

SUPREME COURT OF LOUISIANA

No. 16-KH-0894

STATE EX REL. DEMOND CAREY

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE FIRST
JUDICIAL DISTRICT COURT, PARISH OF CADDO**

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). Furthermore, relator's challenge to the sufficiency of the evidence was fully litigated on direct review and therefore barred by La.C.Cr.P. art. 930.4(A). *See State v. Carey*, 47,650 (La. App. 2 Cir. 2/27/13), 110 So.3d 221, writ denied, 13-0726 (La. 11/1/13), 125 So.3d 417. 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.

FILED
FEB 02 2016
B. WASHINGTON
CADDO PARISH DEPUTY CLERK

STATE OF LOUISIANA

DOCKET NO. 272566 (SECTION 1)

VERSUS

FIRST JUDICIAL DISTRICT COURT

DEMOND CAREY

CADDO PARISH, LOUISIANA

OPINION

On October 27, 2011, Petitioner was convicted of Manslaughter. On December 14, 2011, Petitioner was sentenced as a Second Felony Habitual Offender to be confined for eighty (80) years at hard labor. He was subsequently committed to the Louisiana Department of Corrections, subject to the conditions provided by law. The Court ordered that Petitioner's sentence be served without the benefit of probation, parole, or suspension of sentence. The Court also informed Petitioner of his right to post-conviction relief proceedings. On February 27, 2013, the Second Circuit Court Appeal affirmed Petitioner's conviction and sentence. *State v. Carey*, 47,650 (La. App. 2d Cir. 2/27/13), 110 So.3d 221.

Currently, this Court has for its consideration Petitioner's **Application for Post-Conviction Relief**, filed on February 6, 2014. On December 17, 2015, the Second Circuit Court of Appeals issued a Writ of Mandamus for an Application purportedly filed by Petitioner on January 30, 2014. There is no record of an application being filed on January 30, 2014; however, it appears that Petitioner's February 6, 2014, application is outstanding. For the following reasons, Petitioner Application for Post-Conviction Relief, filed on February 6, 2014, is **DENIED**.

In Petitioner's Application, he argues that he received ineffective assistance of counsel. Specifically, Petitioner argues that his defense counsel failed to adequately investigate the crime. He further argues that counsel failed to interview certain parties that may have been able to provide exculpatory evidence.

To succeed on an ineffective assistance of counsel claim, Petitioner must first satisfy the test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner must show that counsel's performance was deficient, that the deficiency prejudiced him, and that counsel's error was so serious that it violated Petitioner's right to effective assistance of counsel as guaranteed by the Sixth Amendment of the U.S. Constitution. *Id.* at 686. The Petitioner must prove actual prejudice before relief will be granted. It is not sufficient for the Petitioner to show the error had some conceivable effect on the outcome of the proceedings. Rather, he must

Exhibit "X"

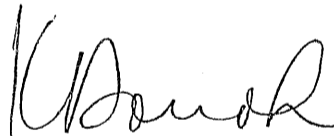
show that but for counsel's unprofessional errors, there is a reasonable probability the outcome would have been different. *Id.* at 693. The performance and conduct of the defense attorney must be evaluated from that counsel's perspective at the time of the occurrence.

Petitioner fails to carry his burden under *Strickland*. Although he argues that counsel did not adequately investigate the crime, he does not demonstrate that, but for these errors, there is a reasonable probability that the trial outcome would have been different. Rather, he simply states that had his counsel investigated the crime, he may have discovered exculpatory evidence. As previously stated, it is not enough for a Petitioner to allege the error had some conceivable effect on the outcome. Furthermore, the Second Circuit analyzed the evidence in great detail and, ultimately, affirmed Petitioner's conviction and sentence. *State v. Carey*, 47,650 (La. App. 2d Cir. 2/27/13), 110 So.3d 221.

Accordingly, Petitioner's Application is **DENIED**.

The Clerk of Court is directed to provide a copy of this Ruling to the Petitioner and the District Attorney.

Signed this 1st day of February, 2016, in Shreveport, Caddo Parish, Louisiana.

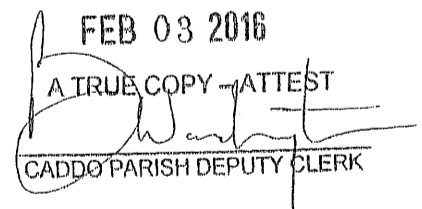


Honorable Katherine Clark Dorroh
First Judicial District Court
District Judge

ENDORSED FILED
B. WASHINGTON, Deputy Clerk

DISTRIBUTION:
Caddo Parish District Attorney's Office
501 Texas Street
Shreveport, LA 71101

Demond Carey
#314372, Oak-1
Louisiana State Prison
Angola, LA 70712

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