

07/11/2016 "See News Release 038 for any Concurrences and/or Dissents."

**SUPREME COURT OF LOUISIANA**

**No. 16-KP-1264**

**STATE OF LOUISIANA**

**VERSUS**

**SEAN BERNARD NEWTON**

**ON SUPERVISORY WRITS TO THE FOURTEENTH  
JUDICIAL DISTRICT COURT, PARISH OF CALCASIEU**

**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 and the Court of Appeal's written reasons for 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.

STATE OF LOUISIANA

COURT OF APPEAL, THIRD CIRCUIT

NO: KW 15-00998

Judgment rendered and mailed to all parties or counsel of record on June 22, 2016.

STATE OF LOUISIANA  
VERSUS  
SEAN BERNARD NEWTON

FILED: 10/20/15

On application of Sean Bernard Newton for Writ of Review in No. 16048-10 on the docket of the Fourteenth Judicial District Court, Parish of Calcasieu, Hon. Clayton Davis.

Martin Edward Regan, Jr.  
Paul J. Barker

Counsel for:  
Sean Bernard Newton

John Foster DeRosier  
Carla Sue Sigler

Counsel for:  
State of Louisiana

Lake Charles, Louisiana, on June 22, 2016.

**CALL UP RESCINDED; WRIT DENIED:** Having received and reviewed supplemental briefs and the applicable law, the court rescinds its original order to call up the writ and issues the following ruling.

Relator seeks review of the trial court's denial of his application for post-conviction relief from July 6, 2015. Relator's application to the trial court was timely filed. The trial court was within its authority in denying Relator's claims without supplementation. To the extent that Relator has newly-discovered evidence supporting an appropriate claim, he is not precluded from filing a subsequent application within the confines of La.Code Crim.P. art. 930.8(A)(1). Additionally, the trial court did not err in finding that Relator failed to show how the result of his trial would have been different based on the claims raised regarding ineffective assistance of counsel. Accordingly, Relator's writ application is denied.

JCP  
JCP

JTG  
JTG

SEC Conery, J., dissents and would grant the writ, finding that the writ was timely filed, and, in the interest of judicial economy, would order the trial court to conduct an evidentiary hearing on the "Brady" claim and "ineffective assistance of counsel" claim.



\* STATE OF LOUISIANA

14<sup>TH</sup> JUDICIAL DISTRICT

VS. NO. 16048-10

PARISH OF CALCASIEU

SEAN BERNARD NEWTON

STATE OF LOUISIANA

JUL 09 2015

FILED:

DEPUTY CLERK

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WRITTEN REASONS AND ORDER

SEAN BERNARD NEWTON has filed an Application for Post Conviction Relief claiming ineffective assistance of counsel. Initially the Court notes that this Application is outside of the time limitations established under Louisiana Code of Criminal Procedure article 930.8 since it was filed on March 18, 2015<sup>1</sup> and the Louisiana Third Circuit Court of Appeal rendered its decision on February 13, 2013.

A defendant claiming ineffective assistance of counsel must show that counsel's performance fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). There is a strong presumption that conduct of counsel falls within the wide range of reasonable assistance. *Id.* A defendant claiming ineffective assistance of counsel must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* In order to prove prejudice to the defendant, Petitioner must show that errors were so serious as to deprive him of a fair trial. *State v. Johnson*, 582 So.2d 885, 888, (La. App. 4 Cir. 6/13/1991). Additionally, counsel's performance is ineffective when it can be shown that he made errors so serious that counsel was not functioning as counsel guaranteed defendant by the Sixth Amendment. *Id.*

Petitioner's filing is mostly unintelligible. For example, his "Claim 1" is of his counsel's failure to file a Motion to Sever some of the nine co-defendants from his case, yet the Petitioner went to trial only with his brother and parents. Severance was not an issue as to the nine co-defendants. The severance that took place on the morning of trial was administrative. The parties expected only the four defendants to be tried.

Also, he complains that when his brother's charges were reduced, Petitioner's counsel failed to "recognize that the trial court had been divested of jurisdiction over those counts and that defendant." The brother, Brandon Newton, had his conviction set aside post-trial, *State v. Newton*.

<sup>1</sup> This filing was inadvertently placed in the record by the Clerk's office, then removed.

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EXHIBIT  
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12-510 (La. App. 3 Cir. 2/13/13), 129 So.2d 11. Petitioner fails to explain how post-trial legal rulings favoring his brother shows any ineffectiveness of Petitioner's counsel.

"Claim II" is a rambling account of evidence that is not explained and is likewise unintelligible. It seems to complain about some witnesses who were not called to trial. There is a reference to witnesses who did testify, but whose immunity was in question and whose immunity should have been brought into question. None of it suggests that this trial would have had a different result.

"Claim III" is an attack on the sentence and counsel's failure to raise the constitutionality of a life sentence to a defendant "of tender years." The Petitioner has had an effective remedy via appeal on this issue.

The Court finds no basis to order an evidentiary hearing in this matter, both because this filing is untimely as noted above and because the request amounts to a fishing expedition for evidence to support allegations of ineffective assistance of counsel.

Petitioner has not met his burden of proof of ineffective assistance of counsel in this case.

Therefore, IT IS HEREBY ORDERED that the Petitioner's Application for Post Conviction Relief is DENIED.

Done and signed this 6 day of July, 2015, Lake Charles, Louisiana.

*Clayton Davis*  
CLAYTON DAVIS, DIV. B  
DISTRICT JUDGE

PLEASE SERVE:  
Calcasieu Parish District Attorney's Office

✓ Martin E. Regan, Jr.  
2125 St. Charles Avenue  
New Orleans, LA 70130

✓ Warden Burl Cain  
17544 Tunica Trace  
Angola, LA 70712

PLEASE NOTIFY:  
Sean Newton #584239  
LSP Main Prison  
Angola, LA 70712

A TRUE COPY  
Lake Charles, Louisiana  
*Janet...*  
Deputy Clerk of Court  
Calcasieu Parish, Louisiana

JUL 10 2015

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- Out of Parish Sheriff
- Warden, Calcasieu Correctional Center
- Office of Public Defender
- Office of District Attorney
- Defendant

*Janet...*  
Deputy Clerk of Court

undersigned's office on June 23, 2015.

STATE OF LOUISIANA : 14TH JUDICIAL DISTRICT COURT

VS. NO. 16048-10 : PARISH OF CALCASIEU

SEAN BERNARD NEWTON : STATE OF LOUISIANA

FILED: AUG 25 2015 : Bethany Smith  
DEPUTY CLERK OF COURT

13-16424

RULING ON REQUEST FOR RELIEF OF JULY 9, 2015 REASONS AND ORDER

Petitioner seeks a rescission of this Court's ruling of July 9, 2015, styled as a "Request For Relief," which ruling denied Petitioner's application for post-conviction relief based on ineffective assistance of counsel. The Court has reviewed the current motion, Exhibits 1-9 attached to the motion and the affidavit of Mr. Wainwright. The request is based primarily on the claim that prosecutorial immunity was provided to witness called by the state, yet the state allegedly denied giving such immunity to their witness.

La.C.Cr.P. Art. 930.3 sets forth the grounds upon which relief can be granted in a motion for post-conviction relief. Alleged prosecutorial conduct is not listed. To the extent the request seeks relief on one or more of the listed grounds, it fails to identify such grounds or explain how the allegations of the request support one or more of the listed grounds. Further, as this motion seeks rescission of a prior order denying petitioner's claim based on ineffective assistance of counsel, the current motion seeks to expand the grounds of the earlier one, and in doing so, seeks additional time to file his petition despite the earlier motion being denied in part as untimely.

The Court finds the request is based on innuendo and speculation and lacks the solid factual grounds which might warrant a hearing absent the defects noted above and in this Court's earlier ruling.

Accordingly, the request for relief is DENIED.

Signed in chambers this 20<sup>TH</sup> day of August, 2015.

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*Clay*

HONORABLE CLAYTON DAVIS  
DISTRICT JUDGE, DIVISION B

PLEASE SERVE ALL PARTIES

AUG 25 2015

A TRUE COPY

Lake Charles, Louisiana

Bethany Smith  
Deputy Clerk of Court  
Calcasieu Parish, Louisiana

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  - Warden, Calcasieu Correctional Center
  - Office of Public Defender
  - Office of District Attorney
  - Defendant
- Date: 8-26-15  
B. Smith  
Deputy Clerk of Court

EXHIBIT  
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