

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-1222**

**STATE EX REL. DAVONTA MITCHELL**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE NINTH  
JUDICIAL DISTRICT COURT, PARISH OF RAPIDES**

**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 remaining claims are repetitive and/or unsupported. La.C.Cr.P. art. 930.4; 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 two applications 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.

Exhibit 10

CRIMINAL DOCKET NUMBER: 302,702  
DIVISION: "D"

STATE OF LOUISIANA                      NINTH JUDICIAL DISTRICT COURT  
VERSUS    PARISH OF RAPIDES  
DEVONTA CHARLES MITCHELL                      STATE OF LOUISIANA

WRITTEN REASONS ON APPLICATION  
FOR POST-CONVICTION RELIEF

THIS MATTER is before the Court on an application for post-conviction relief filed by Devonta Charles Mitchell ("Mr. Mitchell") asserting ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution affords a defendant in every criminal trial effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 363 (1987). However, the defendant must establish: 1) that counsel's performance was deficient; and 2) the complained of deficiency prejudiced the defendant. Id. More specifically, the defendant must demonstrate that counsel's performance was deficient. This task requires a showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2061, 80 L.Ed. 2d 684 (1984). [Petitioner] must establish that counsel's acts fell beneath an objective standard of reasonable professional assistance. Gray v. Lynn, 6 F.3d 265, 268 (5<sup>th</sup> Cir. 1993)(citations omitted). This court gives great deference to counsel's assistance, strongly presuming that counsel has exercised reasonable professional judgment. Id. (quoting Ricaldy v. Proconier, 736 F.2d 203, 206 (5<sup>th</sup> Cir. 1984)). Secondly, the defendant must show that the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064. Petitioner must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Gray, 6 F.3d at 269 (quoting Strickland, 466 U.S. at 694, 104 S.Ct. at 2068). Both components of this inquiry are mixed questions of law and fact; accordingly, this Court generally must make an independent determination of whether counsel's representation passed constitutional muster. Id. at 268 (quoting Ricaldy, 736 F.2d at 206).

After reviewing the record, pleadings and transcript of this case, this Court concludes that an evidentiary hearing is not necessary. This case can be resolved based upon the application and answer, and supporting documents, including relevant transcripts available to the court.

CLAIM ONE:

"Defense counsel pursued a jury selection process which discriminated against black females and all males based upon race and sex depriving me of a jury comprised of a cross section of the community without prior consultation and my consent to an all white female jury".

This case involved a 16 year-old African American defendant and African American victims. A key issue of jury selection was whether potential jurors would accept that a 16 year-old can be tried as an adult. Defense counsel objected to the jury pool as not reflecting the racial balance of the community. The Court overruled the objection. Mr. Mitchell makes an unsupported blanket allegation that does not rise to the level of ineffective assistance of counsel.

Claim One has no merit.

CLAIM TWO:

"Defense counsel failed to move to strike the entire jury panel by holding LSA-Cr.P. art. 417(C)(2)(a) unconstitutional as applied in my case insofar only 114 of 375 jurors mailed notice of jury duty appeared resulting in under representation of

blacks and other minorities depriving me of a jury representing a cross section of the community".

Code of Criminal Procedure art. 417(C)(2)(a) is not unconstitutional. Additionally, defense counsel objected to the racial balance of the overall jury pool at trial. The presiding Judge overruled the objection. Claim Two has no merit.

CLAIM THREE:

"Rested the case without allowing me to testify that neither I nor my alleged co-defendant intended to kill Mabel Fisher when the two shots were fired directly in the air without consultation and my consent".

Mr. Mitchell chose not to testify. The following exchange occurred during the trial:

The Court:

All right, one thing I meant to ask before and he was allowed to go in - - before we came back out was have you discussed with the jury, I mean, with the defendant if he wishes to testify?

Ms. Fuller:

Um, yes, Your Honor, we discussed that.

The Court:

And after discussing ...

Ms. Fuller:

He did not want...

The Court:

...he made a decision not...

Ms. Fuller:

...not to testify.

The Court:

...to testify. Is that correct, sir?

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The evidence that the defendant was involved in the commission of an offense other than an offense for which he is on trial is only to be considered for a limited purpose. And the only reason I've allowed them to introduce evidence showing that, uh, the defendant was in a truck, um, Chevrolet truck or whatever kind of truck it was that was stolen from Alexandria was to show you why he was stopped, why he was arrested in Lafayette and brought to Alexandria. That's the only reason why that's - - y'all have probably been wondering why this guy stopped him and arrested him in Lafayette unless he told you why, so that is the only purpose that it is allowed. You cannot find the defendant guilty of this offense merely because he was riding in a truck that was stolen.

I remind you the accused is on trial only for the offenses charged and you may not find him guilty of these offenses merely because he was arrested for a different offense. And that is my instruction now and that will be my final instruction to you later also.

(Transcript, pp. 111-112)

Claim Six has no merit.

CLAIM SEVEN:

"The bills of information fail to set forth all essential elements of the crime. I was on trial for and the mens rea".

Claim Seven is not a post-conviction issue. Claim Seven has no merit.

CLAIM EIGHT:

"The State's evidence through the testimony of the victims fail to prove beyond a reasonable doubt that I committed the offenses as charged in the bills of information".

Claim Eight does not raise any post-conviction issues and has no merit.

CLAIM NINE:

"Appellate counsel was ineffective for not consulting and obtaining my consent to file what amounted to a no merit brief whereas the above claims could have been brought before the appellate courts. Additionally, review of the denial to quash the entire jury panel as raised by defense counsel".

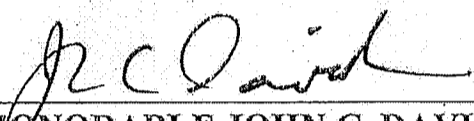
Mr. Mitchell filed a pro sé appellate brief raising every issue he could. All of

the appellate issues were resolved. Claim Nine has no merit.

**Conclusion**

After a review of the application, answer and supporting documents and transcript available to the Court, all claims in the application are denied. There is no need for an evidentiary hearing.

Written Reasons issued this 11 day of March, 2015, in Alexandria, Louisiana.

  
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**THE HONORABLE JOHN C. DAVIDSON**  
Judge, Ninth Judicial District Court

**CLERK: PLEASE SERVE:**

State of Louisiana  
Through its Attorney-of-Record:  
Mr. Michael W. Shannon  
Third Floor, 701 Murray Street  
Alexandria, LA 71301

Devonta Charles Mitchell, #583988  
Winn Correctional Center, Elm A-1  
P.O. Box 1260  
Winnfield, LA 71483-1260

Glenn G. Cortello  
Chief Public Defender  
1115 6<sup>th</sup> Street  
Alexandria, LA 71301

FILED & RECORDED  
ROBIN L. HOOPER  
CLERK OF COURT  
2015 MAR 12 AM 8:47  
BY D. Babalione  
DY. CLERK & RECORDER  
RAPIDES PARISH LA.

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STATE OF LOUISIANA, PARISH OF RAPIDES  
I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS  
A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE  
AND OF RECORD IN THIS OFFICE.  
IN FAITH, WHEREOF, WITNESS MY HAND AND SEAL OF  
OFFICE, AT ALEXANDRIA, LOUISIANA, THIS 12th  
DAY OF MARCH A.D., 20 15  
BY D. Babalione  
ROBIN L. HOOPER  
DY. CLERK OF COURT