8/04/2017 "See News Release 039 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 15-KH-2265

STATE EX REL. BINIKA HANKTON

v.

STATE OF LOUISIANA

ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT, PARISH OF ORLEANS

PER CURIAM:

Denied. Relator fails to show she 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. La.C.Cr.P. art. 930.4. We attach hereto and make part hereof the district court's written reasons denying relief.

Relator has now fully litigated three 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 she can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted her right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

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STATE OF LOUISIANA — CRIMINAL DISTRICT COURT

VERSUS — PARISH OF ORLEANS

BINIKA HAMKTON — NO. 493-937 SECTION "I"

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JUDGMENT

This matter is before the Court on an Application for Post-Conviction Relief, which was filed pro se on August 3, 2015. In this application, the defendant raises three issues which will be addressed below.

First, Ms. Hankton contends that the evidence adduced at trial was insufficient to support her conviction. Ms. Hankton raised this very issue in her appeal and the Fourth Circuit Court of Appeal concluded otherwise:

> Considering "the record as a whole," as per *Huckaby* and its progeny, we find that the evidence presented at trial "could reasonably support a finding of guilt beyond a reasonable doubt. (Page 11 of Fourth Circuit opinion of April 30, 2014.

As provided in Article 930.4(A) of the Code of Criminal Procedure, issues that were fully litigated on appeal should not be considered in an application for post-conviction relief. Consequently, this issue is precluded from further consideration.

In her next argument, Ms. Hankton maintains that trial counsel was ineffective for failing to re-urge a motion for change of venue following voir dire. An ineffective assistance claim is assessed by the two prong test established in *Strickland v Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984). First, the defendant must show that counsel's performance was deficient, i.e. that he made mistakes so serious that he was not functioning as the counsel guaranteed to a defendant by the Sixth Amendment. Secondly, one must show that the deficiency prejudiced him. This showing can only be made if the defendant can show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. At 693, 104 S. Ct. 2068. In *State v Lacaze* , 824 So.2d 1063, 1999-0584 (La. 1/25/02), the Louisiana Supreme Court observed that the Sixth Amendment does not guarantee "errorless counsel [or] counsel judged ineffective by hindsight, but counsel reasonably likely to render effective assistance." Further, the Court advised that "judicial scrutiny must be 'highly deferential'" and that "courts must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."

A review of the transcript of the voir dire examination indicates that there would have been no reason to grant a change in venue had trial counsel re-urged his motion. There were 75

persons in the venire, 26 of whom indicated that they were familiar with the Hankton name, specifically Telly Hankton. Of that number, ten prospective jurors were excused for cause because of their responses that they could not be fair or some other concern with the Hankton family name. The other 16, as well as the venire as a whole, said nothing that would have made a change of venue proper. Accordingly, in this application, Ms. Hankton cannot show that she suffered any prejudice by her attorney's decision not to re-urge his venue request. This issue has no merit.

Finally, Ms. Hankton complains again about the admission of her inculpatory statement at trial and the use made of that statement by the prosecution. This Court is still of the opinion that the police satisfied all Constitutional requirements in the taking of this statement and that the prosecution did not unfairly use the statement in proving its case. For this reason and those stated above, this application is hereby DENIED.

New Orleans, La. this 1st day of September 2015.

JUDGE