

SUPREME COURT OF LOUISIANA

No. 15-KH-2339

STATE EX REL. TERRY L. COOLEY

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE THIRTY-SIXTH
JUDICIAL DISTRICT COURT, PARISH OF BEAUREGARD**

PER CURIAM:

Denied. On the showing made, relator presents no cognizable grounds for post-conviction relief. La.C.Cr.P. art. 930.2; La.C.Cr.P. art. 930.3. 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. CR 326-2008

TERRY L. COOLEY

FILED: *June 30, 2015*

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36TH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

PARISH OF BEAUREGARD

[Signature]
DEPUTY CLERK OF COURT

2015 JUN 30 11:12 AM
CLERK OF COURT
PARISH OF BEAUREGARD
LOUISIANA

2015 JUN 30 11:12 AM

TRIAL RESPONSE TO WRIT OF MAY 13, 2015

The application of Terry L. Cooley for Post Conviction Relief was denied by this court on October 29, 2014. By peremptory writ issued on May 13, 2015, the Court of Appeal, Third Circuit, remanded the matter with instructions for the trial court to specifically address Claim III in the application which alleged that "evidence was not presented tending to show his accusers lied". Although the identity of the "accusers" mentioned in that paragraph is not given, it can be assumed that the reference is to the victims of the crimes of Aggravated Incest, Sexual Battery and Molestation of a Juvenile for which applicant was convicted, and all of whom testified in the trial. The evidence presented by the State in the trial was based almost exclusively on the direct testimony of the victims.

On May 19, 2015, following the issuance of the writ, a telephone conference was conducted between the undersigned judge, Assistant District Attorney Richard A. Morton, and defense counsel Dmitric Burnes. As a result of the conference, the judge directed the State to file a formal response on the question raised by the writ, and specifically whether the court can grant or deny relief without further proceedings. C. Cr. P. Art. 929 (A).

The response of the State was filed on May 29, 2015, in which the State makes both a procedural objection, and an argument against the need for an evidentiary hearing. This double response alleviates the need to decide the procedural question separately and beforehand. C. Cr.

EXHIBIT
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P. Art. 927 (A). It is noted here that the Defense asserts that the practice of combining procedural objections and an answer on the merits to be "a minor deviation", then adds that it raises no objection to proceeding on that basis.

DISCUSSION

The supporting facts outlined in the application for the remaining claim are copied here verbatim:

... [redacted] biological mother of [redacted] has come forward with information concerning a conversation she had with [redacted], biological father of the step-daughters of Terry Cooley who were the subjects of courts one through three in the amended indictment. [redacted] has knowledge of a conversation she had with [redacted] wherein [redacted] tried to get her to fabricate an allegation concerning Terry Cooley and [redacted] and to get her to 'lie like we did', that is, fabricate a false allegation similar [sic] to false allegations by the step-daughters."

It is important to note that neither [redacted] nor [redacted] testified in the criminal jury trial. Furthermore, it is not alleged that either was unavailable or beyond the subpoena power of the court.

The foregoing paragraph does not give a time frame about where [redacted] "came forward", nor when she had the conversation with [redacted]. This subsequent sentence in the supporting facts (quoted below) gives a bit more detail but does little to answer the questions of time:

[redacted] recalls advising trial counsel that she had a conversation with [redacted] but does not recall informing trial counsel of the details of the conversation."

If the discovery of this conversation by applicant or his counsel was before or during the trial, or even for a year after the verdict, the time to seek relief has expired. Applicant was found guilty by a jury on November 22, 2010 and was sentenced on December 17, 2010. C. Cr. P. Articles 853 and 854. An application for Post-conviction relief is no substitute for a Motion for New

Trial, whether based on newly discovered evidence or on any other grounds provided.

In order to succeed on this application, the applicant has the burden to demonstrate that one of the grounds listed in C. Cr. P. Article 930.3 can be established. By its own language, the list is exclusive and none of the specific grounds of paragraphs (2) through (7) need be considered. The only possibility for relief for this applicant would be found in the first paragraph which reads:

"(1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana." C. Cr. P. Article 930.3 (1)

Applicant argues that his right to a "fair trial" was denied because neither the conversation described above, nor its existence, came to the knowledge of the jury. This, he argues, is a violation of the 6th and 14th amendments to the Constitution of the United States and of Article 1, Section 16 of the Louisiana constitution. The argument continues that the verdict could have been different if this additional evidence had been presented, making the trial unfair.

An analysis of the claim in light of the trial evidence discloses that the claim would not entitle applicant to relief, even if both [REDACTED] and [REDACTED] testified in an evidentiary hearing as the supporting facts of the application indicate. The victims in the trial testified directly to the events constituting the behavior upon which applicant was convicted. They were thoroughly cross-examined by able defense counsel. It is not alleged that any plan by [REDACTED] to have [REDACTED] "fabricate an allegation" ever materialized. Furthermore, whatever [REDACTED]'s falsehoods may have been, it is of no consequence to this inquiry because he was not a witness in the case either. The simple fact that he was a parent creates no shift in the burden of proof. Although [REDACTED] was the biological father of three of the victims, they were young adults at trial time and had spent most of their lives with the mother, estranged from [REDACTED]

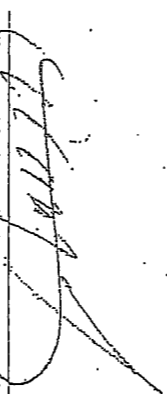
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There was no evidence in the trial that [REDACTED] communicated with his daughters about their proposed testimony. There was no suggestion of undue influence which [REDACTED] had over the victims, nor that he had anything to gain from the prosecution.

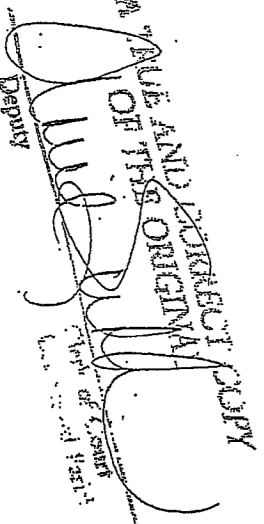
The thrust of this application is not about whether the applicant had a fair trial. There is no allegation that the District Attorney secreted pertinent evidence, nor that the judge made any unfair rulings on evidentiary matters. The fairness of the trial was adequately reviewed when the matter received a full hearing on appeal. This process is an attempt to reopen the evidentiary phase of the trial and to collaterally impeach the trial witnesses years after the fact. The concept of a fair trial does not mean that an accused can have more than one trial if the first result is not to his liking.

It is the conclusion of the court that Claim III, if established, would not entitle the applicant to relief and, by the authority of C. Cr. P. Article 929, the court reiterates its position that the application should be dismissed.

Lake Charles, Louisiana, June 5, 2015.


Judge H. Ward Fontenot *ad hoc*

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A TRUE AND CORRECT COPY
OF THE ORIGINAL

Deputy
Clerk of Court
Lake Charles Parish