Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KH-134

STATE OF LOUISIANA

versus

DARRYL DAVIS COOK

IN RE DARRYL DAVIS COOK
APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT, PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE NGHANA LEWIS, DIVISION "B", No. 99,96

TRUE COPY
LINDA TRAN
DEPUTY CLERK

April 22, 2026

Panel composed of Judges Susan M. Chehardy, Fredericka Homberg Wicker, and John J. Molaison, Jr.

WRIT DENIED

Relator Darryl Cook seeks review of the trial court's January 26, 2026 judgment denying his Application for Post-Conviction Relief (APCR). We deny relief for the following reasons.

On December 21, 2000, the relator was convicted of second-degree murder of his wife and received a sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. This Court affirmed the relator's conviction and sentence on November 27, 2001. *State v. Cook*, 01-547 (La. App. 5 Cir. 11/27/01), 806 So.2d 184. On October 4, 2002, the Louisiana Supreme Court denied the relator's writ application. *State v. Cook*, 01-3392 (La. 10/4/02), 826 So.2d 1121.

The relator filed his APCR with the district court on November 6, 2025. He relied on the newly discovered evidence exception of La. C.Cr.P. art. 930.8(A)(1) and argued that Judge Mary Hotard Becnel, who presided over his 2000 trial, should have recused herself. The relator claims that he recently learned his wife, the victim, worked as a nurse caretaker for Judge Becnel's mother from 1998 to 1999. The relator also asserts that he recently learned Judge Becnel granted a temporary restraining order requested by his wife during divorce proceedings initiated shortly before her murder. In addition, the relator claims ineffective assistance of counsel.

The relator's writ application does not indicate that he requested a return date in the district court as required by the Uniform Rules for the Courts of Appeal. Specifically, Rule 4-3 states, in pertinent part: "The application for writs shall contain documentation of the return date and any extensions thereof; any application that does not contain this documentation may not be considered by the Court of Appeal."

Rule 4-3 provides in criminal cases that "the return date shall not exceed 30 days from the date of the ruling at issue." The relator's writ application is postmarked March 26, 2026, more than thirty days after the district court's January 26, 2026, ruling from which he seeks review. However, the relator claims that he did not receive a copy of the district court's ruling until March 2, 2026, when someone placed it under his pillow in violation of prison regulations for receiving legal mail. Rule 4-3 provides that an untimely application can be considered if the delay in filing was "not due to the applicant's fault." In the interest of justice, given the facts and circumstances of this case, we will consider the relator's application, although it does not comply with the Uniform Rules.

La. C.Cr.P. art. 930.8(A) 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."

The relator's conviction and sentence became final in 2002. In seeking post-conviction relief, the relator relies on the "facts not known" exception of La. C.Cr.P. art. 930.8(A)(1), which applies when the following requirement is met:

> 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.

To support his claim of newly discovered evidence of judicial bias, the relator submitted an affidavit dated May 19, 2025, in which his sister, Janice Cook, stated that Judge Becnel employed the victim as a nurse caretaker for her mother from 1998 to 1999.[1]

Because the victim was the relator's wife, the relator has not shown "that the facts upon which the claim is predicated were not known" to him as required by La. C.Cr.P. art. 930.8(A)(1). Furthermore, the relator provides no explanation for the twenty-six-year delay in his sister coming forward with such information, particularly when the relator lived with his sister when the murder occurred. Accordingly, the relator fails to show unknown facts under La. C.Cr.P. art. 930.8(A)(1), which would exempt this time-barred claim.

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[1] The relator also claims that Judge Becnel granted a restraining order against the relator at the victim's request during their divorce proceedings. However, the relator does not include any proof of the temporary restraining order in the writ application. Regardless, the relator would have had knowledge of the temporary restraining order, as well as the trial judge who issued it, at the time of his trial held in December of 2000. Under these circumstances, the relator does not meet the exception for newly discovered evidence under La. C.Cr.P. art. 930.8(A)(1).

Similarly, the relator's claim that counsel rendered ineffective assistance by failing to uncover evidence of Judge Becnel's alleged conflict of interest is also untimely. Because the relator would have known about his wife's employment at the time of his trial, this claim does not qualify under La. C.Cr.P. art. 930.8(A)(1)'s unknown facts exception.[2]

Finally, the relator contends that Judge Nghana Lewis should have recused herself from reviewing his APCR because she previously served as a law clerk for Judge Becnel. To support this claim, the relator submitted a copy of an excerpt from a Wikipedia entry about Judge Lewis's legal career.

The relator contends that Judge Lewis was obliged to recuse herself *sua sponte* from reviewing his APCR. La. C.Cr.P. art. 671 specifies the grounds upon which a judge may be recused in a criminal case. Under this article, recusal is required if a judge is biased, prejudiced, or personally interested in the cause to such an extent that the judge would be unable to conduct a fair and impartial trial or would be unable for any other reason to conduct a fair and impartial trial. *See* La. C.Cr.P. art. 671. La. C.Cr.P. art. 672 provides that a judge may recuse in any cause in which a ground for recusal exists, whether or not a party has filed a motion. A judge may recuse himself *sua sponte. State v. Kitts*, 17-777 (La. App. 1 Cir. 5/10/18), 250 So.3d 939, 957, *writ denied*, 18-872 (La. 1/28/20), 291 So.3d 1057.

With regard to post-conviction matters, the Louisiana Supreme Court has found that a district court judge must recuse himself from post-conviction proceedings from any case in which he actively participated in prosecuting the defendant. *See State ex rel. McKenzie v. State,* 99-1657 (La. 11/5/99), 750 So.2d

[2] As part of his ineffective assistance of counsel claim, the relator faults counsel for failing to investigate the authenticity of the handwritten note allegedly written by him in which he stated his intent to kill his wife with a handgun. The relator does not contend that this claim rests on any exception to La. C.Cr.P. art. 930.8's prescriptive period. We find this claim is untimely.

973, 974 (“This district court judge who denied relator’s application for post-conviction relief filed the state’s appellate brief in relator’s appeal in this Court almost twenty years ago.... [T]he judge should have recused himself from post-conviction relief proceedings.”); *State ex rel. Truvia v. State,* 96-1278 (La. 2/6/98), 709 So.2d 723 (“The district court judge who denied relator’s petition for post-conviction relief prosecuted relator for the instant crime over twenty years ago. Although this appears to have been inadvertent, he should have been recused from the post-conviction relief proceeding.”).

The relator does not point to any specific instances of Judge Lewis’s bias resulting from her prior clerkship for the trial judge who presided over the relator’s trial more than twenty-five years ago. The relator has not shown any direct statutory or jurisprudential support mandating Judge Lewis’s automatic disqualification from reviewing the relator’s APCR. This claim lacks merit.

For these reasons, we deny this writ application.

Gretna, Louisiana, this 22nd day of April, 2026.

JJM
SMC
FHW

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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 **04/22/2026** 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:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-KH-134

E-NOTIFIED
40th District Court (Clerk)
Honorable Nghana Lewis (DISTRICT JUDGE)
Bridget A. Dinvaut (Respondent)

MAILED
Darryl Davis Cook #437546 (Relator)
Louisiana State Penitentiary
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