

SUPREME COURT OF LOUISIANA

No. 16-KP-2203

STATE OF LOUISIANA

v.

BERTIE HICKS

**ON SUPERVISORY WRITS TO THE 26th JUDICIAL
DISTRICT COURT, PARISH OF WEBSTER**

PER CURIAM:

Writ granted. Respondent's claim of ineffective assistance of counsel, which is based on incongruous autopsy findings and other information provided to the defense as discovery, was not timely filed in the district court, and respondent failed to carry his burden to show that an exception applies. La.C.Cr.P. art. 930.8; *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So.2d 1189. In addition, this claim is barred by La.C.Cr.P. art. 930.4(E). Furthermore, respondent 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).

Respondent entered an unqualified plea of guilty in 2006. He fails to show that a constitutional error in his guilty plea "has probably resulted in the conviction of one who is actually innocent." *See Bousley v. United States*, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611, 140 L.Ed.2d 828 (1998) (quoting *Murray v. Carrier*, 477 U.S. 478, 496, 106 S.Ct. 2639, 2649, 91 L.Ed.2d 397 (1986)). His claim of actual innocence, based on an expert medical opinion obtained in 2016, does not meet the high standard of *State v. Conway*, 01-2808 (La. 4/12/02), 816 So.2d 290. The district court's ruling granting respondent an evidentiary hearing is vacated.

Relator has now fully litigated four 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 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 matter is remanded to the district court, which is ordered to record a minute entry consistent with this per curiam.

REVERSED AND REMANDED