

SUPREME COURT OF LOUISIANA

No. 15-KH-1031

STATE EX REL. MICHAEL PENNINGTON

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-FIRST
JUDICIAL DISTRICT COURT, PARISH OF TANGIPAHOA**

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). As to the remaining claims, relator fails to satisfy his post-conviction burden of proof. 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 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.

DA/Def

STATE OF LOUISIANA : NUMBER 03295, DIVISION "C"
VERSUS : 21ST JUDICIAL DISTRICT COURT
MICHAEL PENNINGTON : PARISH OF TANGIPAHOA
: STATE OF LOUISIANA

FILED: November 20, 2014 : DY. CLERK M. Michelle Chauv

REASONS FOR JUDGMENT

Mover was convicted of the offense of second degree murder, after trial by jury. His conviction was affirmed by the First Circuit Court of Appeal (2012-KA-0804) and writs were denied by the Louisiana Supreme Court (2013-K-0838). Thereafter, Mover has filed the present motion for post-conviction relief.

Mover's claims for relief are that his conviction was constitutionally flawed by the fact that the trial proceeded without the Court's awaiting a ruling on a writ taken on the Court's denial of his motion to suppress statements, that his counsel was ineffective in failing to object to the trial proceeding until the writ ruling on the motion to suppress, and that he was denied equal protection in that the Court failed to rule on motions to quash filed prior to the trial.

JULIANE DUFRECHE
CLERK OF COURT
TANGIPAHOA PARISH, LA
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As to the first two contentions, the primary issue raised on appeal dealt with the issue of the statement given by Mover to law enforcement, and his contention that the statement should have been suppressed. Therefore, the present argument as to the suppression is essentially mooted by the ruling of the First Circuit on appeal. Under any circumstances, the Court fails to see how any delay in the trial would have changed the outcome, based on the First Circuit's ruling.

The Court's review of its notes and the minutes indicate that the motion to quash was based upon several grounds. Mover was originally indicted for first degree murder, and one aspect of the motion to quash dealt with the allegedly cruel and unusual punishment afforded by the method of execution. A second aspect dealt with alleged legal defects in the method of allotment of capital cases under the rules of this Judicial District. Both of these grounds were mooted by the State's amendment of the charges against Mover to second degree murder on September 24, 2010, and the motion to quash the allotment method was specifically withdrawn as moot by Mover's attorney.

Mover also included in a motion to quash the composition of the jury venire, based upon the perception that pre-trial publicity would prevent Mover from being able to obtain a jury venire which

would not be prejudiced against him. That motion was denied on April 21, 2010, as premature, the Court ruling that until prospective jurors were actually questioned in voir dire, it would be impossible to merely assume that a jury could not be selected which had no prior knowledge or prejudice as to this particular case. At the same time that ruling was made, the Court ordered that it would allow a subsequent motion for change of venue, in the event that an unbiased jury could not be assembled, based upon the actual responses given in jury selection. As it eventually turned out, the jury was selected in Mover's case without any showing that the venire was poisoned by any pretrial publicity or other prejudice, and no contention as to this issue was raised thereafter on Mover's appeal.

The remaining issue raised was relative to the method of selection of the grand jury, as to racial composition, and as to the method of selection of the foreperson of the grand jury. The Court's notes reflect that this motion was also denied, but this ruling is not reflected in the minutes. Nevertheless, with respect to the contention regarding the selection process for the foreperson, it is noted that Mover was indicted well after the 1999 amendments to Article 413 of the Code of Criminal Procedure, whereby the foreperson is selected by a random drawing from the first twelve names randomly drawn from the venire, so this argument has no merit. As to alleged defects or irregularities in the method of summoning/selecting grand jurors, similar arguments have been made in this District and denied, based upon the showing made, and the Court therefore, at the present time, finds no basis to consider this as an issue for post-conviction relief. It is further noted that, even if this portion of the motion to quash was not actually denied on April 21, 2010, there was no objection raised as to this issue prior to trial. However, this ruling is made without prejudice for Mover to file a new application for post-conviction relief, upon this ground alone, with appropriate supporting documentation.

For these reasons, the application for post-conviction relief is denied.

Amite, Louisiana, this 20th day of November, 2014.



Robert H. Morrison, III
Judge, Division "C"

Please send copies and notice to:

Michael Pennington

District Attorney's Office- Patricia Parker