

**SUPREME COURT OF LOUISIANA**

**No. 16-KH-0912**

**STATE EX REL. DOUGLAS CRADDOCK**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE TWENTY-THIRD  
JUDICIAL DISTRICT COURT, PARISH OF ASCENSION**

**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). As to the remaining claims, relator fails to satisfy his post-conviction burden of proof. 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.

STATE OF LOUISIANA

CLERK OF COURT

23<sup>rd</sup> JUDICIAL DISTRICT COURT

VS. NO. 23,862 "D"

2015 JUN -9 PH 2: 57

STATE OF LOUISIANA

DOUGLAS CRADDOCK

D.Y. CLERK & RECORDER  
ASCENSION PARISH, LA.

PARISH OF ASCENSION

FILED: \_\_\_\_\_

Deputy Clerk

**REASONS FOR JUDGMENT ON POST-CONVICTION RELIEF**

Petitioner, Douglas Craddock, filed an Application for Post-Conviction Relief on July 9, 2013. He was convicted of Armed Robbery on October 22, 2009 and was sentenced to 25 years at hard labor. His February 18, 2010 judgment of conviction and sentence were affirmed on March 25, 2011 and became final on April 25, 2011.

In his Application for Post-Conviction Relief he raises three claims:

1. He was denied due process under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution by the denial of his right to counsel of choice.
2. He was denied effective assistance of counsel in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution,
3. He was denied due process of law under the Sixth and Fourteenth Amendments to the U.S. Constitution by errors of the trial court.

The State filed an Answer on January 12, 2015. The trial judge was Judge Alvin Turner, Jr.; however, one of the claims petitioner makes is premised upon Judge Turner entering the jury room. Petitioner moved to recuse Judge Turner from hearing this Application for Post-Conviction Relief. Following a hearing, Judge Turner was recused and the matter was re-allotted to this division on October 29, 2014.

With regard to petitioner's first claim that he was denied due process by the denial of counsel of his choice, the petitioner submits the following. Mr. Craddock had a public defender from May 1, 2008 through the trial. He now complains that the counsel he had for sixteen months, Mr. B.J. Francis, did not follow through with a preliminary examination and other motions. Then, 30 days prior to trial, Mr. Keith Crawford replaced

Mr. Francis as his public defender. He expressed concerns that this was somehow a conflict because Mr. Crawford had previously worked for the District Attorney's office. However, nothing in the record indicates any conflict because of Mr. Crawford's prior employment. He goes on to submit that Pegram Mire, Jr. was going to represent him and that he informed Mr. Crawford of this at the trial date. The trial court refused to grant a continuance. In his traverse to the State's Answer, he contends there was no evidence that he needed court appointed counsel and that his family could afford counsel.

If the defendant could afford counsel, he certainly did not assert that from May 1, 2008 until the trial in October 2009. To do so at trial and not complain that he was denied due process until now is without merit. Defendant had ample opportunity to hire counsel, or at a minimum, make the Court aware of his desire to do so before commencement of trial. If his complaint is that he simply did not want Mr. Crawford representing him, he does not have a right to counsel of his choice when he has court appointed counsel. U.S. v. Gonzales-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006). Thus, petitioner's first claim is dismissed.

In his second claim, he contends he did not have effective assistance of counsel in the following respects:

1. Counsel was ineffective when they failed to conduct a preliminary examination after the petitioner requested one.
2. Counsel was ineffective when he failed to exercise a peremptory strike on juror Curtis Mire.
3. Counsel was ineffective when he failed to exercise a peremptory strike on juror Justine James.
4. Counsel was ineffective when he failed to exercise a peremptory strike on juror Richard LeBlanc.
5. Counsel was ineffective when he failed to object to the Court subjecting the jury to a nearly eighteen hour day.

The landmark case for addressing claims of ineffective assistance of counsel is Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The Court held that the benchmark for judging any claim of ineffectiveness of counsel must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on having produced a just result. A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial with a reliable result. Id. The proper standard for attorney performance is that of reasonably effective assistance. Trapnell v. United States, 725 F. 2d 149 (2d Cir. 1983). The Sixth Amendment refers to "counsel". It does not specify the requirements for counsel to be effective. Strickland. It "relies instead on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions." Michel v. Louisiana, 350 U.S. 91 76 S. Ct. 158, 100 L. Ed. 83 (1955). Anytime a claim of ineffectiveness is presented, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Strickland. Judicial scrutiny of counsel's performance must be highly deferential. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. Michel.

Turning to the second prong of Strickland, an error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. United States v. Morrison, 449 U.S. 361, 101 S. Ct. 665, 66 L. Ed. 2d 564 (1981); Strickland. The defendant must show particular errors of counsel had an actual adverse effect on the defense. It is not enough

to show that the errors had some conceivable effect on the outcome of the proceeding.

Strickland.

As Mr. Craddock stated, a Motion for Preliminary Exam was requested, as were Motions for Discovery, Bill of Particulars, and to Produce Documents. They were all set for hearing several times, but not ruled upon. Measuring this against the two prong test of Strickland, even if defense counsel acted in an unreasonable manner, Mr. Craddock fails to show an actual adverse effect on the defense. The evidence presented in the case included the apprehension of petitioner in the vehicle described by eyewitnesses. He was in possession of the gun used in the robbery, as well as the medication and cash that was taken in the robbery. Furthermore, his statements implicated himself in the robbery, and he was identified by eyewitnesses. Thus, he has failed to demonstrate that his attorney's failure to conduct a preliminary examination would have changed the outcome of the trial. His attorney was also afforded benefit of open file discovery, thus failure to hear the Motion for Bill of Particulars was not prejudicial to Mr. Craddock.

With regard to his claims that his attorney was ineffective because he failed to exercise peremptory challenges on three jurors; namely, Curtis Mire, Justine James, and Richard LeBlanc, this goes to the trial strategy of defense counsel. Teague v. Scott, 60 F. 3d 1167 (5<sup>th</sup> Cir. 1995). Although all three jurors made statements in voir dire that taken in isolation may seem biased, all three testified that they could follow the law, keep an open mind, and be unbiased. As such, Mr. Craddock fails to meet the Strickland test on these issues as well.

Finally, Mr. Craddock submits that his counsel was ineffective for failing to object to the Court keeping the jury for eighteen hours. The minutes do not reflect the exact start time when the jury was called; however, it would have been no earlier than 9:00 a.m. The minutes reflect that a verdict was reached at 1:22 a.m. That would have been approximately sixteen hours. Nonetheless, whether it was sixteen or eighteen hours, there is no indication that the jury was strained or wanted to go home. Additionally, the minutes reflect numerous breaks taken. Thus, this claim is also without merit.


This Court must consider the totality of the evidence before the jury. As stated in Strickland, the question is whether there is a reasonable probability that absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Considering the totality of the evidence presented, petitioner has failed to prove that his counsel made errors such that an adverse effect was had upon the defense. Claim two of his application is dismissed.

In his final claim, petitioner claims he was denied due process by errors of the Court. He discusses the claims raised in claims one and two. This Court will not address those claims again herein. Contentions that failure to record certain proceedings is reversible error should have been raised on appeal. As such, this contention is without merit pursuant to La. Code of Criminal Procedure Article 930.4. Likewise, his claim of reversible error by the Court in reading the sentence for armed robbery also should have been raised on appeal and is dismissed.

Finally, Mr. Craddock contends that it was error for the trial judge to enter the jury room during deliberations. The minutes reflect that the jury recessed for deliberations at 12:12 a.m. The minutes further state, "Jury sent note to Judge which read as follows- 'Package, gun, part-deff (sic) of 1<sup>st</sup> rob.' Judge sent the evidence (package, gun, and part of gun) to jury room. Court entered jury room to get clarification on note." Louisiana Code of Criminal Procedure Article 791 provides in pertinent part that a jury is sequestered by being kept together in the charge of an officer of the court so as to be secluded from outside communication. An unauthorized communication to the jury by a court official requires reversal of the verdict if the communication is prejudicial to the accused. State v. Marchand, 362 So. 2d 1090 (La. 1978). Additionally, the rule of sequestration does not prohibit communication between the judge and jury when such communication is within the bounds of trial related necessity. State v. Copeland, 419 So. 2d 899 (La. 1982). Here, the minutes reflect that the judge entered the jury room "to get clarification on note." Over an hour passed before the verdict was reached. There is no evidence that this communication was prejudicial to the defense. Additionally, in State v. Allen, 682 So. 2d 713 (La. 1996), the Supreme Court held that communications between the judge and jury concerning the jury's confusion over possible verdicts was

within the bounds of trial related necessity. As such, all issues raised in claim three are also without merit and dismissed.

**SIGNED AND ORDERED** at Napoleonville, Louisiana, this 5<sup>th</sup> day of June, 2015.

  
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JESSIE M. LEBLANC, JUDGE  
23<sup>RD</sup> JUDICIAL DISTRICT COURT  
DIVISION "D"

**PLEASE NOTIFY:**

Mr. Alan Robert, Counsel for Douglas Craddock

Ms. Joni Buquoi, ADA