis's conduct in Defendant's case was consistent with his conduct in the many other matters he neglected, and that Mr. Lewis's deficient performance prejudiced Defendant.

Defendant makes specific complaints regarding acts or omissions by his trial counsel and he should be afforded a hearing at which the district court can evaluate whether the pending disciplinary proceedings impaired counsel's performance at defendant's trial, and whether the ordinary level of deference to trial counsel's strategy should be afforded to the complained-of omissions in light of the evidence now known about Mr. Lewis's pattern of neglect, inattention and misconduct. *See United States v. Mouzin*, 785 F.2d 682, 698 (9th Cir. 1986) (finding professional discipline does not create a per se rule of ineffective assistance, but discipline does indeed "flow[] from revealed incompetence or untrustworthiness or turpitude such as to deserve no client's confidence.").

Because Defendant is sentenced to life without parole, the interests of justice would be best served if Defendant was afforded the opportunity to present this evidence to the court during an evidentiary hearing. *See* La. C.Cr. P. art. 930.8(A)(1).