

Fifth Circuit Court of Appeal State of Louisiana

No. 26-KH-413

STATE OF LOUISIANA
VERSUS
DARWIN L. BETHUNE

IN RE DARWIN L. BETHUNE
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE E.
ADRIAN ADAMS, DIVISION "G", NUMBER 14-2923

TRUE COPY

September 17, 2026



SUSAN BUCHHOLZ
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT DENIED

Defendant-relator, Darwin L. Bethune, seeks supervisory review of the district court's order denying his application for post-conviction relief (APCR). We deny the writ.

Facts and Procedural History

On June 5, 2014, a Jefferson Parish Grand Jury returned an indictment charging relator with one count of second-degree murder in violation of La. R.S. 14:30.1. On October 5, 2017, a Jefferson Parish Grand Jury returned a superseding indictment charging relator with second-degree murder in violation of La. R.S. 14:30.1, obstruction of justice in violation of La. R.S. 14:130.1, and inciting a felony in violation of La. R.S. 14:28. On April 16, 2018, pursuant to a negotiated

plea agreement, relator pled guilty to manslaughter and was sentenced to thirty years imprisonment at hard labor.¹

Relator filed his first APCR in 2019, which the district court denied. On supervisory review, this Court granted the writ in part and remanded to the district court for a hearing to determine whether relator was entitled to an out-of-time appeal. *State v. Bethune*, 20-83 (La. App. 5 Cir. 4/16/20) (unpublished writ disposition). On September 22, 2020, the district court granted relator an out-of-time appeal. On appeal, this Court affirmed relator's conviction and sentence. *State v. Bethune*, 21-25 (La. App. 5 Cir. 11/10/21), 330 So.3d 1236. Relator did not file a writ application with the Louisiana Supreme Court.

Relator filed another APCR with the district court on November 20, 2023, which he supplemented on September 9, 2024, raising claims of ineffective assistance of counsel and *Boykin*² violations. On January 6, 2025, the State filed its response, arguing that relator's claims were procedurally barred or, alternatively, without merit. On January 16, 2026, relator filed another supplement to his APCR in which he raised the following claims: (1) illegal acquisition of cell site location information; (2) *Brady*³ violation; (3) perjured testimony; (4) involuntary guilty plea; (5) unlawful warrantless canine-assisted search; and (6) prosecutorial misconduct.⁴ On May 26, 2026, the State filed a supplemental response arguing that relator's additional claims were without merit. On June 8, 2026, the district court denied relief, stating: "Petitioner has not presented sufficient evidence in

¹ The State amended the indictment to reflect that relator was *nolle prossed* as to the counts of obstruction of justice and inciting a felony.

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

³ *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (State's suppression of evidence that is favorable to the accused after receiving a request for such evidence violates a defendant's due process rights where the evidence is material to either guilt or punishment, without regard to the good or bad faith of the prosecutors).

⁴ Relator's application does not include a "copy of each pleading on which the judgment, order, or ruling was founded" as required by Uniform Rules – Court of Appeal, Rule 4-5(C)(8). However, a copy of relator's original APCR and his supplements to the APCR filed in the district court are available in the official record.

support of his claims, and thus has not met his burden” under La. C.Cr.P. art. 930.2.⁵

On July 8, 2026, relator filed a notice of intent with the district court. On July 14, 2026, the district court found that relator’s request “may be timely” because “no service” was “reflected in the court record,” and set an extended return date for August 31, 2026. On September 3, 2026, relator’s writ application, postmarked August 31, 2026,⁶ was stamped as filed with this Court. In it, relator re-urges the claims he raised in the district court.

Discussion

First, relator contends the State illegally obtained his cell site location information (CSLI), and that the State’s entire case relied on this evidence.

As an initial matter, when a defendant pleads guilty, he waives all non-jurisdictional defects in the proceedings leading up to the guilty plea, and the review of such defects either by appeal or through post-conviction relief is precluded.⁷ *State v. Turner*, 09-1079 (La. App. 5 Cir. 7/27/10), 47 So.3d 455, 459. Furthermore, as the district court pointed out, relator’s claim is procedurally barred from review under La. C.Cr.P. art. 930.4(B) and (C), by raising a claim about which he knew but inexcusably failed to raise in the proceedings leading to conviction or on appeal.⁸ Nevertheless, because relator raises his CSLI claim along

⁵ 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.”

⁶ To determine timeliness, the actual date of filing for pleadings filed by inmates is the date the pleading is delivered to prison authorities. *See Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988); *State ex rel. Johnson v. Whitley*, 92-2689 (La. 1/6/95), 648 So.2d 909; *Shelton v. Louisiana Department of Corrections*, 96-348 (La. App. 1 Cir. 2/14/97), 691 So.2d 159.

⁷ In addition, counsel for relator did not preserve for appellate review any pretrial rulings, including the ruling on relator’s motions to suppress. *See State v. Crosby*, 338 So.2d 584 (La. 1976). Under *Crosby*, a defendant may be allowed appellate review if, at the time he enters a guilty plea, he expressly reserves his right to appeal a specific adverse ruling in the case. *State v. Williams*, 18-137 (La. App. 5 Cir. 9/19/18), 254 So.3d 1260, 1265.

⁸ La. C.Cr.P. art. 930.4(B) provides: “If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.” La. C.Cr.P. art. 930.4(C) provides: “If the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.”

with several other claims in the context of an ineffective assistance of counsel claim,⁹ we address the issue.

At the time of the offense, January of 2014, the State's request for non-content information, *i.e.*, cell site location information (CSLI), was not subject to the search warrant requirement. *See State v. Marinello*, 09-1260 (La. App. 3 Cir. 10/6/10), 49 So.3d 488, *writ denied*, 10-2494 (La. 3/25/11), 61 So.3d 660, and *writ denied*, 10-2534 (La. 3/25/11), 61 So.3d 661, in which the Third Circuit found that the State was not required to obtain records regarding the defendant's cellular telephone activity from the cellular telephone company through a warrant rather than subpoena. However, in 2018, the United States Supreme Court held that a warrant supported by probable cause is generally required before cell phone location records from a third-party provider can be acquired. *Carpenter v. United States*, 585 U.S. 296, 138 S.Ct. 2206, 201 L.Ed.2d 507 (2018). Importantly, *Carpenter* did not retroactively invalidate searches conducted before the change in the jurisprudence. *See State v. Davis*, 18-485 (La. App. 5 Cir. 4/10/19), 269 So.3d 1123, 1134-35, *writ denied*, 19-716 (La. 11/12/19), 282 So.3d 229.

Here, on January 3, 2014, the State obtained relator's CSLI from two of his cell phones pursuant to a court order for a subpoena duces tecum after officers had interviewed relator that same day. While relator maintains that the court orders are dated January 8, 2014, relator has not shown how the date discrepancy, standing alone, would render the acquisition of his CSLI invalid, particularly when a subsequent search warrant and a police report refer to the application for the court

⁹ The general rule that a guilty plea waives all non-jurisdictional defects includes all claims of ineffective assistance of counsel, 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. *See also United States v. Palacios*, 928 F.3d 450, 455 (5th Cir. 2019). Here, relator does not contend that counsel's ineffectiveness rendered his guilty plea involuntary. Nevertheless, the Supreme 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 ("When a defendant enters a counseled plea of guilty, this court will review the quality of counsel's representation in deciding whether the plea should be set aside.").

orders on January 3, 2014. We agree with the district court's conclusion that Commissioner Joyce, who signed the orders, "erroneously affixed an '8' instead of a '3' on the orders, as it is illogical that the police would legally obtain two court orders for the CSLI in question, but illegally acquire the same information days before." Under these circumstances, relator's claim is speculative and conclusory, and relator fails to meet his post-conviction burden of proof. *See* La. C.Cr.P. art. 930.2.

In a related claim, relator suggests that the State's illegal acquisition of his CSLI constituted a *Brady* violation. In *Brady*, 373 U.S. at 87, 83 S.Ct. at 1197, the United States Supreme Court held that the State's suppression of evidence favorable to the accused after it receives a request for such evidence violates a defendant's due process rights where the evidence is material to either guilt or punishment, without regard to the good or bad faith of the prosecutors.

Here, relator's *Brady* claim fails because relator pled guilty. A guilty plea constitutes a waiver of all non-jurisdictional defects, including the right to contest pretrial discovery violations. *See, e.g., United States v. Conroy*, 567 F.3d 174, 178 (5th Cir. 2009), *cert. denied*, 559 U.S. 941, 130 S.Ct. 1502, 176 L.Ed.2d 117 (2010) ("[A] guilty plea precludes the defendant from asserting a *Brady* violation."); *United States v. Meza*, 843 F.App'x 592, 599 n.3 (5th Cir. 2021), *cert. denied*, -- U.S. --, 142 S.Ct. 259, 211 L.Ed.2d 118 (2021) ("It is well-established that a defendant's guilty plea waives his pre-plea rights to *Brady* material."). In any event, the State disclosed the CSLI records to the defense. Thus, even if relator had not pled guilty, thereby waiving his right to claim a *Brady* violation, relator cannot show that a *Brady* violation occurred.

Additionally, relator claims that Detective Francis offered perjured testimony at the motion to suppress hearing when he confirmed that relator's CSLI was obtained pursuant to a court order for a subpoena duces tecum. Relator relies on

Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), in which the Supreme Court held that where a prosecutor allows a state witness to give false testimony without correction, a reviewing court must reverse the conviction if the witness's testimony reasonably could have affected the jury's verdict, even if the testimony goes only to the credibility of the witness.

Relator offers no legal support to show that *Napue* applies to guilty pleas. See *United States v. Estey*, 2023 WL 2823993, at *7 n.2 (W.D. Ky. Apr. 7, 2023), in which the federal district court reasoned:

It is true that prosecutorial misconduct may arise in certain contexts where information the government believes or knows to be false is nonetheless presented, but the presentation must occur *at trial*. Cf. *Napue v. Illinois*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150, 154 (1972). This precedent does not squarely apply in other contexts, such as plea negotiations.

In any event, relator's claim that Detective Francis misrepresented how relator's CSLI was obtained, standing alone, does not establish that the witness lied or that the State suborned perjury. See *Kutzner v. Cockrell*, 303 F.3d 333, 337 (5th Cir. 2002), *cert. denied*, 536 U.S. 978, 123 S.Ct. 14, 153 L.Ed.2d 877 (2002) ("Importantly, due process is not implicated by the prosecution's introduction or allowance of false or perjured testimony unless the prosecution actually knows or believes the testimony to be false or perjured; it is not enough that the testimony is challenged by another witness or is inconsistent with prior statements."). We find no merit in relator's *Napue* claim.

Relator also argues that the police illegally recovered ballistic evidence, *i.e.*, a copper projectile, when a canine sniff was conducted on the flowerbed belonging to the victim's next-door neighbor.

Interpreting Louisiana Constitution Article I, § 5, the Louisiana Supreme Court has held that a defendant adversely affected by the search of another's home has standing under the Louisiana Constitution to assert a homeowner's loss of

privacy rights. *State v. Gant*, 93-2895 (La. 5/20/94), 637 So.2d 396, 397; *State v. Owen*, 453 So.2d 1202, 1205 (La. 1984). This added standing provision in the Louisiana Constitution is therefore contrary to the federal rule that an accused may not raise the violation of a third person's Fourth Amendment rights for the suppression of evidence. *See Owen, supra*.

The curtilage of a home is that "area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life." *State v. Salinas*, 17-485 (La. App. 5 Cir. 7/6/18), 251 So.3d 1166, 1177 n.8, *writ denied*, 18-1301 (La. 4/8/19), 267 So.3d 614 (citing *United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987)). The curtilage is considered part of the home itself and therefore is afforded Fourth Amendment protection. *Id.* To determine whether an outside area is part of the curtilage or extension of the residence's living area, courts look at four factors to evaluate how intimately the area is tied to the home itself: (1) the area's proximity to the home; (2) whether the area is included within an enclosure surrounding the home; (3) whether the area is being used for the intimate activities of the home; and (4) the steps taken by the resident to protect the area from observation by passers-by. *Id.*

In *Florida v. Jardines*, 569 U.S. 1, 133 S.Ct. 1409, 1417, 185 L.Ed.2d 495 (2013), the Supreme Court held that an officer's use of a drug-sniffing dog on the front porch of a home violated the Fourth Amendment because the officer's "behavior objectively reveal[ed] a purpose to conduct a search." In doing so, the Supreme Court found that the front porch was part of the home's curtilage, which is treated as part of the home itself for Fourth Amendment purposes. On the other hand, areas outside the curtilage, such as front yards, do not receive the same Fourth Amendment protection. *See United States v. Hayes*, 551 F.3d 138, 145 (2d Cir. 2008) ("The sanctuary of the home simply does not extend to the front yard."); *Reeves v. Churchich*, 484 F.3d 1244, 1255 (10th Cir. 2007) (holding the front yard

was not part of curtilage where there was no evidence establishing that the front yard was enclosed, used for intimate activities, or protected from observation); *State v. Paulson*, 98-1854 (La. App. 1 Cir. 5/18/99), 740 So.2d 698, 701 (finding a defendant had no reasonable expectation of privacy in plants grown in garden plots in his front yard, accessible through a non-gated driveway, where “[a]ny person, including mail carriers, delivery people, or neighbors, could have entered” and observed them).

Here, the canine sniff was conducted on a flower bed in front of a house. There is no indication that the flower bed was fenced off and shielded from public view or that the neighbor had a protected curtilage interest in an open-front flower bed. Thus, on the showing made, relator’s claim of an illegal search is without merit.

Next, relator maintains that his guilty plea was involuntary. However, as the district court found, relator raised this claim on appeal, and this Court determined “that defendant’s plea was entered into freely and voluntarily.” *Bethune*, 330 So.3d at 1244. Because relator’s involuntary-plea claim was fully litigated on appeal, it is precluded from post-conviction review under La. C.Cr.P. art. 930.4(A).¹⁰

Relator also asserts that the State committed prosecutorial misconduct by unlawfully detaining a potential witness, Jasmin Williams, who was coerced by police into providing information about relator.

As a general rule, a defendant adversely affected by a statement unlawfully obtained from another under the Fifth or Sixth Amendments, or under Article I, § 16 of the Louisiana Constitution, lacks standing to raise its illegality. *See State v. Neal*, 25-157 (La. App. 5 Cir. 5/27/25), 2025 WL 1504861, at *2-3, *writ denied*, 25-800 (La. 10/1/25), 417 So.3d 575. However, in *Neal*, this Court pointed out that

¹⁰ La. C.Cr.P. art. 930.4(A) provides: “Any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.”

the Supreme Court had “reserved judgment on whether ‘gross police misconduct against third parties in the overly zealous pursuit of criminal convictions might lead to limited standing.’” 2025 WL 1504861, at *5-6 (quoting *State v. Burdgress*, 434 So.2d 1062, 1065 (La. 1983)). This Court further stated: “This dicta has since been acknowledged by Louisiana courts, but each court declined to reach the issue, finding that the alleged misconduct did not rise to the level necessary to potentially trigger limited standing.” 2025 WL 1504861, at *6.

Here, relator’s general and conclusory claims of misconduct, standing alone, do not trigger the limited standing discussed in *Neal*. In fact, the State’s discovery inventory lists a copy of a “Rights of Arrestee or Suspects” form for Ms. Williams, negating any suggestion of gross police misconduct that could establish limited standing. As such, relator fails to meet his post-conviction burden of proof under La. C.Cr.P. art. 930.2.

Next, relator claims counsel rendered ineffective assistance by failing: (1) to preserve relator’s right to challenge the district court’s ruling denying his motion to suppress via a *Crosby* plea; (2) to seek supervisory review of the district court’s ruling denying his motions to suppress his statement; (3) to file a motion to suppress the projectile; (4) to investigate the *Napue* violation; and (5) to challenge his *Boykin* colloquy.

Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. Casimer*, 12-678 (La. App. 5 Cir. 3/13/13), 113 So.3d 1129, 1141. To prove ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Casimer*, 113 So.3d at 1141. Under the *Strickland* test, the defendant must show: (1) that counsel’s performance was deficient, that is, the performance fell below an objective standard of reasonableness under prevailing

professional norms; and (2) that the deficient performance prejudiced the defense. *Id.* When a defendant claims that counsel's ineffective assistance rendered a guilty plea invalid, 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 v. Lockhart*, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985).

Although relator complains that counsel should have requested a *Crosby* plea, the Supreme Court in *Crosby* held, "the [district] court has very great and virtually unreviewable discretion to reject rather than accept a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error." 338 So.2d at 590. Here, relator makes no showing that such a plea was viable. *See* La. C.Cr.P. art. 930.2. On the other hand, relator, who faced a charge of second-degree murder and a life sentence, pleaded guilty to a reduced charge of manslaughter and a 30-year sentence pursuant to the plea bargain his counsel negotiated.

With respect to counsel's failure to file additional motions to suppress or to seek supervisory review, as a general matter, 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. Furthermore, relator's attempt to re-purpose his claims of illegal search, *Napue* violation, and improper *Boykin* colloquy as a collective claim for ineffective assistance of counsel is also without merit. *See State v. Williams*, 613 So.2d 252, 256-57 (La. App. 1st Cir. 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."). Relator's ineffective assistance of counsel claim does not entitle him to relief.

Relator further asserts that he was not given an opportunity to respond to the State's supplemental brief before the district court issued a ruling denying his APCR. In *State v. Terry*, 458 So.2d 97, 100 (La. 1984), the Supreme Court explained that La. C.Cr.P. art. 927 was enacted to allow the district court to rule without the petitioner's presence in court; its purpose was not to serve as a prerequisite to the district court's exercise of its constitutional authority. Thus, while La. C.Cr.P. art. 927(B) permits the State to file an answer to a relator's APCR, there is no codal provision mandating a response from a relator.

Relator also complains that the district court did not conduct an evidentiary hearing. However, a district court may dispose of the petition for relief summarily if the factual and legal issues can be resolved based upon the application and answer, and the supporting documents, including relevant transcripts, depositions, and other reliable documents submitted by either party or available to the court. La. C.Cr.P. art. 929(A). Given that the issues relator has raised lack merit, we find the district court acted within its discretion when resolving relator's claims without conducting an evidentiary hearing. *See State ex rel. Tassin v. Whitley*, 602 So.2d 721, 722 (La. 1992).

For the foregoing reasons, the writ is denied.

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

SMC
SJW
SUS

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



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETN, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

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-413

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable E. Adrian Adams (DISTRICT JUDGE)
Darren A. Allemand (Respondent)

MAILED

Darwin L. Bethune #700630 (Relator)
Rayburn Correctional Center
27268 Highway 21
Angie, LA 70426