

JEREL SMITH

NO. 25-KH-111

VERSUS

FIFTH CIRCUIT

TIMOTHY HOOPER, WARDEN

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS



Linda Wiseman
First Deputy, Clerk of Court

April 16, 2025

Linda Wiseman
First Deputy Clerk

IN RE JEREL SMITH

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT,
PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE CONNIE M.
AUCOIN, DIVISION "C", NUMBER 17,30

Panel composed of Judges Jude G. Gravois,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED

Relator, Jerel Smith, filed a *pro se* writ application seeking review of the district court's September 10, 2024 decision denying his First Uniform Application For Post-Conviction Relief ("APCR"). Relator argues that this Court should grant him relief because the district court failed to comply with this Court's June 4, 2024 ruling, which reversed the district court's order denying the APCR as untimely and remanded for the district court to consider new evidence presented by relator regarding the timeliness of his APCR. Relator specifically contends that the district court failed to have him transported to attend the hearing set by the district court to consider the timeliness and merits of his APCR. He further contends that the district court failed to conduct a full evidentiary hearing prior to ruling on his APCR. However, as explained more fully below, this Court did not order an evidentiary hearing on relator's APCR. For this reason and those stated more fully below, we deny relator's writ application.

On May 11, 2018, a unanimous jury found relator guilty of second degree murder and armed robbery. On June 14, 2018, he was sentenced to life imprisonment at hard labor for second degree murder and a concurrent sentence of ninety-nine years for armed robbery. The district court ordered both sentences to be served without the benefit of parole, probation, or suspension of sentence. On March 13, 2020, this Court affirmed relator's convictions and sentences for second degree murder and armed robbery. *State v. Smith*, 19-395 (La. App. 5 Cir. 3/13/20), 293 So.3d 732. Relator did not file a writ application seeking review with the Louisiana Supreme Court.

Relator then filed his APCR, which the district court denied as untimely on April 2, 2024. Relator sought supervisory relief from this Court, arguing that he had a receipt from the prison mailing system proving he turned over his APCR to prison officials for mailing in a timely manner. On June 4, 2024, this Court granted relator's writ application, reversed the district court's ruling, and remanded the matter for the district court to determine whether relator's APCR was timely filed under the mailbox rule. *See State v. Jerel Smith*, 24-KH-198, p. 3 (La. App. 5 Cir. 6/10/24), 2024 WL 2886956.

Following remand, the district court issued an order on June 17, 2024, recognizing that this Court remanded the matter to consider the timeliness of relator's APCR. The order also set the matter for hearing on September 10, 2024, for the State of Louisiana to "show cause . . . as to why [relator's APCR] should not be granted," and appointed the public defender's office to represent relator at the hearing.

At the September 10, 2024 hearing, the district court first considered whether relator's APCR was timely. Defense counsel introduced the mail receipt indicating that relator submitted his APCR to prison authorities in a timely manner. The State conceded that the APCR was timely and indicated it was prepared to

proceed with the merits of the APCR. The district court then ruled that the APCR was timely, and asked counsel to address the merits. Defense counsel objected and argued that he would need time to review the transcripts. He also argued that relator should be present at the hearing to offer any arguments or evidence he had.

The State responded that relator failed to present any grounds in his APCR that required either additional time to review the transcripts or an evidentiary hearing. The State explained that relator raised three different grounds in his APCR. First, relator alleged that his trial counsel was ineffective because his attorney failed to file a motion to suppress: 1) the shoe seized from relator's residence with the victim's blood on it; 2) the identification of relator made by a convenience store clerk; and 3) relator's statement. The State argued that the shoe was seized pursuant to a valid search warrant and his friend identified the shoes as the ones relator was wearing when she picked him up on the morning that the murder occurred. With respect to the identification, trial counsel filed a motion to suppress, which the district court denied. Further, the store clerk who identified relator, testified that relator was a frequent customer. Finally, the State argued that relator made a voluntary statement that he should be in jail after officers showed him a picture of the murder weapon they recovered.¹

In the second argument raised in his APCR, relator argued that his trial counsel was ineffective and caused irreparable harm because he would not allow relator to testify on his own behalf. The State argued that this issue was without merit because relator failed to attach an affidavit from his trial counsel confirming

¹ We note that relator also briefly argues in his APCR that his trial counsel should have filed a motion to suppress the murder weapon because of alleged discrepancies in Dirk Summers' testimony. However, relator does not identify the alleged discrepancies. Further, according to the testimony summarized in our opinion, the gun was recovered from underneath a building at a public park in Killona, Louisiana, following a phone tip from Mr. Summers. Mr. Summers explained at trial that he purchased the gun from relator in exchange for money and cocaine. He further explained that relator arrived at his trailer in a green SUV and was accompanied by a female. Relator's friend, Jaraielle Taylor, testified that she brought relator to a trailer in Killona and saw him take an object that looked like a gun into the trailer. When Mr. Summers later saw officers approaching his trailer, he left and hid the gun as described above. He then called the police and told them where to find the gun.

he prohibited defendant from testifying. Finally, relator argued he was entitled to relief because the trial court unconstitutionally instructed the jurors that their verdict only required the agreement of ten jurors for a finding of guilt. Defense counsel conceded that this argument is moot because a unanimous jury convicted relator on both counts. However, he again argued that he could not address the other issues without reviewing the trial transcripts. The State also reminded the district court that this Court conducted a thorough *Anders*² review on appeal and determined that the evidence was sufficient to support relator's convictions pursuant to *State v. Raymo*, 419 So.2d 858 (La. 1982).

Following oral argument, the district court determined that pursuant to La. C.Cr.P. art. 929, it could rule on relator's APCR in a summary manner, without an evidentiary hearing or relator's presence.³ The district court then denied relator's APCR finding that relator did not state a legal basis for post-conviction relief on any grounds. The district court ordered counsel for the State to submit a written judgment to ensure service of the ruling on relator. However, the record does not contain a written judgment.⁴

² *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

³ La. C.Cr.P. art. 929(A) provides:

- A. If the court determines that 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, the court may grant or deny relief without further proceedings.

⁴ Relator contends that he did not have any contact with the public defender appointed by the district court. He further contends that he did not know whether the district court had ruled on his APCR until he wrote to the clerk of court on December 4, 2024, asking for a status update. According to the official record, the clerk of court responded to relator's letter by sending him a copy of the minute entry from the September 10, 2024 hearing on December 11, 2024. On December 21, 2024, relator mailed a notice of intent seeking a return date to file a writ application from the September 10, 2024 denial of his APCR. On January 13, 2025, the district court denied the notice of intent as untimely. Relator mailed a second notice of intent on February 14, 2025, which the trial court denied as untimely on February 25, 2025. Relator then filed the writ application at issue on March 17, 2025. Considering the history of this case, we will consider relator's current writ application. According to the official record, the first notice of the ruling denying the APCR was sent to relator on December 11, 2024, and relator filed a notice of intent within 30 days of receipt of the ruling.

In his writ application, relator contends that the trial court failed to follow this Court's order by denying his APCR without a full blown evidentiary hearing and without relator's presence. However, this Court's June 4, 2024 ruling only ordered the district court to determine whether relator's APCR was timely. The district court's decision to set the matter for hearing and appoint counsel was not part of this Court's order. Further, after reviewing the merits of relator's APCR, we agree with the district court that an evidentiary hearing was not necessary, as relator's APCR fails to raise a question of fact that cannot be resolved by means of a summary disposition under Article 929. *See also* La. C.Cr.P. art. 930.⁵

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). *Id.* Under the *Strickland* test, the defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Id.*

To be successful in arguing ineffective assistance of counsel, a post-conviction petitioner must prove deficient performance to the point that counsel is not functioning as counsel within the meaning of the Sixth Amendment. *State ex*

⁵ La. C.Cr.P. art. 930 provides:

A. An evidentiary hearing for the taking of testimony or other evidence shall be ordered whenever there are questions of fact which cannot properly be resolved pursuant to Articles 928 and 929. The petitioner, in absence of an express waiver, is entitled to be present at such hearing, unless the only evidence to be received is evidence as permitted pursuant to Subsection B of this Section, and the petitioner has been or will be provided with copies of such evidence and an opportunity to respond thereto in writing.

B. Duly authenticated records, transcripts, depositions, documents, or portions thereof, or admissions of facts may be received in evidence.

rel Sparkman v. State, 15-1726 (La. 10/17/16), 202 So.3d 488, 491. A petitioner must also prove actual prejudice to the point that the results of the trial cannot be trusted. It is absolutely essential that both prongs of the *Strickland* test must be established before relief will be granted by a reviewing court. *Id.* An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or “a trial whose result is reliable.” *Casimer*, 113 So.3d at 1141. To prove prejudice, the defendant must demonstrate that, but for counsel’s unprofessional conduct, the outcome of the trial would have been different. *Id.*

In order to prevail, the accused must also overcome a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; specifically, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065. An alleged error that is within the ambit of trial strategy does not establish ineffective assistance of counsel because opinions may differ on the advisability of such a tactic. *State v. McKinney*, 19-380 (La. App. 5 Cir. 12/26/19), 289 So.3d 153, 162.

Further, the filing of pretrial motions is squarely within the ambit of the attorney’s trial strategy. *State v. Jones*, 09-688 (La. App. 5 Cir. 2/9/10), 33 So.3d 306, 325. Counsel’s decisions as to which motions to file or pursue form a part of trial strategy. *State v. Robinson*, 22-310 (La. App. 5 Cir. 4/12/23), 361 So.3d 1107, 1122. Hindsight is not the proper perspective for judging the competence of counsel’s trial decisions and an attorney’s level of representation may not be evaluated based on whether a particular strategy is successful. *Id.*

In the present matter, relator fails to provide any explanation in his APCR as to how trial counsel was deficient for failing to file additional motions to suppress the evidence or statement. He provides no explanation regarding the grounds trial counsel should have raised to challenge the evidence and statement. Relator also

fails to explain how he was prejudiced. Thus, relator did not overcome the presumption that trial counsel's actions might be considered sound trial strategy. General statements and conclusory allegations will not suffice to prove a claim of ineffective assistance of counsel. *State v. Fisher*, 19-488 (La. App. 5 Cir. 6/24/20), 299 So.3d 1238, 1247.

Further, on direct appeal, this Court conducted a thorough *Anders* and *Raymo* review and found that the evidence was sufficient to support relator's convictions:

Birdie's store clerk positively identified Defendant as the individual whom the victim left with at approximately 6:00 a.m. on the morning of January 9, 2017. The victim's blood was found on defendant's shoe, which was retrieved from defendant's residence pursuant to a search warrant. Defendant sold the firearm used in the murder to Dirk Summers in exchange for cash and cocaine. Video surveillance placed the truck at various locations in St. Charles and St. John the Baptist parishes (including the location in LaPlace where the truck was eventually abandoned) consistent with witnesses' statements and testimony. On one videotape, Sergeant Walsh observed a black man, wearing a greenish hooded sweatshirt, walking in the area where the victim's truck was later discovered. Defendant's cell phone records also placed Defendant in the same areas where the crimes occurred. Also, Det. Plaisance testified that when they showed Defendant pictures of the gun given to them by Mr. Summers, Defendant said he was ready to go to jail because that was where he belonged.

Smith, 293 So.3d at 741-42.

Finally, concerning relator's claim that his trial counsel was ineffective and caused irreparable harm because he allegedly would not allow relator to testify on his own behalf at trial, we agree with the trial court's ruling that relator did not state or provide an adequate basis in his APCR for this claim. The sole basis of this claim in relator's APCR was his own self-serving conclusory allegations. No evidence was presented with the APCR to support this claim. Thus, we conclude

that the trial court did not err in not conducting an evidentiary hearing on and summarily denying this claim.

Accordingly, on the showing made, we deny relator's writ application.

Gretna, Louisiana, this 16th day of April, 2025.

SUS
JGG
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
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JUDGES



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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 **04/16/2025** 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

25-KH-111

E-NOTIFIED

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

MAILED

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