

SUPREME COURT OF LOUISIANA

No. 15-KH-1708

STATE EX REL. TRIVENSKEY ODOM

v.

STATE OF LOUISIANA

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

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's claim that he did not voluntarily waive his right to a trial by jury is unsupported. La.C.Cr.P. art. 930.2. We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

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 La.C.Cr.P. art. 930.4 to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in state collateral proceedings 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.

5-14-15 BW

EXHIBIT # 1

FILED

STATE OF LOUISIANA MAY 14 2015 NUMBER 298,449 (SECTION 1)
 VERSUS [Signature] FIRST JUDICIAL DISTRICT COURT
 TRIVENSKEY ODOM E. WASHINGTON
 DEPUTY CLERK OF COURT CADDOPARISH, LOUISIANA

ORDER

Petitioner filed a writ of mandamus with the Second Circuit Court of Appeal seeking to compel the District Court to rule on his Application for Post-Conviction Relief and Request for Production of Documents allegedly filed on January 17, 2014. The Second Circuit Court of Appeal granted the writ and ordered the district court to enter a dispositive order in connection with the January 17, 2014 motion. The record reveals no such motion or filing dated January 17, 2014. A copy of a letter from the Deputy Clerk of Court dated September 16, 2014 is attached hereto as Exhibit A for reference.


On September 12, 2014, Petitioner filed an Application for Post-Conviction Relief which raises claims of ineffective assistance of counsel. Particularly, Defendant accuses his trial counsel of failing to investigate his mental competency to stand trial and to request a sanity commission hearing. Additionally, Petitioner claims that, in light of his alleged mental condition, his trial counsel should have advised him to waive his right to a jury trial. Finally, Petitioner alleges that his trial counsel failed to hold the State to the burden of proving his guilt beyond a reasonable doubt.

To succeed on an ineffective assistance of counsel claim, Petitioner must first satisfy the test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner must show that counsel's performance was deficient, that the deficiency prejudiced him, and that counsel's error was so serious that it violated Petitioner's right to effective assistance of counsel as guaranteed by the Sixth Amendment of the U.S. Constitution. *Id.* at 686. The Petitioner must prove actual prejudice before relief will be granted. It is not sufficient for the Petitioner to show the error had some conceivable effect on the outcome of the proceedings. Rather, he must show that but for counsel's unprofessional errors, there is a reasonable probability the outcome would have been different. *Id.* at 693. The performance and conduct of the defense attorney must be evaluated from that counsel's perspective at the time of the occurrence. Petitioner fails to meet the requirements of the *Strickland* test because he does not demonstrate that there would have been a different outcome.

Accordingly, Petitioner's Application for Post-Conviction Relief is **DENIED**.

The Clerk of Court is directed to provide a copy of this Order to the Petitioner, the District Attorney and the Second Circuit Court of Appeal.

THUS DONE AND SIGNED in Shreveport, Caddo Parish, Louisiana, on this the 14th day of May, 2015.


Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

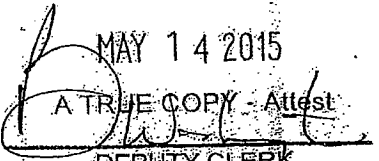
Distribution:

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Second Circuit Court of Appeal
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Shreveport, LA 71101

Trivensky Odom
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Angola, LA 70712-9818

ENDORSED FILED
B. WASHINGTON, Deputy Clerk

MAY 14 2015
A TRUE COPY - Attest

DEPUTY CLERK