

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-1126**

**STATE EX REL. DEWAYNE LAKEITH JOSEPH**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE SIXTEENTH  
JUDICIAL DISTRICT COURT, PARISH OF ST. MARTIN**

**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). 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.

STATE OF LOUISIANA

VS. NO. 09-236292

DEWAYNE LAKEITH JOSEPH

16<sup>TH</sup> JUDICIAL DISTRICT COURT

PARISH OF ST. MARTIN

STATE OF LOUISIANA

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REASONS FOR JUDGMENT ON APPLICATION FOR  
POST CONVICTION RELIEF

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The Petitioner in this matter was charged on May 6, 2009 by a Bill of Indictment with First Degree Murder (La. R.S. 14:30) for the murder of his wife. The State initially sought the death penalty. However, after testing Petitioner, it was agreed by the State's expert and the defense experts that Petitioner has mental retardation. The State decided, therefore, not to seek the death penalty in this case.

Petitioner was found guilty on February 2, 2011, by a jury of First Degree Murder. He was sentenced by this Court on February 9, 2011, to serve life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Petitioner filed an appeal with the Third Circuit Court of Appeal, asserting as his sole assignment of error that the evidence adduced at his trial was insufficient to sustain his first degree murder conviction. On March 6, 2013, the Third Circuit affirmed Petitioner's conviction, finding that the jury's determination regarding specific intent was rational, and that there was sufficient evidence to support a verdict of guilty of first degree murder.

On October 25, 2013, the Louisiana Supreme Court denied Petitioner's application for a writ of certiorari and/or review.

Petitioner has now filed an Application for Post Conviction Relief, in which he is claiming ineffective assistance of counsel. According to Petitioner, his trial counsel failed to investigate every element of his mental health history, resulting in Petitioner being convicted of the charged offense of First Degree Murder (La. R.S. 14:30) instead of the responsive verdict of Manslaughter (La. R.S. 14:31.) Petitioner believes that if his trial counsel had properly and thoroughly investigated Petitioner's alleged history of mental health issues and substance abuse issues, he could have pled not guilty by reason of insanity. Petitioner further argues that his trial counsel should have presented evidence at the jury trial of the fact that he and his wife had been drinking heavily and using drugs prior to the altercation that resulted in his wife's death. Had Petitioner pled not guilty by reason of insanity, and had his trial counsel presented sufficient evidence of his mental health

issues and substance abuse issues, Petitioner believes the jury would have found him guilty of manslaughter instead of first degree murder.

In order to prove ineffective assistance of counsel, a defendant must satisfy the two-prong test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) did counsel's representation fall below the standards of reasonableness and competency as informed by the prevailing professional standards demanded of attorneys in criminal cases; and (2) is there a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different (i.e. the defendant has been prejudiced by his counsel's deficient performance). *State v. Milligan*, 28,660 (La. App. 2<sup>nd</sup> Cir. 12/11/96), 685 So.2d 1127; *State v. Jones*, 29,805 (La. App. 2<sup>nd</sup> Cir. 9/24/07), 700 So.2d 103.

Petitioner has specifically alleged that his trial counsel failed to investigate his mental health history. However, the record indicates that a complete psychological examination and an IQ test were performed on Petitioner by doctors for both the State and the defense. In fact, the initial request for such testing was made by Petitioner's defense counsel during the discovery process prior to trial. Additionally, both the State and Petitioner's counsel were in possession of all of Petitioner's medical, educational, and correctional records at least a full year before the jury trial, as is made clear by the January 7, 2010 minute entry of a status conference held before this Court. At another status conference held before this Court on July 30, 2010, the State informed the Court that all of the experts agreed that Petitioner has mental retardation and the State would therefore not be seeking the death penalty.

In the case *Hines v. Louisiana*, 102 F.Supp.2d 690, 699, (E.D.La. 2000), the court addressed the defendant's claim that his counsel was ineffective for failing to properly investigate his case:

"In order to establish counsel was rendered ineffective by virtue of a failure to investigate the case against a defendant or to discover and present evidence, a convicted defendant must do more than merely allege a failure to investigate; he must state with specificity what the investigation would have revealed, what evidence would have resulted from that investigation, and how such would have altered the outcome of the case." *Adanandus v. Johnson*, 947 F.Supp. 1021, 1038 n. 53 (W.D.Tex. 1996), *aff'd*, 114 F.3d 1181 (5<sup>th</sup> Cir. 1997)(citations omitted).

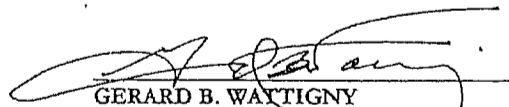
In this case, Petitioner has simply alleged that his trial counsel failed to investigate his mental health history. The record indicates otherwise. Petitioner's counsel asked for and received an order to have Petitioner tested by doctors to determine his IQ and whether he suffered from any mental issues, such as mental retardation. The record further indicates that Petitioner's counsel was in possession of all of Petitioner's medical, educational, and correctional records well before the date of the jury trial. Petitioner has not suggested any other evidence that his counsel may have uncovered

had he conducted a more comprehensive investigation. The Court therefore finds that Petitioner has not supported his claim that his trial counsel was ineffective due to a failure to investigate his case.

Petitioner further claims that his trial counsel was ineffective for failing to present evidence to the jury that Petitioner suffered from unspecified mental issues and/or substance abuse issues which contributed to him murdering his wife. Petitioner also suggests that his trial counsel should have presented evidence to the jury that Petitioner and his wife were drinking heavily and using drugs on the night of the murder. Jurisprudence has consistently held that if an alleged error falls within the ambit of trial strategy, it does not establish ineffective assistance of counsel. "The assessment of an attorney's performance requires his conduct to be evaluated from counsel's perspective at the time of the occurrence. A reviewing court must give great deference to trial counsel's judgment, tactical decisions and trial strategy, strongly presuming he has exercised reasonable professional judgment." *State v. Mitchell*, 37,916 (La. App. 2 Cir. 3/3/04), 769 So.2d 276, 287. Furthermore, the Louisiana Supreme Court stated in *State v. Brooks*, 505 So.2d 714, 724 (La. 1987), citing *Strickland v. Washington*, 466 U.S. 668 (1984), "While opinions may differ on the advisability of such a tactic, hindsight is not the proper perspective for judging the competence of counsel's trial decisions. Neither may an attorney's level of representation be determined by whether a particular strategy is successful." In this claim, Petitioner is attacking his trial counsel's trial strategy and the tactical decisions he made during the trial process. These are not grounds for a claim of ineffective assistance of counsel.

Based on the reasons given above, this Court finds that Petitioner has failed to satisfy the first prong of *Strickland v. Washington, supra*, in that he has failed to show that his trial counsel's representation fell below the standards of reasonableness and competency as informed by the prevailing professional standards demanded of attorneys in criminal cases. His application for post-conviction relief is therefor denied.

SIGNED in New Iberia, Parish of Iberia, State of Louisiana, on the 5 day of December, 2014.

  
GERARD B. WATTIGNY  
16<sup>TH</sup> JUDICIAL DISTRICT COURT