

SUPREME COURT OF LOUISIANA

No. 2025-KD-00759

STATE OF LOUISIANA

VS.

LARRY ROY

*On Supervisory Writ to the 9th Judicial District Court,
Parish of Rapides*

WEIMER, C.J., additionally concurring in the denial of the state’s writ.

In response to this death-sentenced prisoner’s application for post-conviction relief, the state filed a “Motion to Dismiss Application for Post-Conviction Relief,” arguing that the 20-year delay in the proceedings warranted dismissal pursuant to La.C.Cr.P. art. 930.8(B).¹ The district court held a hearing on the motion at which the state argued that a 20-year delay is *per se* prejudicial to the state because memories fade over time and, further, that because one of defendant’s trial attorneys has died, the state was prejudiced. Following the district court’s denial of the motion, the state sought review in this court.

At the hearing, the state explained that it “has a right to invoke Article 930.8 and demand a hearing on the issue. And that is what the state has done and why we are here today. This is the 930.8 hearing.” The state asserted that its “top line position” was that the 20-year delay was *per se* prejudicial, but the state added that

¹ The state’s motion was filed on March 18, 2025. At the time, La.C.Cr.P. art. 930.8(B) provided:

An application for post-conviction relief which is timely filed, or which is allowed under an exception to the time limitation as set forth in Paragraph A of this Article, shall be dismissed upon a showing by the state of prejudice to its ability to respond to, negate, or rebut the allegations of the petition caused by events not under the control of the state which have transpired since the date of original conviction, if the court finds, after a hearing limited to that issue, that the state’s ability to respond to, negate, or rebut such allegations has been materially prejudiced thereby.

it had also presented evidence of prejudice (referring to the affidavit attached to the state’s motion, in which an investigator attested to the death off one of Roy’s defense attorneys and the unavailability of the other of Roy’s two defense attorneys²). Significantly, in its instant writ application, the state made no claim that it had been denied a hearing under Article 930.8(B).

I concur in the denial of the state’s writ application because the district court correctly rejected the state’s assertion that the passage of time is *per se* prejudicial. The concept of *per se* prejudice is inconsistent with La.C.Cr.P. art. 930.8. In multiple sections of that code article, the legislature *did* provide deadlines for filing. *See e.g.* La.C.Cr.P. art. 930.8(A) (setting a two-year deadline to file an application for post-conviction relief); La.C.Cr.P. art. 930.8(A)(1) (requiring that claims based on new facts be filed within two years of the discovery of the new evidence); La.C.Cr.P. art. 930.8(A)(2) (requiring that a claim based on new constitutional law be filed within one year of the finality of that ruling). However, in subsection B of Article 930.8, the legislature *did not* specify the length of a prejudicial delay. This omission suggests that the legislature did not intend for any particular delay to be deemed automatically prejudicial to the state.

Moreover, the *per se* rule sought by the state would require this court to disregard the article’s requirement of a “materially prejudiced” showing by the state, contrary to the well-settled principle that all words of a statute should be given meaning. **St. Martin Par. Police Jury v. Iberville Par. Police Jury**, 33 So.2d 671, 676 (La. 1947) (“[T]he court must give effect to all parts of a statute, if possible, and construe no sentence, clause, or words as meaningless and as surplusage if construction giving force to, and preserving, all words can legitimately be found, and

² It was later determined this attorney was available to testify.

the court should construe an expression in a statute so as to give it effect rather than to render it meaningless in respect to context.”). Indeed, the 2025 amendments to Article 930.8 contained in 2025 La. Acts 393 added a provision that would address the circumstance presented in this case: “When the petitioner fails to timely seek a hearing that is allowed by law or fails to pursue claims for a period of two years after filing an application, the delay caused by inaction shall be presumed as prejudicial.” La.C.Cr.P. art. 930.8(C) (eff. Aug. 1, 2025). Since the district court ruled on the instant motion to dismiss on May 12, 2025, before this language was added, it did not err when it rejected the state’s *per se* prejudice argument.

Finally, although it is undisputed that one of defendant’s trial counsel is now deceased, I agree with the district court’s finding that the state has not demonstrated how the unavailability has materially prejudiced the “state’s ability to respond to, negate, or rebut” the allegations contained in defendant’s post-conviction application. For these reasons, the state did not meet its burden of proof to warrant dismissal of defendant’s post-conviction application under La.C.Cr.P. art. 930.8(B).