

SUPREME COURT OF LOUISIANA

No. 16-KH-0263

STATE EX REL. MICHAEL WILLIAMS

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-FOURTH
JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

PER CURIAM:

Denied. Relator fails to show that 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 unsupported. La.C.Cr.P. art. 930.2. We attach hereto and make a part hereof the district court's written reasons denying relief.

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.

RECEIVED

NOV 18 2015

SERVE

W.F.P.S.O.

RECEIVED

NOV 23 2015

Legal Programs Department
DIVISION "C"

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 09-4692

STATE EX REL MICHAEL WILLIAMS

VERSUS

BURL CAIN, WARDEN

FILED:

November 12, 2015

Cherie A. Ball

DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF AND THE STATE'S RESPONSE, STAMPED AS FILED ON NOVEMBER 3, 2015.

On July 28, 2011, the petitioner was found guilty of the second degree murder of Terry Redmond, a violation of LSA-R.S. 14:30.1.

The petitioner's conviction has been reviewed and upheld by the Fifth Circuit on direct appeal. *State v. Williams*, 12-KA-355 (La.App. 5 Cir. 12/11/12), 106 So.3d 1090, 1095. Following remand from the Court of Appeal for sentencing, this court sentenced the petitioner to life in prison.

The petitioner filed an application for post-conviction relief, alleging the following specific claims:

1. He was denied his right to a trial transcript,
2. Ineffective assistance of counsel, at trial and on appeal, and
3. Denial of his rights to confront witnesses and receive a fair trial.

Following various motions, the Fifth Circuit granted writs and remanded for this court to consider and rule on all post-conviction claims. The state answered each claim, as requested by the court.

CLAIMS RAISED

Claim One: the petitioner was denied his right to a trial transcript

The petitioner contends that neither the court nor his attorneys have provided him with the trial transcript. The record reflects that on June 23, 2015, pursuant to court order, the Clerk of Court mailed 451 pages of trial transcript to the petitioner.

The petitioner is now in possession of the complete trial transcript. For this reason, the claim is moot and does not fall within the exclusive grounds for post-conviction relief named in LSA-C.Cr.P. art. 930.3.

Claim Two: Ineffective assistance of counsel, at trial and on appeal

On the claim that trial counsel was ineffective, the petitioner contends his attorney failed to investigate the crime scene. The petitioner was represented at trial by experienced counsel, Joseph L. Perez, of the Jefferson Parish Indigent Defender Board.

In this claim, the petitioner asserts that he informed his trial attorney that the eyewitness, Michael Gordon, could not have "seen anything on Angus Street" from where he was standing.

He argues that his attorney should have obtained photographs or video of the location or required the jury to visit the scene.

During the trial, the witness, Michael Gordon, who knew both the petitioner and the deceased, was shown photographs of the areas where the confrontation took place. These photographs were later introduced into evidence and shown to the jury. Mr. Gordon was carefully cross-examined as to what he witnessed on April 26, 2009. In addition, the petitioner himself testified. He acknowledged familiarity with this part of the Scottsville neighborhood.

Because the jury had the benefit of multiple witnesses explaining the photographs and the unfolding scene, defense counsel was not deficient in failing to produce additional photographs. Furthermore, although the petitioner heard the testimony of Michael Gordon at trial, the petitioner testified that Mr. Gordon made a mistaken identification, not that he was unable to see him attacking the victim. At the time of trial, there was no allegation that the confrontation could not be seen from Mr. Gordon's vantage point.

This claim is made in the context of an allegation of ineffective assistance of counsel. Under the well-known standard set out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and *State v. Washington*, 491 So.2d 1337 (La.1986), a conviction must be reversed if the petitioner proves (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect. *State v. Legrand*, 2002-1462 (La.12/3/03), 864 So.2d 89.

To be successful in arguing ineffective assistance of counsel, a post-conviction petitioner must prove deficient performance to the point that counsel is not functioning as counsel within the meaning of the Sixth Amendment. A petitioner must also prove actual prejudice to the point that the results of the trial cannot be trusted. It is absolutely essential that both prongs of the *Strickland* test must be established before relief will be granted by a reviewing court.

Furthermore, there is a strong presumption that counsel's performance is within the wide range of effective representation. Significantly, effective counsel does not mean errorless counsel and the reviewing court does not judge counsel's performance with the distorting benefits of hindsight, but rather determines whether counsel was reasonably likely to render effective assistance. *State v. Soler*, 93-1042 (La.App. 5 Cir. 4/26/94), 636 So.2d 1069, 1075.

In this case, the claim made regarding failure to investigate is speculative. It is not established that any different evidence could have been produced. It has not been established that the trial produced an unreliable result. This claim fails to meet the petitioner's heavy burden of proof.

On the claim that appellate counsel was ineffective, the petitioner has likewise not met his burden of proof. Specifically, the petitioner alleges that his attorney Prentise L. White was constitutionally deficient in representing him on appeal by not raising the confrontation claim he now asserts.

In reviewing claims of ineffective assistance of counsel on direct appeal, the Supreme Court of the United States has expressly observed that appellate counsel "need not advance every argument, regardless of merit, urged by the defendant. *Evitts v. Lucey*, 469 U.S. 387, 394 (1985). The Court gives great deference to professional appellate strategy and applauds counsel for "winnowing out weaker arguments on appeal and focusing on one central issue if possible, and at most a few key issues. *Jones v. Barnes*, 463 U.S. 745 (1983). This is true even where the weaker arguments have merit. *Id.* at 751-2.

When the claim of ineffective assistance of appellate counsel is based on failure to raise the issue on appeal, the prejudice prong of the *Strickland* test requires the petitioner to establish that the appellate court would have granted relief, had the issue been raised. *United States v. Phillips*, 210 F.3d 345, 350 (5 Cir. 2000).

In this case, the petitioner is unable to point to an adverse ruling from the trial court to support any meritorious appellate argument on the subject. Significantly, the Fifth Circuit Court of Appeal detailed the facts of the crime at great length, finding the evidence was constitutionally sufficient to convict.

On this claim, the petitioner fails to prove either prong of the *Strickland* test. He fails to show that counsel's choice to argue sufficiency as the sole issue on appeal was deficient or below accepted standards.

For these reasons, the court finds no merit to petitioner's claim of ineffective assistance by trial or appellate counsel.

Claim Three: Denial of his rights to confront witnesses and receive a fair trial

In his final post-conviction claim, the petitioner contends that he suffered a violation of the confrontation clause of the United States Constitution. Article VI of the Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." It is fundamental that the Confrontation Clause is designed to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." *Maryland v. Craig*, 497 U.S. 836, 845 (1990).

During the trial, Jefferson Parish Detective Kevin Decker testified that he "authored an arrest warrant for Michael Williams due to him having been identified as having chased the victim across that field that we were just looking at through the canal to Esther and Florence and shooting him multiple times." (Tr. p. 607). At this point, defense counsel raised an objection on hearsay grounds. The court agreed and stated that the testimony was not coming in and that nobody would testify to what he was told. (Tr. p. 609). The court specifically ordered the jury to disregard the testimony as to what the witness was told. (Tr. p. 610).

Defense counsel diligently objected to hearsay evidence in a timely manner. The trial court scrupulously excluded potential hearsay evidence and issued, as requested, a curative instruction. Based on the trial court's grant of relief after the brief reference, the petitioner cannot establish prejudice or unfairness.

CONCLUSION

Under the authority of LSA-C.Cr.P. art. 930.2, the petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted. The petitioner has not met his heavy burden on his claims.

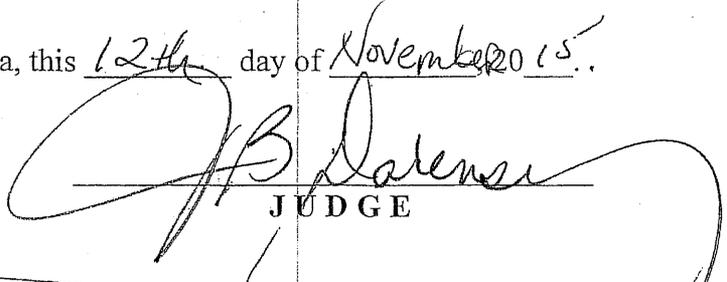
The petitioner had a fair trial with reliable results. He has had judicial review of his convictions and sentence. He has failed to prove the existence of constitutional errors grave enough to warrant post-conviction relief.

The court will deny relief on all claims.

Accordingly,

IT IS ORDERED BY THE COURT that the application for post-conviction relief be and is hereby DENIED.

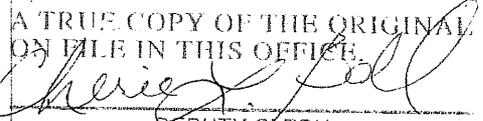
Gretna, Louisiana, this 12th day of November, 2015.


JUDGE

PLEASE SERVE:

PRISONER: Michael Williams, 09-4692, #586704, Louisiana State Penitentiary, Angola, LA 70712

Jefferson Parish District Attorney's Office, Juliet Clark, Terry Boudreux, 200 Derbigny St., Gretna, LA 70053

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA