

STATE OF LOUISIANA

VERSUS

TIMOTHY SMITH

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

CASE NO. 491-266

SECTION 'E'

### JUDGMENT

Defendant, Timothy Smith, hereinafter referred to as Petitioner, has filed with this Court an Application for Post Conviction Relief.

In 2009, Petitioner was charged with one count of Attempted Second Degree Murder in violation of La.R.S. 14: (27)30.1. On November 9, 2010, Petitioner was found guilty by jury of attempted manslaughter. On December 17, 2010, Petitioner was sentenced to seventeen (17) years hard labor in the Department of Corrections concurrent with any other sentence now serving and with credit for time served.

In Petitioner's first assignment of error, he contends that the State failed to prove his guilt beyond a reasonable doubt. Specifically, Petitioner argues that the evidence put forth by the State was insufficient to support the charge of attempted second degree murder. A review of the record shows that this claim had been previously addressed and denied by the Fourth Circuit Court of Appeals and the Louisiana Supreme Court. *State v. Smith*, App. 4 Cir. 2013, 108 So.3d 376, 2011-0664 (La.App. 4 Cir. 1/30/13), writ denied 122 So.3d 551, 2013-0472 (La. 10/4/13). Accordingly, Petitioner's claim is without merit.

Next, Petitioner contends that he was denied his constitutional right to a fair and an impartial trial when the State utilized perjured testimony. However, Petitioner fails to show that the witness's testimony was false and that the State acted in collusion with the witness to facilitate such testimony. *State v. Broadway*, 96-2659, p. 17 (La.10/19/99), 753 So.2d 801, 814. Further, there is no reasonable likelihood that the testimony given by the State's witness would have affected the outcome of the trial. Accordingly, Petitioner's claim is without merit.

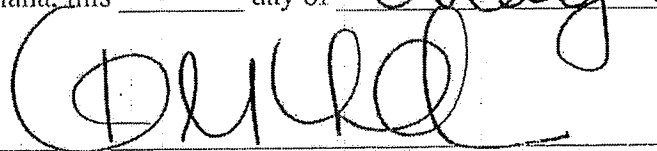
Lastly, Petitioner contends that a he was denied effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution. Specifically, Petitioner contends that trial counsel failed to file a motion to quash the bill of information, arguing that the elements of the crime charged could not be proven beyond a reasonable doubt. In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court held that 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 cannot be relied on as having produced a just result". *Id* at 699. In

particular, the defendant must show that his representation fell below an objective standard of reasonableness *and* that but for counsel's errors, the result(s) of the trial would have been different. *Id.* Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. *State v. Serigny*, 610 So.2d 857, 859-60 (La.App. 1st Cir.1992), *writ denied*, 614 So.2d 1263 (La.1993).

Here, the issue regarding whether the evidence was sufficient to support the crime charged have been previously addressed and denied by the Fourth Circuit Court of Appeals and the Louisiana Supreme Court. *State v. Smith*, App. 4 Cir. 2013, 108 So.3d 376, 2011-0664 (La.App. 4 Cir. 1/30/13), *writ denied* 122 So.3d 551, 2013-0472 (La. 10/4/13). Further, Petitioner fails to show that counsel's representation fell below an objective standard of reasonableness and that but for counsel's errors the end result would have been different. Accordingly, Petitioner's claim is without merit.

For the forgoing reasons, Petitioner's Application for Post Conviction Relief is hereby **DENIED.**

New Orleans, Louisiana, this 30<sup>th</sup> day of May, 2014.



Keva M. Landrum-Johnson  
District Court Judge  
Section E

A copy of this ruling to be sent to defendant at the following address:

Timothy Smith #112831  
General Delivery  
Elayn Hunt Correctional Center  
P.O. Box 174  
St. Gabriel, Louisiana 70776

Mailed to Defendant on: 5/30/14

by: [Signature]

Mailed to the 4<sup>th</sup> Circuit on:

by: