

Fifth Circuit Court of Appeal State of Louisiana

No. 26-KH-311

STATE OF LOUISIANA

VERSUS

KEITH JOHNSON

IN RE KEITH JOHNSON
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
SHAYNA BEEVERS MORVANT, DIVISION "M", NUMBER 20-794

TRUE COPY

August 21, 2026



SUSAN BUCHHOLZ
DEPUTY CLERK

Panel composed of Judges Stephen J. Windhorst,
Michael P. Mentz, Pro Tempore, and Timothy S. Marcel

WRIT DENIED

In this application for post-conviction relief (“APCR”), relator challenges the trial court’s denial of his claims of grand jury procedural deficiencies. For the following reasons, we deny relator’s application.

Procedural Background

On October 20, 2022, pursuant to a negotiated plea agreement, relator Keith Johnson pled guilty to manslaughter (count one); obstruction of justice (count two); and possession of a firearm by a convicted felon (count three). On the same date, the trial court sentenced relator to forty years imprisonment at hard labor on count one, ten years imprisonment at hard labor on count two, and twenty years imprisonment at hard labor on count three. The trial court further ordered the sentence on count

one to run consecutively with the sentence on count two but concurrently with the sentence on count three. The trial court also ordered the sentence on count two to run concurrently with count one but consecutively with the sentence on count three.

Relator filed his APCR with the district court on May 15, 2026, stating that his grand jury indictment was not brought into open court in violation of La. C.Cr.P. art. 383.¹ Relator also challenged the validity of his grand jury indictment, arguing that grand jury indictments must be unanimous because jury verdicts are required to be unanimous, citing *Ramos v. Louisiana*, 590 U.S. 83, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020).

On May 26, 2026, the district court denied relief, first pointing out that relator failed to object or file a motion to quash the indictment. Nevertheless, the district court found that relator's allegations of defects in his grand jury indictment were "factually incorrect," stating:

The August 27, 2020 minute entry shows all twelve grand jurors and the Assistant District Attorney appeared in open court to return the indictment. The charging document includes signatures from both the grand jury foreperson and the assistant district attorney. This Court notes the August 27, 2020 minute entry was not included in the material provided. As such, the Court will issue an order to the Clerk of Court to provide Defendant a certified copy of the August 27, 2020 minute entry.

With respect to relator's argument that grand jury indictments must be unanimous to be constitutionally valid, the district court found that relator "does not show nor does the record establish, the vote of the grand jurors to indict." In rejecting this claim, the district court stated: "There is no case law holding that Louisiana's statutory provisions for grand jury concurrence are unconstitutional."

¹ La. C.Cr.P. art. 383 states:

An indictment is a written accusation of crime made by a grand jury. It must be concurred in by not less than nine of the grand jurors, indorsed "a true bill," and the indorsement must be signed by the foreman. Indictments shall be returned into the district court in open court; but when an indictment has been returned for an offense which is within the trial jurisdiction of another court in the parish, the indictment may be transferred to that court.

In doing so, the district court pointed out that La. C.Cr.P. art. 435 provides, in pertinent part: “Nine grand jurors shall constitute a quorum, and nine grand jurors must concur to find an indictment.” In addition, La. C.Cr.P. art. 444 provides, in pertinent part: “At least nine members of the grand jury must concur in returning ‘a true bill’ or ‘not a true bill.’” Next, the district court, in finding that relator’s claim of newly “obtained” evidence was “without merit,” also found that his claim was time-barred pursuant to La. C.Cr.P. art. 930.8 and successive. Finally, the district court found that relator’s claim failed to satisfy his post-conviction burden of proof.²

Relator filed a notice of intent with the district court on June 16, 2026. As mentioned above, on July 6, 2026, relator filed a writ of mandamus with this Court based on the district court’s failure to act on his notice of intent. It does not appear that the district court has acted on relator’s notice of intent. Thus, there is no documentation of a return date with relator’s writ application as required by Uniform Rules – Courts of Appeal, Rule 4-3, which 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.” On July 13, 2026, relator’s writ application, postmarked July 9, 2026, was stamped as filed with this Court, more than thirty days from the district court’s May 26, 2026 ruling. However, as discussed above, the district court has not yet set a return date.

Thus, we will review relator’s claim is included given that the district court has not acted on relator’s timely-filed notice of intent. Uniform Rules – Courts of Appeal, 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 instant application, relator re-urges his claim of a defective grand jury indictment.

² 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.”

Analysis

Louisiana Code of Criminal Procedure 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.” In the instant case, relator’s convictions and sentences became final in 2022. Thus, as the district court found, relator’s application filed in 2026 appears untimely.

However, relator contends that his claim concerning the grand jury indictment falls under the “facts not known” exception of La. C.Cr.P. art. 930.8(A)(1). In support of his claim, relator relies on the grand jury sheet he recently obtained from the 24th Judicial District Court Clerk of Court, which does not indicate that his grand jury indictment was returned in open court. On the other hand, relator gives no explanation for why he did not request documentation of his grand jury indictment until 2026 given that he pled guilty in 2022. Furthermore, it appears that he received a copy of his grand jury indictment in December of 2022. As such, relator does not appear to meet the diligence requirement of La. C.Cr.P. art. 930.8(A)(1), which provides in relevant part:

[T]he 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.

In any event, even assuming relator timely filed a post-conviction challenge to his grand jury indictment, we find that by pleading guilty, relator waived all non-jurisdictional defects in the proceedings leading to the plea. Thus, his claim of challenging the validity of the grand jury indictment is precluded from post-

conviction review. *See State v. King*, 99-1348 (La. App. 5 Cir. 5/17/00), 761 So.2d 791, 793, *writ denied*, 00-1824 (La. 6/29/01), 794 So.2d 822. Furthermore, in light of the August 27, 2020 minute entry showing that all twelve grand jurors were present in open court to return the indictment, it appears relator has failed to meet his post-conviction burden of proof under La. C.Cr.P. art. 930.2.

Next, notwithstanding the untimeliness of relator's challenge to the grand jury statutes, relator's reliance on *Ramos* appears misplaced as he provides no legal support that its holding concerning Louisiana's non-unanimous jury system is applicable to the grand jury statutes he now challenges. Thus, it would appear relator would not meet his post-conviction burden of proving that relief should be granted. *See* La. C.Cr.P. art. 930.2.

Finally, relator complains that the district court did not conduct an evidentiary hearing. However, the 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 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 the factually and legally weak issues raised by relator and discussed above, the district court acted within its discretion when it resolved relator's claims without conducting an evidentiary hearing. *See State ex rel. Tassin v. Whitley*, 602 So.2d 721, 722 (La. 1992).

The writ application is denied.

Gretna, Louisiana, this 21st day of August, 2026.

MPM
SJW
TSM

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 **08/21/2026** 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
CLERK OF COURT

26-KH-311

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Shayna Beevers Morvant (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

MAILED

Keith Johnson #743199 (Relator)
Rayburn Correctional Center
27268 Highway 21
Angie, LA 70426