

SUPREME COURT OF LOUISIANA

No. 18-KP-1093

KENNETH WAYNE WHITMORE

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE NINETEENTH
JUDICIAL DISTRICT COURT, PARISH OF E. BATON ROUGE**

JOHNSON, C.J., dissenting.

I would grant to remand to the district court with instructions to consider the merits of the application. Because the preceding post-conviction application was withdrawn and dismissed *without prejudice*, the district court erred in finding the present application is procedurally barred as impermissibly successive. The application was also timely filed pursuant to the exception set out in La.C.Cr.P. art. 930.8(A)(1). Accordingly, the claim that the State withheld an unredacted police report, which shows that a witness initially described a suspect markedly different in appearance than the defendant, in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), should not have been denied on procedural grounds.