

# Fifth Circuit Court of Appeal State of Louisiana

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No. 26-KH-516

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NOEL AUSTIN

*versus*

STATE OF LOUISIANA

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IN RE NOEL AUSTIN

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE FRANK A. BRINDISI, DIVISION "E", No. 03-6329

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TRUE COPY

October 28, 2026



MORGAN NAQUIN  
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,  
Jude G. Gravois, and Stephen J. Windhorst

## WRIT DENIED

Relator, Noel Austin, filed an application for writ of mandamus, seeking to obtain a hearing transcript from 2004 so that he may challenge his adjudication as a multiple offender, and thus challenge his sentence as illegal. For the following reasons, we deny the writ of mandamus.

### *Background*

On February 18, 2004, a jury found defendant-relator, Noel Austin, guilty of two counts of attempted first-degree murder, aggravated battery, and possession with intent to distribute cocaine. On March 4, 2004, the district court sentenced him to concurrent terms of fifty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence for the attempted first-degree murder convictions, ten years imprisonment at hard labor for the aggravated battery conviction, and thirty years imprisonment at hard labor with the first two years to be served without benefit of parole, probation, or suspension of sentence for the conviction of possession with intent to distribute cocaine. After a habitual offender hearing on May 18, 2004, the district court found relator to be a third-felony offender, vacated his original sentence on count one of attempted first-

degree murder, and imposed a sentence of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.

In 2005, this Court affirmed relator's convictions and sentences, and the Louisiana Supreme Court denied relator's writ application. *See State v. Austin*, 04-993 (La. App. 5 Cir. 3/1/05), 900 So.2d 867, *writ denied*, 05-830 (La. 11/28/05), 916 So.2d 143.

On July 9, 2025, relator filed a Motion to Correct an Invalid and Illegal Habitual Offender Sentence, claiming that his habitual offender sentence was illegal because the court, not a jury, "made a factual finding which had the effect of increasing his punishment."<sup>1</sup> On July 10, 2025, the district court denied relief, finding that relator's claim contesting the constitutionality of his sentence pursuant to the multiple bill was not cognizable in a motion to correct illegal sentence. The district court further found "no illegality in the defendant's sentences, as the terms of the sentences imposed are clearly within the statutory parameters."

Relator filed a writ application seeking review of the district court's ruling and re-urging his claim that his sentence is illegal. This Court denied the writ, first noting that nothing in relator's application pointed to an illegal term in his sentence, thus eliminating the possibility of seeking review "at any time," and further determining that relator's constitutional challenge to his sentence had no merit and his application for post-conviction relief was untimely. *State v. Noel Austin*, 25-373 (La. App. 5 Cir. 9/12/25), 2025 WL 2631395 (unpublished).

#### *Application for Writ of Mandamus*

More recently, relator filed in the district court a Motion for Production of Documents, requesting the transcript from his multiple offender hearing that occurred on May 18, 2004. The district court denied relator's motion, noting that the record contains a letter from the Chief of Court Reporters explaining that the court reporter who transcribed the hearing is no longer employed with the court, and the court possesses neither the habitual offender hearing transcript nor the notes or tapes from that hearing.

Relator now asks this Court to "enforce production of documents" by ordering the district court clerk to locate the transcript. We find no error in the district court's order denying relator's request, given that the court reporter no longer works for the court, the hearing occurred more than 20 years ago, and the court already has indicated it does not have in its possession the transcript or any notes or tapes from the hearing. The district court and/or the clerk's office cannot produce what it does not have.

Relator also has not indicated how the hearing transcript may support an argument that his sentence is "illegal." If relator cannot point to an illegal term of his sentence, he does not raise a claim cognizable in a motion to correct an illegal sentence. Instead, he raises a claim properly cognizable in an application for post-conviction relief, if at all. Thus, the language of La. C.Cr.P. art. 882, permitting a defendant to file a motion to correct an illegal sentence "at any time," would not

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<sup>1</sup> Relator relied on the United States Supreme Court's decision in *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024), which held that the Fifth and Sixth Amendments require a unanimous jury's determination of facts essential to an enhanced sentence under the Armed Career Criminal Act, which "imposes lengthy mandatory prison terms on certain defendants who have previously committed three violent felonies or serious drug offenses on separate occasions." *Erlinger*, 602 U.S. at 825, 144 S.Ct. at 1846.

apply, and the two-year period specified in La. C.Cr.P. art. 930.8 would render any subsequent APCR time barred. Finally, relator already has, unsuccessfully, challenged his sentences as illegal, rendering any future request successive and thus jurisdictionally barred. *See* La. C.Cr.P. art. 930.4.

Finding no error in the district court's ruling, the writ of mandamus is denied.

Gretna, Louisiana, this 28th day of October, 2026.

**SMC**  
**JGG**  
**SJW**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
SCOTT U. SCHLEGEL  
TIMOTHY S. MARCEL

JUDGES



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CURTIS B. PURSELL  
CLERK OF COURT

SUSAN S. BUCHHOLZ  
CHIEF DEPUTY CLERK

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FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/28/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

**CURTIS B. PURSELL**  
CLERK OF COURT

**26-KH-516**

**E-NOTIFIED**

24th Judicial District Court (Clerk)  
Honorable Frank A. Brindisi (DISTRICT JUDGE)  
Matthew R. Clauss (Respondent)

**MAILED**

Noel Austin #305854 (Relator)  
Louisiana State Penitentiary  
Angola, LA 70712