Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KH-278

STATE OF LOUISIANA

versus

ANDREW J. MITCHELL

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 23,26, DIVISION "X"
HONORABLE KIRK A. VAUGHN, JUDGE AD HOC, PRESIDING

August 19, 2026

STEPHEN J. WINDHORST

JUDGE

Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and Michael P. Mentz, Pro Tempore

<u>WRIT DENIED</u>

SJW
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MPM

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DEFENDANT/RELATOR,
ANDREW J. MITCHELL
In Proper Person

WINDHORST, J.

Relator/defendant, Andrew Mitchell, seeks review of the trial court's April 23, 2026 judgment denying his motion to reconsider and reduce sentence and an amended and supplemental petition for post-conviction relief ("supplemental APCR").

On August 31, 2023, defendant pled guilty to theft valued in the amount over $25,000 (counts three and four); theft valued in the amount over $5,000 but less than $25,000 (counts one and two); and forgery (counts five through nine). Pursuant to a plea agreement, the trial court sentenced defendant to twenty years imprisonment at hard labor for each count of counts three and four, and ten years imprisonment at hard labor on each remaining count, with all sentences to run concurrently. Defendant was also ordered to pay restitution to the victims. Defendant did not file a motion for appeal.

On April 10, 2026, defendant filed a motion to reconsider and reduce sentence and supplemental APCR with the trial court. In his motion to reconsider and reduce sentence, defendant argued that his sentence was excessive based on his status as a first-time, non-violent offender. In his supplemental APCR, defendant stated that the instant filing was a supplement to his original APCR, which was filed with the trial court on September 2, 2025, but had not yet been ruled on by the district court. In his supplemental APCR, defendant re-urged his original APCR claims of due process violations, double jeopardy violation, improper venue, excessive sentence, ineffective assistance of counsel, and made the following additional claims: (1) involuntary guilty plea; (2) void bail order; (3) restitution errors; (4) suppression of exculpatory evidence; (5) vindictive prosecution; and (6) cumulative error.[1] On

[1] On July 21, 2026, defendant filed a supplement to this writ application containing a citation to supplemental authority pursuant to La. U.R.C.A., Rule 2-12.6.1, namely, Abouammo v. United States, 608 U.S. —, 146 S.Ct. 1571, — L.Ed.2d — (2026). Upon review, we find the supplemental authority does not change this court's disposition.

April 23, 2026, the trial court denied defendant's motion to reconsider and reduce sentence and his supplemental APCR.

This timely writ application followed.

LAW and ANALYSIS

Voluntariness of guilty plea

Defendant challenges the voluntariness of his guilty plea, which he claims resulted from coercion and rested on insufficient evidence. Specifically, defendant contends he was coerced into entering a plea so his son would avoid a prison sentence on the same theft and forgery charges arising from their public adjusting services for clients who suffered property damage from Hurricane Ida.[2] Defendant maintains that after his son's arrest, the State, through counsel, extended a plea offer, stating: "You take twenty [years] and he [defendant's son] gets probation[.]" Although defendant claims that counsel would corroborate his version of the plea negotiations, he does not include an affidavit from counsel in support. See La. C.Cr.P. art. 930.2.[3] Instead, defendant points out that both his and his son's cases were resolved in a joint guilty plea hearing and sentencing in which his son received probation, and he pled guilty to a term totaling 20 years imprisonment at hard labor.

Generally, when a defendant pleads guilty, he waives all non-jurisdictional defects in the proceedings leading up to the guilty plea and precludes review of such defects either by appeal or post-conviction relief. State v. Turner, 09-1079 (La. App. 5 Cir. 7/27/10), 47 So.3d 455, 459. Once a defendant has been sentenced, only those guilty pleas which are constitutionally infirm may be withdrawn by appeal or post-conviction relief. State v. Gross, 95-621 (La. App. 5 Cir. 3/13/96), 673 So.2d 1058, 1059-1060.

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[2] Defendant and his son were charged in the same bill of information.

[3] La. C.Cr.P. art. 930.2 states: "The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted."

In the instant case, the guilty plea hearing and sentencing transcript reflects that the case against relator's son, in agreement with the State and the defense, was dismissed and relator's son was "referred to pre-trial intervention." At the hearing, relator's son also indicated that he had signed a consent agreement regarding a civil restitution judgment. Next, the trial court described the terms of relator's plea agreement, stating:

> I think it's a good resolution to the case.
>
> It results in the victims getting some money and there will be a civil judgment which you've signed and I'll ask you to acknowledge later. You're getting twenty years, credit for time served. Everything's going to run concurrent.
>
> That's why I can say twenty years because that's the most lengthy sentence that will be imposed. There's also an agreement that any future proceedings you could receive concurrent time.

As part of relator's plea agreement, the State also dismissed one count of racketeering in violation of La. R.S. 15:1353. Relator indicated that he understood the terms of the plea agreement. The guilty plea transcript further shows that the trial court advised relator of his Boykin[4] rights and relator confirmed that he understood that he was waiving those rights by pleading guilty.

Given that relator's claim of an involuntary guilty plea is unsupported by an affidavit from counsel, we find that even if relator was motivated by familial concern, his bare allegation standing alone does not rise to the level of constitutional coercion or duress sufficient to invalidate his guilty plea, especially considering the benefits relator received from the plea bargain agreement. See State v. Franco, 94-265 (La. App. 5 Cir. 11/16/94), 646 So.2d 1043, 1046, writ denied, 94-3099 (La. 4/28/95), 653 So.2d 588.[5]

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[4] Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

[5] In Franco, this court found that defendant's plea bargain, which included the State's dismissal of the charges against his wife and three daughters, was not involuntarily entered despite relator's claim of emotional distress, especially when he could not name anyone who had coerced him to enter a guilty plea, and he received the minimum sentence allowed by law.

As part of his claim of an involuntary guilty plea, relator argues that the State's evidence was insufficient. However, "a plea of guilty by its nature admits factual guilt and relieves the State of the necessity to prove it by a contested trial." See State v. Fisher, 19-488 (La. App. 5 Cir. 6/24/20), 299 So.3d 1238, 1243. Thus, relator is not entitled to assert an insufficient evidence claim, as his unconditional guilty plea waived all non-jurisdictional defects. See State ex rel. Kenny v. State, 15-1864 (La. 12/16/16), 207 So.3d 1053, 1054 (*per curiam*), in which the supreme court found that the defendant's guilty plea waived all non-jurisdictional defects, and therefore, the defendant was not entitled to assert insufficient evidence claims in support of his APCR, citing State v. Crosby, 338 So.2d 584, 586 (La. 1976). In the same way, the relator's claim challenging the amount of the restitution order is similarly waived given that the restitution order, signed by relator, was negotiated as part of relator's plea agreement.[6] See State v. Epperley, 14-259 (La. App. 4 Cir. 10/2/14), 151 So.3d 721, 739, in which the fourth circuit found that the defendant's entry of guilty pleas served to waive his right to appeal the amount of restitution. This claim lacks merit.

Improper venue

Next, relator claims that the trial court erred in failing to dismiss the charges for lack of jurisdiction because "every essential element of every offense occurred exclusively in Texas," the location of relator's public adjusting firm, Mitchell Adjusting International LLC.

La. Const. Art. 1, §16 guarantees the right to be tried in the parish where the offense occurred, unless venue is changed in accordance with law. La. C.Cr.P. art. 611 further provides that all trials shall take place in the parish where the offense has been committed. However, under La. C.Cr.P. Art. 615, improper venue must be raised in advance of trial by a motion to quash.

[6] In the Stipulate Civil Money Judgment and Order of Restitution, relator also waived his right to a determination of substantial financial hardship under La. C.Cr.P. art. 875.1.

Relator did not file a motion to quash and therefore, waived any venue issue. Regardless, relator committed the offenses of theft and forgery based on money he received as a public adjuster licensed by the Louisiana Department of Insurance to provide services in the state. Additionally, the contracts signed by the victims, who resided in St. Charles Parish and suffered property damage caused by Hurricane Ida, state that the "Public Adjusting Contract follows Revised 2011 Louisiana Law Insurance RS 22:1704 - Contract between Public Adjuster and Insured." La. C.Cr.P. art. 611 C(5) specifically provides that for forgery offenses, "the offense is deemed to have been committed either in the parish where the offense occurred or where the victim resides." This claim lacks merit.

Double jeopardy

Relator also claims that his convictions for theft and forgery violate the prohibition against double jeopardy.

La. C.Cr.P. art. 594 allows a claim of double jeopardy to be raised at any time.[7] La. C.Cr.P. art. 930(3) further specifies that the issue of double jeopardy is one of the grounds that may be raised in an APCR. The Fifth Amendment to the United States Constitution and Article I, §15 of the Louisiana Constitution prohibit placing a person twice in jeopardy of life or limb for the same offense. See also La. C.Cr.P. art. 591. Double jeopardy provisions are intended to protect an accused not only from a second prosecution for the same criminal act, but also from multiple punishments for the same act. State v. Lefeure, 00-1142 (La. App. 5 Cir. 1/30/01), 778 So.2d 744, 750, writ denied, 01-1440 (La. 9/21/01), 797 So.2d 669. However, it is well-settled that an accused who commits separate and distinct offenses during the same criminal episode or transaction may be prosecuted and convicted for each offense without violating the prohibition against double jeopardy. State v. Stevens,

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[7] La. C.Cr.P. art. 594 states: "Double jeopardy may be raised at any time, but only once, and shall be tried by the court alone. If raised during the trial, a hearing thereon may be deferred until the end of the trial."

18-344 (La. App. 5 Cir. 12/5/18), 260 So.3d 776, 783. When a defendant enters an unconditional guilty plea, he has not waived review of jurisdictional defects, including double jeopardy. State v. Landfair, 07-751 (La. App. 5 Cir. 3/11/08), 979 So.2d 619, 621, writ denied, 08-1143 (La. 1/9/09), 998 So.2d 713. Nevertheless, when a defendant enters an unconditional guilty plea, "the jurisdictional defect exception for double jeopardy applies only where on the face of the record the court had no power to enter the conviction or impose the sentence." Id. Consequently, in such a case, a review of only the charging documents and plea colloquy is allowed. Id. Therefore, a defendant must show, on the basis of the bill of information and the guilty plea colloquy, a *prima facie* case of double jeopardy, that is, that his prosecution violated the constitutional protection against a second prosecution for the same offense or multiple punishments for the same criminal act. Id.

Here, relator's claim of double jeopardy rests on his assertion that his forgery and theft convictions arise from the same insurance settlement checks and endorsements. However, the bill of information indicates that the four counts of theft involved four different named victims from "8/29/21 to TODAY," and each of the five forgery counts reference dates ranging from December 2021 (counts six and seven), February 2022 (count two), and March 2022 (counts eight and nine), but without any reference to a named victim. The guilty plea hearing transcript does not contain a discussion of the factual basis for the theft and forgery convictions. Consequently, on the showing made, relator did not meet his burden of proof as to his double jeopardy claim. La. C.Cr.P. art. 930.2.

Bail

Relator also appears to challenge the legality of the pretrial bail orders and his son's arrest warrant on grounds that the orders were signed by judges who were subsequently recused. In support of his claim, relator includes the recusal orders showing that the three judges were recused on grounds of their familiarity with a material witness in the case who also worked as a courthouse security officer.

However, La. C.Cr.P. art. 673 specifically provides that "[a] judge has full power and authority to act, even though a ground for recusal exists, until he is recused, or a motion for his recusal is filed." Accordingly, to the extent that the three judges issued orders before their recusal, relator has not shown any grounds for relief.[8]

Excessive sentence and motion to amend and reduce sentence

Relator also maintains in his supplemental APCR that he received an excessive sentence and filed a motion to reduce and amend his sentence pursuant to State v. Dorthey, 623 So.2d 1276 (La. 1993). La. C.Cr.P. art. 881.2 A(2) precludes a defendant from seeking review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. Because relator pled guilty and was sentenced pursuant to a negotiated plea agreement, this claim is without merit.

Ineffective assistance

Relator further contends that counsel rendered ineffective assistance.

A voluntary guilty plea waives all non-jurisdictional defects in the proceedings against the defendant, which includes claims of ineffective assistance of counsel claims, except when the ineffectiveness is alleged to have rendered the guilty plea involuntary. See State ex rel. Knight v. Frederick, 21-1061 (La. 11/23/21), 328 So.3d 71 (*per curiam*). Here, relator does not contend that counsel's ineffectiveness rendered his guilty plea involuntary, but rather complains that counsel failed to (1) file pre-plea motions; (2) challenge the restitution amount; and (3) advise him against filing bankruptcy to his detriment. Nevertheless, the Supreme

[8] Furthermore, any claim regarding the validity of the bail orders was rendered moot following relator's convictions. See State v. Crook, 517 So.2d 1131, 1132 (La. App. 5 Cir. 1987), writ denied, 541 So.2d 885 (La. 1989).

Court has held that a defendant's entry of a counseled plea of guilty did not serve to waive a post-conviction ineffective assistance claim. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). See also State v. West, 09-2810 (La. 12/10/10), 50 So.3d 148, 149 (*per curiam*).

To prove ineffective assistance of counsel, defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In the context of guilty pleas, the Strickland analysis under the first deficiency prong remains the same, whereas under the second prejudice prong, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 58-59, 106 S.Ct. at 370.

Although relator faults counsel for failing to file a motion to quash for lack of jurisdiction and move for a new bail hearing after the judges' recusals, we find that relator's re-purposing of these claims as one of ineffective assistance of counsel is also without merit. See State v. Williams, 613 So.2d 252, 256-57 (La. 1992) ("When the substantive issue that an attorney has not raised has no merit, then the claim that the attorney was ineffective for failing to raise the issue also has no merit."). Furthermore, the filing of motions is squarely within the ambit of trial strategy. State v. Pendelton, 96-367 (La. App. 5 Cir. 5/28/97), 696 So.2d 144, 156, writ denied, 97-1714 (La. 12/19/97), 706 So.2d 450. Relator also claims that counsel refused to file a business bankruptcy petition and advising relator that such a filing would make relator look as if he was "hiding something." However, relator's claim that a bankruptcy filing would have transformed his case into a civil matter is speculative at best. Additionally, relator did not meet his burden under La. C.Cr.P. art. 930.2

regarding his complaint that counsel failed to advise him on a variety of potential civil law defenses, without any context as to how these civil law strategies applied to his criminal case. With respect to relator's claim that counsel should have challenged the coercive nature of his guilty plea and the restitution amount, "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies," and "should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee v. United States, 582 U.S. 357, 358, 137 S.Ct. 1958, 1966, 198 L.Ed.2d 476 (2017). As discussed above, relator's claim of coercion regarding his guilty plea and restitution amount are without merit. Consequently, relator has failed to carry his burden of showing "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial," and this claim lacks merits. Hill, 474 U.S. at 59, 106 S.Ct. at 370.

Exculpatory evidence

Relator also contends that the State suppressed exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), including: (1) Notices of Authorization directing the insurance companies to mail checks directly to relator's Texas business office; (2) insurance-carrier mailing records; (3) records showing his business accounts were frozen by merchant cash advance lenders; (4) withholding records from a law firm representing relator's business; and (5) his pre-arrest Louisiana Department of Insurance surety-bond directive.

In United States v. Ruiz, 536 U.S. 622, 629-30, 122 S.Ct. 2450, 2455, 153 L.Ed.2d 586 (2002), the Supreme Court held that the Constitution does not require the State to disclose material impeachment evidence prior to entering a plea agreement with a defendant. The Supreme Court concluded that the Brady rule does not dictate that the prosecutor must share all useful information with the defendant.

Moreover, to the extent that relator's list of suppressed evidence appears to be contained in his own business records, relator is hard-pressed to show that a Brady violation occurred. See State v. Hobley, 98-2460 (La. 12/15/99), 752 So.2d 771, 786, cert. denied, 531 U.S. 839, 121 S.Ct. 102, 148 L.Ed.2d 61 (2000).

Vindictive prosecution

Relator also makes a claim of vindictive prosecution. Relator never raised the issue of prosecutorial vindictiveness at the trial court level. Nevertheless, relator's claim is without merit. Relator argues that the State "targeted Relator while similarly situated public adjusters engaged in standard industry practice were not prosecuted." Additionally, relator points to the "coordinated involvement of the District Attorney's Office and judicially conflicted judges, combined with the explicit use of the son's liberty as a bargaining chip" as an example of the State's pattern of "systematic misconduct."

A defendant has the burden of proving prosecutorial vindictiveness. "In determining whether there has been prosecutorial vindictiveness, the court examines the State's actions in the context of the entire proceeding." See State v. Darensbourg, 06-572 (La. App. 5 Cir. 12/27/06), 948 So.2d 1128, 1132, writ denied, 07-317 (La. 11/9/07), 967 So.2d 495. In the instant case, given relator's beneficial plea bargain, we find that relator's claim of prosecutorial vindictiveness does not meet his post-conviction burden of proof as it rests only on conclusory allegations. See La. C.Cr.P. art. 930.2.

Cumulative effect

Relator also asserts that the cumulative effect of the State's misconduct and counsel's ineffectiveness requires relief.

Since the cumulative effect of errors is not an enumerated ground for obtaining post-conviction relief in La. C.Cr.P. art. 930.3, relator does not raise a claim warranting post-conviction relief. See State v. Ayo, 08-468 (La. App. 5 Cir.

3/24/09), 7 So.3d 85, 104, writ denied, 09-1026 (La. 3/5/10), 28 So.3d 1006; State v. Draughn, 05-1825 (La. 1/17/07), 950 So.2d 583, 629, cert. denied, 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007)).

Evidentiary hearing

Finally, relator complains that the trial court did not conduct an evidentiary hearing. Given the factual and legal issues discussed herein, the trial court acted within its discretion when it resolved relator's claims without conducting an evidentiary hearing. La. C.Cr.P. art. 929 A; See State ex rel. Tassin v. Whitley, 602 So.2d 721, 722 (La. 1992).

CONCLUSION

For the reasons stated herein, relator's writ application is denied.

WRIT DENIED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **AUGUST 19, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-KH-278

E-NOTIFIED
29TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE KIRK A. VAUGHN (DISTRICT JUDGE)
HONORABLE JOEL T. CHAISSON, II
(RESPONDENT)

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