

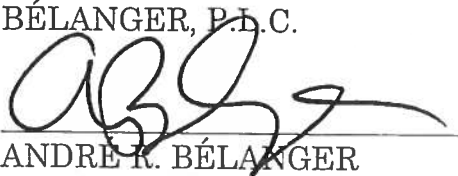
APPENDICES

APPENDIX A: Trial Court's Post-Conviction Ruling

APPENDIX B: Decision of the Louisiana First Circuit Court of Appeals

APPENDIX C: Decision of the Louisiana Supreme Court

Respectfully Submitted,
MANASSEH, GILL, KNIPE &
BÉLANGER, P.L.C.



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Dated: April 24, 2019

PHILLIP NEWTON, JR.
DOC #533813

VERSUS

STATE OF LOUISIANA

NUMBER 13-CR-346 DIVISION B

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA **FILED**

STATE OF LOUISIANA

REASONS FOR JUDGMENT

JUL 20 2017
Shondel N. Jones
East Feliciana Parish, Clerk of Court
State of LA

Phillip Newton, Jr. was charged with Attempted Second Degree Murder of Tiana

McCray. He was convicted of the responsive offense of Attempted Manslaughter by a jury on June 10, 2014. After adjudication as a second felony offender, he was sentenced to thirty years at hard labor in the custody of the Department of Public Safety and Corrections. His conviction was affirmed by The First Circuit Court of Appeal.

Mr. Newton filed an Application for Post-Conviction Relief on March 2, 2017. The Custodian was ordered to file an answer or procedural objection on March 14, 2017. In response, the Custodian filed an answer on April 12, 2017. The Application for Post-Conviction Relief is now before the Court.

The factual and legal issues can be resolved based on the Application for Post-Conviction Relief and attachments, including a transcript of the trial and the response by the Custodian through the District Attorney. Further proceedings are unnecessary.

Mr. Newton alleges ineffective assistance of counsel and the denial of his right to a trial by an impartial jury.

The test to determine the effectiveness of trial counsel is that enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). The Applicant must first show that counsel's performance was deficient, and the errors were so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. The Applicant must also show that the deficient performance prejudiced the defense, and counsel's errors were so serious as to deprive the defendant of a fair trial, the result of which is reliable. Unless the Applicant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process rendering the result unreliable. Mr. Newton has failed to make either showing.

The allegation of ineffective assistance of counsel is based on Trial Counsel not having Mr. Newton testify in his own defense. His failure to testify, he argues, prevented the jury from hearing that Mr. Newton did not intend to kill the victim but was only acting in self-defense. Mr. Newton concedes that it is not unusual for defense lawyers to counsel against testifying to



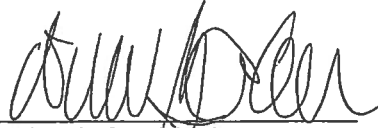
prevent the jury from hearing evidence of other crimes. That situation is not applicable here, according to Mr. Newton, because the victim testified as to four prior violent encounters with him. Since the jury was familiar with the prior criminal acts involving the victim, Mr. Newton claims that not allowing him to testify cannot be just a trial tactic that failed. He concludes that Trial Counsel's failure to allow Mr. Newton to testify deprived him of the opportunity to present his defense and of his constitutional right to a fair trial requiring a new trial. His conclusion is not supported by the facts as revealed by the record. First, the decision to testify or not rests with the criminal defendant. He may consult or discuss his decision with his lawyer but, ultimately, the decision is his. Mr. Newton was advised of his absolute right to testify in open court in the presence of his lawyer. He evidently made the decision to avail himself of his right against self-incrimination and may not, now, complain. Second, there was clearly a good reason for Trial Counsel's advice that Mr. Newton not testify. Though the jury was informed of the other crimes involving the victim, they were not informed of other crimes for which Mr. Newton had been convicted including, Disturbing the Peace by fighting (two convictions), Illegal use of Weapons, Simple Battery, and Simple Assault (two convictions). That information was available to the State and provided to the defense in discovery. Had Mr. Newton testified, those crimes would certainly have been revealed to the jury from which the jury could easily conclude that Mr. Newton had a propensity for violence against people. Trial Counsel's advice that Mr. Newton refrain from testifying was sound and not evidence of deficient performance prejudicial to the Defendant.

Mr. Newton also asserts that one of the jurors withheld the fact that the juror was acquainted with Mr. Newton and Mr. Newton's father. In his supporting affidavit, Mr. Newton testified that he knew the juror and knew that the juror worked with Mr. Newton's father. He also admitted that he failed to bring those facts to his lawyer's attention. In another supporting document, Mr. Newton's father claims, not only that he knew the juror, but worked with him, had an unpleasant relationship with him, and that the juror even discussed the case. That statement is not an affidavit. Assuming that the statement was, in fact, the statement of Mr. Newton's father, he also failed to communicate those facts to Trial Counsel though he was present during jury selection. If the juror knew both Mr. Newton and his father as they allege, the time to raise that issue was during jury selection or at some time prior to the end of the trial. There is no explanation for their failure to do so, and they may not complain now.

The Application for Post-Conviction will be dismissed.

A judgment is attached to these reasons.

Clinton, Louisiana this 9 day of July, 2017.

A handwritten signature in black ink, appearing to read 'William G. Carmichael', written over a horizontal line.

William G. Carmichael
Judge, Division B

Please notify:

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PHILLIP NEWTON, JR.
DOC #533813

VERSUS

STATE OF LOUISIANA

NUMBER 13-CR-346 DIVISION B

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

JUDGMENT

Phillip Newton, Jr. was charged with Attempted Second Degree Murder of Tiana McCray. He was convicted of the responsive offense of Attempted Manslaughter by a jury on June 10, 2014. After adjudication as a second felony offender, he was sentenced to thirty years at hard labor in the custody of the Department of Public Safety and Corrections. His conviction was affirmed by The First Circuit Court of Appeal.


Mr. Newton filed an Application for Post-Conviction Relief on March 2, 2017. The Custodian was ordered to file an answer or procedural objection on March 14, 2017. In response, the Custodian filed an answer on April 12, 2017. The Application for Post-Conviction Relief is now before the Court.

The factual and legal issues can be resolved based on the Application for Post-Conviction Relief and attachments, including a transcript of the trial and the response by the Custodian through the District Attorney, and for written reasons filed with this judgment:

IT IS ORDERED, ADJUDGED, AND DECREED that further proceedings are unnecessary.

IT IS FURTHER ORDERED, ADJUDGED, AND DECEED that the Application for Post-Conviction Relief filed by Phillip Newton, Jr. on March 2, 2011, is DENIED.

JUDGMENT READ, RENDERED, AND SIGNED at Clinton, Louisiana this 19 of July, 2017.


William G. Carmichael
Judge, Division B

FILED

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2017 KW 1146

VERSUS

OCT 30 2017

PHILLIP NEWTON

In Re: Phillip Newton, applying for supervisory writs, 20th
Judicial District Court, Parish of East Feliciana, No.
13-CR-346.

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

WRIT DENIED. Relator failed to meet his burden of proof on each claim, and he failed to prove that the outcome of the case would have been different had counsel performed differently at trial. See La. Code Crim. P. art. 930.2. See also **Strickland v. Washington**, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984). Accordingly, the district court did not err by denying the application for postconviction relief.

JTP

WJC

JMG

tabbies
B

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2017-KP-1997

VS.

PHILLIP NEWTON

IN RE: Phillip Newton; - Defendant; Applying For Supervisory and/or
Remedial Writs, Parish of East Feliciana, 20th Judicial District
Court Div. B, No. 13-CR-346; to the Court of Appeal, First Circuit,
No. 2017 KW 1146;

January 28, 2019

Denied. See per curiam.

MRC

BJJ

JLW


GGG

JDH

SJC

JTG

Supreme Court of Louisiana
January 28, 2019



Deputy Clerk of Court
For the Court

tabbles
C

SUPREME COURT OF LOUISIANA

No. 17-KP-1997

STATE OF LOUISIANA

v.

PHILLIP NEWTON

JAN 28 2019

MRC ON SUPERVISORY WRITS TO THE TWENTIETH JUDICIAL
DISTRICT COURT, PARISH OF EAST FELICIANA

PER CURIAM:

Denied. Relator fails to satisfy his post-conviction burden of proof. La.C.Cr.P. art. 930.2.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, ~~relator has exhausted his right to state collateral review. The district court is ordered~~ to record a minute entry consistent with this per curiam.