

Fifth Circuit Court of Appeal State of Louisiana

No. 26-KH-416

STATE OF LOUISIANA
VERSUS
JOHN D. MARTIN, III

IN RE JOHN D. MARTIN, III
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUVENILE COURT,
PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE CONNIE
M. AUCOIN, DIVISION "C", NUMBER 22,159

TRUE COPY

September 17, 2026



SUSAN BUCHHOLZ
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and John J. Molaison, Jr.

WRIT DENIED

Relator, John D. Martin, III, seeks this Court's supervisory review of the trial court's ruling which denied his motion for post-conviction relief seeking an out-of-time appeal. For the following reasons, we find no error in the trial court's ruling and thus deny the writ application.

PROCEDURAL BACKGROUND

On December 4, 2023, relator was found guilty by a judge of domestic abuse battery by strangulation and possession of a firearm by a convicted felon. On December 18, 2023, the trial court sentenced relator to three years imprisonment at hard labor on the domestic abuse battery conviction and fifteen years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on the possession of a firearm by a convicted felon conviction. Both sentences were ordered to be served concurrently. At that time, relator did not file a motion for an appeal.

On June 8, 2026, relator filed a Motion for Out-of-Time Appeal with the trial court based on his claim that he was never advised of his right to appeal, citing *State v. Counterman*, 475 So.2d 336 (La. 1985). On June 29, 2026, the trial court denied the motion with a hand-written notation: “(1) See minutes 12/18/23 (2) [La.] C.Cr.P. art. 914.”¹

On July 30, 2026, relator filed a notice of intent with the trial court. On August 4, 2026, the trial court set a return date for September 4, 2026. On September 3, 2026, relator’s writ application was stamped as filed with this Court. In it, relator re-urges his claim for an out-of-time appeal.

ANALYSIS

In *State v. Counterman*, 475 So.2d at 339, the Louisiana Supreme Court held that an application for post-conviction relief filed in the trial court is the appropriate procedural vehicle for a defendant who has failed to appeal to seek reinstatement of his right to appeal. In doing so, the Supreme Court concluded:

[T]he trial court may grant post conviction relief reinstating defendant’s constitutional right to appeal after the time for appealing has elapsed, after due consideration of such factors as the length of the delay in defendant’s attempt to exercise the right and the adverse effect upon the state caused by the delay, in cases such as those in which the defendant was not substantially notified at sentencing of his right to appeal or those in which the defense attorney was at fault in failing to file or perfect a timely appeal.

Id. at 340.

In the instant case, relator, who represented himself at his bench trial, was found guilty on December 4, 2023, and was sentenced on December 18, 2023.

¹ The minute entry from December 18, 2023 states:

Defendant present in court. PSI filed under seal. Defendant sworn. Victim Impact State by Angela Martin. Defendant makes a statement to the Court. Statement by ADA Byrd. Sentenced as follows: Ct.1 Domestic Abuse Battery by Strangulation – 3 years Dept. of Corrections at hard labor, to run concurrent with Ct. 2. Ct.2 Convicted Felon Possessing a Firearm or Carrying a Concealed Weapon – 15 years Dept. of Corrections at hard labor without the benefit of probation, parole or suspension of sentence. Credit for time served. Fined \$1,000.00 plus costs, suspended. Defendant advised of 2 year limitation to file for post-conviction relief. Uniform Commitment order filed herein. Court denies defendant’s request to return his firearm.

Under La. C.Cr.P. art. 914, a motion for an appeal in a criminal matter must be made no later than thirty days after the rendition of the judgment or ruling from which the appeal is taken, or thirty days from the ruling on a motion to reconsider sentence filed pursuant to La. C.Cr.P. art. 881.1.

According to relator, he made an oral request for an appeal. However, the December 18, 2023 minute entry does not reflect that relator filed a motion to reconsider his sentence, nor did he orally move to appeal. Neither did relator file a written motion for an appeal within thirty days of December 18, 2023, pursuant to La. C.Cr.P. art. 914.² Instead, relator filed a Motion for Out-of-Time Appeal on June 8, 2026. Thus, even if relator's Motion for Out-of-Time Appeal was construed as an APCR,³ it is untimely pursuant to La. C.Cr.P. art. 930.8, which provides in pertinent part: "No application for post-conviction relief including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final." Furthermore, relator has not alleged that any of La. C.Cr.P. art. 930.8(A)'s exceptions to the time bar apply in his case.⁴

² Relator also appears to fault his attorney for failing to move for an appeal. However, relator chose to represent himself at trial. Thus, relator has not shown that any of the *Counterman* criteria apply to his case.

³ Courts should "look through the caption of the pleadings in order to ascertain their substance and to do substantial justice." *See State v. Moses*, 05-787 (La. App. 5 Cir. 5/9/06), 932 So.2d 701, 706 n.3, *writ denied*, 06-2171 (La. 4/5/07), 954 So.2d 140.

⁴ La. C.Cr.P. art. 930.8(A) states:

A. No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that shall take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery. If the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to Article 926.2 and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, the petitioner shall not be eligible for the exception provided for by this Subparagraph.

(2)(a) Facts that were known to any attorney for the petitioner shall be presumed to have been known by the petitioner unless the petitioner rebuts this presumption by clear and convincing evidence. Facts that were contained in the record of the court proceedings concerning the conviction challenged in the application shall be deemed to have been known by the petitioner. The provisions of this Subparagraph are applicable if the petitioner proves both of the following:

Accordingly, on the showing made, we find no error in the trial court's ruling denying relator's application for post-conviction relief seeking an out-of-time appeal. The writ application is denied.

Gretna, Louisiana, this 17th day of September, 2026.

JGG
SMC
JJM

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- (i) That the petitioner exercised due diligence in attempting to discover any post conviction claims or facts upon which any claims may be based.
 - (ii) That exceptional circumstances exist, the interest of justice will be served by consideration of the claim based upon the previously unknown facts, and the newly discovered facts in support of the claim are sufficiently compelling that manifest injustice will result if the claim is not considered.
 - (b) The petitioner shall have the burden of proving the provisions of this Subsubparagraph by clear and convincing evidence.
 - (3) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.
 - (4) The application would already be barred by the provisions of this Article, but the application is filed on or before August 1, 2027, and the date on which the application was filed is within two years after the judgment of conviction and sentence has become final.
 - (5) The petitioner qualifies for the exception to timeliness in Article 926.1.
 - (6) The petitioner qualifies for the exception to timeliness in Article 926.2.

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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CLERK OF COURT

SUSAN S. BUCHHOLZ
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LINDA M. TRAN
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 **09/17/2026** 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-416

E-NOTIFIED

29th Juvenile Court (Clerk)
Honorable Connie M. Aucoin (DISTRICT JUDGE)
No Attorney(s) were ENOTIFIED

MAILED

John D. Martin, III #320411 (Relator)
Louisiana Workforce - DeQuincy
DeQuincy, LA 70633

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(Respondent)
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Twenty-Ninth Judicial District Court
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