

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

NOLAN C. TURNER III — PETITIONER

vs.

DARREL VANNOY, WARDEN — RESPONDENT(S)

RESPONDENT

Appendices

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2020-KH-00047

VS.

NOLAN C. TURNER, III

IN RE: Nolan C. Turner, III - Applicant Defendant; Applying For Supervisory Writ,
Parish of Caddo, 1st Judicial District Court Number(s) 203,173, Court of Appeal,
Second Circuit, Number(s) 53,381-KH;

September 29, 2020

Writ application denied. See per curiam.

WJC

BJJ

JLW

JDH

SJC

JTG

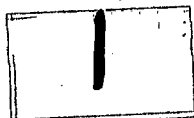
JHB

Supreme Court of Louisiana

September 29, 2020

Second Deputy

Clerk of Court
For the Court



1

SUPREME COURT OF LOUISIANA

No. 20-KH-0047

STATE OF LOUISIANA

v.

NOLAN C. TURNER, III

**ON SUPERVISORY WRITS TO THE FIRST
JUDICIAL DISTRICT COURT, PARISH OF CADDO**

PER CURIAM:

Denied. The application was not timely filed in the district court, and applicant fails to carry his burden to show that an exception applies. La.C.Cr.P. art. 930.8; *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So.2d 1189.

Applicant has now fully litigated two applications 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. Applicant'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, applicant has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

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STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

Richard Sol Feinberg
Assistant District Attorney
501 Texas St., 5th Floor
Shreveport, LA 71101

Katherine Clark Dorroh
Judge, 1st JDC
501 Texas Street
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James Edward Stewart, Sr.
District Attorney
501 Texas Street
Shreveport, LA 71101

Nolan Turner III
LA State Prison
Cypress - 2
Angola, LA 70712

Mike Spence
Clerk of Court, Caddo Parish
501 Texas Street, Room 103
Shreveport, LA 71101

**NOTICE OF JUDGMENT AND
CERTIFICATE OF MAILING**

December 5, 2019

DOCKET Number: **KH 19-53381**

STATE OF LOUISIANA

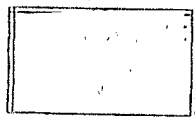
VERSUS

NOLAN C. TURNER, III

NOTICE IS HEREBY GIVEN that the attached order was rendered this date and a copy was mailed to the trial judge, the trial court clerk, all counsel of record and all parties not represented by counsel as listed above.

FOR THE COURT

Clerk of Court



STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

No. 53,381-KH

STATE OF LOUISIANA

VERSUS

NOLAN C. TURNER, III

FILED: 10/18/19

RECEIVED: PM 10/15/19

On application of Nolan C. Turner, III for POST CONVICTION RELIEF in No. 203,173 on the docket of the First Judicial District, Parish of CADD0, Judge Katherine Clark Dorroh.

Pro se

Counsel for:
Nolan C. Turner, III

James Edward Stewart, Sr.
Richard Sol Feinberg

Counsel for:
State of Louisiana

Before PITMAN, GARRETT, and STONE, JJ.

WRIT DENIED.

Applicant Nolan C. Turner, III seeks supervisory review of the trial court's denial of his application for post-conviction relief. On the showing made, this writ is denied. La. C. Cr. P. art. 930.2.

Shreveport, Louisiana, this 5th day of December, 2019.

SDS

708

guy

FILED: December 5, 2019

James E. McFee
CLERK
Chf. Clk.

SECOND CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

Endorsed Filed Dec. 5, 2019

Lillian Evans Richie
LILLIAN EVANS RICHIE, CLERK OF COURT
A TRUE COPY - Attest

4

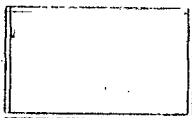
STATE OF LOUISIANA **FILED** NUMBER: 203173; SECTION 1
SEP 19 2019
B. WASHINGTON
CADD0 PARISH DEPUTY CLERK
VERSUS FIRST JUDICIAL DISTRICT COURT

NOLAN C. TURNER, III : CADD0 PARISH, LOUISIANA

RULING

Petitioner was found guilty of First Degree Murder on May 21, 2002 by a twelve-person jury. A sentencing hearing was conducted on May 30, 2002, after the guilt phase, resulting in a recommendation of life imprisonment by a unanimous jury. A motion for a post-verdict judgment of acquittal and a motion for new trial were filed on June 7, 2002, which were denied. Petitioner was sentenced on June 17, 2002, by the Honorable Judge Leon Emanuel to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

Petitioner filed a timely motion for appeal with the Second Circuit Court of appeal, who affirmed the conviction and sentence on October 29, 2003. Petitioner applied for writs to the Louisiana Supreme court, which were denied. *State v. Turner*, 37, 162 (La. App. 2 Cir. 2003), 859 So.2d 911, *writ denied*, 2003-3400 (La. 2004), 870 So.2d 347. Petitioner's first Application for Post-Conviction Relief was filed on February 9, 2005, and denied October 19, 2005. Petitioner filed petition for habeas corpus with the United States District Court, Western District, Shreveport Division, which was denied on August 31, 2009. Next, he filed a petition for a writ of certiorari with the United States Court of Appeal, Fifth Circuit, which was denied. He then filed a petition for a writ of certiorari with the United States Supreme Court, which was denied on October 4, 2010. Petitioner then filed this instant Application on May 16, 2019. In his second Application for Post-Conviction Relief, Petitioner makes the following claim:



1. His trial counsel conceded his guilt to Second Degree Murder over his express objection in violation of Article 1, §13 of the Louisiana Constitution and the Sixth Amendment to the United States Constitution.

Currently before the Court is Petitioner's second Application for Post-Conviction Relief, filed on May 16, 2019. The State filed its Procedural Objections on August 14, 2019, and asked this Court to dismiss Petitioner's second Application as it failed to overcome several procedural objections. For the following reasons, the State's Procedural Objections are sustained and Petitioner's second Application is **DENIED**.

Article 930.8 of the Louisiana Code of Criminal Procedure sets forth the time limitations by which an application for post-conviction relief must be filed.

Specifically, Subsection (A) of Article 930.8 states,

"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 under the provisions of Article 914 or 922..." La. Code Crim. Proc. Art. 930.8(A) (emphasis added).

In turn, Article 922 states,

"A. Within fourteen days of rendition of the judgment of the supreme court or any appellate court, in term time or out, a party may apply to the appropriate court for a rehearing. The court may act upon application at any time.

B. A judgment rendered by the supreme court or other appellate court becomes final when the delay for applying for a rehearing has expired and no application therefor has been made." La. Code Crim. Proc. Art. 922 (emphasis added).

In other words, if an application is filed more than two years after a judgment of conviction and sentence has become final under La. Code of Crim. Proc. Articles 914 (stating the method and time for appeal from a trial court judgment), or 922, *supra*, it will be denied as untimely. *State v. Cotten*, 50,747 (La. 2d Cir. 8/10/16), 201 So. 3d 299.

Petitioner's Application was not filed in a timely fashion, requiring this Court to dismiss his Application. Petitioner's conviction became final under Articles 914 and 922 on October 4, 2010. Under Subsection (A) of Article 922, Petitioner had

fourteen (14) days from that decision in which to file his application for rehearing with the Supreme Court of the United States. As he failed to do so, Subsection (B) of Article 922 rendered his conviction final fourteen days later, or on October 4, 2010. This means that Petitioner had two years from that date, or until October 4, 2012 to file his Application for Post-Conviction Relief. Petitioner filed his Application on May 16, 2019, more than two years after his conviction became final. Since Petitioner failed to file his Application in a timely manner, it must be denied.

In addition, Article 930.4 of the Louisiana Code of Criminal Procedure prohibits the district courts from considering successive applications and motions for post-conviction relief when such applications are repetitive. La. Code Crim. Proc. Art. 930.4. Specifically, Subsection D of Article 930.4 states,

“A successive application **shall be dismissed** if it fails to raise a new or different claim.” Louisiana Code Crim. Proc. Art. 930.4 (emphasis added).

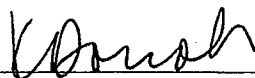
The Louisiana State Legislature makes its directive clear: any application for post-conviction relief that reiterates claims from a previous application for post-conviction relief will be dismissed without consideration. *Id.*

Petitioner's Application must be dismissed pursuant to Article 930.4 of the Louisiana Code of Criminal Procedure. Petitioner has not raised any new arguments specifying why there was a violation of Article 1, §13 of the Louisiana Constitution and the Sixth Amendment of the United States Constitution, but rather, has alleged the **same claim** that was asserted in his first Application for Post-Conviction Relief, filed on February 9, 2005. This Court has already issued a ruling denying that first Application for Post-Conviction Relief. As this Application contains the exact same argument and fails to raise any new claim suggesting that Petitioner's trial counsel conceded his guilt over his express objection, Article 930.4 of the Louisiana Code of Criminal Procedure requires this Court to dismiss Petitioner's Application.

Lastly, Article 930.2 of the Louisiana Code of Criminal Procedure requires that the applicant has the burden of proof. Here, Petitioner did not show that counsel directly or indirectly conceded his guilt. Since Petitioner did not withstand his burden of proof, Article 930.2 requires that his Application be denied.

Accordingly, this Application is **DENIED**. The Clerk of Court is directed to provide a copy of this Ruling to the District Attorney and Petitioner.

Signed this 16th day of Sept, 2019, in Shreveport, Caddo Parish, Louisiana.



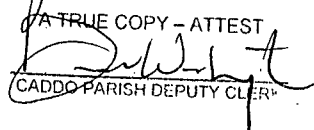
Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

ENDORSED FILED
B. WASHINGTON, Deputy Clerk

DISTRIBUTION:

Nolan C. Turner III
326872, Cypress—2
Louisiana State Penitentiary
Angola, LA 70712

Caddo Parish District Attorney's Office
501 Texas Street
Shreveport, LA 71101

SFP 19 2019
A TRUE COPY - ATTEST

CADDOPARISH DEPUTY CLERK

NOLAND C. TURNER III

DOCKET No. 203,173 SEC 1

VERSUS

FIRST JUDICIAL DISTRICT

DARREL VANNOY, WARDEN

CADDO PARISH, LOUISIANA

Affidavit of David R. McClatchey

Before me, the undersigned Notary, came and appeared David R. McClatchey, a person of the full age of majority who having been sworn stated the following:

1.

Affiant is an attorney and counselor at law licensed to practice in the State of Louisiana, the State of Texas, Federal Court, and before the United States Supreme Court.

2.

Affiant has dedicated his entire legal career to defending the constitutional rights of those less fortunate by providing quality legal representation to persons who are unable to afford legal counsel. Affiant fights for all of his clients to prevent the innocent from being wrongly convicted and the guilty from being overly convicted. Affiant has worked on over 2,000 criminal cases in 29 years of practicing law and not once has he ever been found to be ineffective or indifferent by any court. Affiant is an Assistant Public Defender for the Caddo Parish District Defender's Office and has been so employed for 28 years. Affiant represented Mr. Noland C. Turner III who was charged with first degree murder.

3.

Affiant was present in court during the closing argument presented by co-counsel Michael Vergis. Mr. Vergis did not concede guilt and in fact argued that Mr. Turner was not guilty and innocent of this offense.

4.

If one reads the entirety of Mr. Vergis' closing argument, and not just cherry pick one single paragraph out of context, one would realize that the argument was in two parts. In the first part Mr.



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Vergis argues that the offense itself is not even a first degree murder but at best a second degree murder, so that whoever was involved could not be guilty of first degree murder.

5.

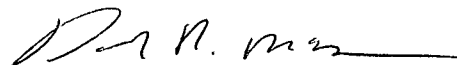
In the second part of Mr. Vergis' closing argument, Mr. Vergis argues that Mr. Turner is not guilty and specifically points out some of the exculpatory evidence that was brought out during the trial. This includes one witness who picked out someone other than Mr. Turner from the photo line-up presented by the police and stated that the subject had a gold tooth which Mr. Turner does not have. The photo line-up used by the police was suggestive. Mr. Vergis also pointed out that one witness referred to as "Little B" could not pick out the person he saw commit the crime anywhere in the court room. Mr. Vergis also argued that Mr. Turner had alibi witnesses that placed him near the barbershop at the time of the incident. Mr. Vergis specifically stated that Mr. Turner was "not guilty of the offense."

6.

In Mr. Vergis' final remarks to the jury he tells the jury that "you do not convict the innocent in order to appease the injured," specifically referring to Mr. Turner as an innocent man.

7.

During the course of representing Mr. Turner counsel did discuss the plea bargaining process with Mr. Turner. Mr. Turner did not want to pursue the possibility of resolving this matter without going to trial and risk receiving the death penalty. It is counsel's duty and obligation to assess the evidence of the case and inform client of that assessment even when the client does not agree with that assessment. It is also the duty and responsibility of counsel to inform clients of the plea bargaining process should a client wish to avail them of that option.



DAVID R. MCCLATCHEY

Thus done and signed before me, notary public, on this 13th day of August, 2019, in Shreveport, Caddo Parish, Louisiana.


NOTARY # 2884

**SECOND OR SUBSEQUENT UNIFORM APPLICATION FOR
POSTCONVICTION RELIEF**

Please review La. C. Cr. P. Arts. 924—930.9 for the correct procedure for filing an application for postconviction relief. This form does not modify the law or requirements as stated in those articles.

For the **Time Limitations** for filing this application, please see Louisiana Code of Criminal Procedure (La. C. Cr. P.) Art. 930.8(A), which states in part that "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 under the provisions of Article 914 or 922 ..."

SECOND OR SUBSEQUENT UNIFORM APPLICATION INSTRUCTIONS—READ CAREFULLY

If this is **not** your **First Application** for postconviction relief, please carefully review all of the following instructions:

1. In accordance with La. C. Cr. P. Art. 930.4(D) or (E), you are entitled to file one application for postconviction relief after your conviction has become final and within the time limits provided in La. C. Cr. P. Art. 930.8.
2. If you are attempting to file a second or subsequent application, you **must use this form** and **justify your right to file a second or subsequent application** in accordance with La. C. Cr. P. Arts. 930.4 and 930.8. If you fail to use this form, your application may be automatically dismissed by the Court.

GENERAL INSTRUCTIONS—READ CAREFULLY

In addition to the above instructions, please carefully review all of the following instructions:

1. **You must use this form or the District Court will not consider your application.** This could affect your ability to seek relief in accordance with the time limits established in La. C. Cr. P. Art. 930.8. Therefore, you must use this form or justify your failure to do so within the postconviction time limits.
2. This application must be clearly written or typed, signed by you or your attorney, and sworn to before a notary public or institutional officer authorized to administer an oath. Any false statement of a material fact may serve as the basis for criminal prosecution. Answer questions concisely in the proper space on the form. You may attach additional pages stating the facts that support your claims for relief. No lengthy citations of authorities or legal arguments are necessary.
3. When the application is completed, you **must file the original application in the District Court for the Parish in which you were convicted and sentenced**, and you must also send a copy to the State.
4. You must raise all claims for relief arising out of a single trial or guilty plea in one application.
5. You are only entitled to file an application for postconviction relief to challenge a **habitual offender adjudication or sentence within very limited circumstances**. In most cases, you can only challenge a habitual offender adjudication or sentence in appeal.

REQUIRED ATTACHMENTS

A copy of the Louisiana Uniform Commitment Order of conviction and sentence **must** be attached to the application (if it is available), or the application must allege that it is unavailable.

You **must** attach a copy of **any judgment** by any court regarding prior postconviction applications, or this application may be dismissed by the district court. If you are unable to provide any judgments, please explain why.

Date of this Application:	May 13, 2019	Name of Applicant:	Nolan C. Turner III
DOC Number:	326872	Place of Confinement:	La. State Penitentiary
District Court Case Number:	203, 173	Parish of Conviction:	Caddo

**Attachment
M**

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Name of Trial Judge:		Honorable Leon Emanuel	
Offense(s) for which you were convicted:		La. R.S. 14:30—first degree murder	
Do any of the convictions involves a sex offense or a human trafficking related offense where the victim was a minor under the age of eighteen years (see La. R. S. 46:1842(1.1) and 46:1844(W)(2))? [Check One] Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Date of Conviction:	July 8, 1999	Conviction by: [Check One]	Guilty Plea <input type="checkbox"/> Trial by Jury <input checked="" type="checkbox"/> Trial by Judge <input type="checkbox"/>
Date of Sentencing:	July 8, 1999	Sentence	Life without benefits
Name of Counsel who represented you at the time of trial, sentence and / or conviction:		Public Defender's: Mr. McClatchey, Mr. Goins, and Mr. Vergis	
Multiple Offender Proceeding: [Check One]		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, answer both of the following questions:			
Result of Proceeding: [Check One]		Pled <input type="checkbox"/> Adjudicated to be a Multiple Offender <input type="checkbox"/> Adjudicated No Bill <input type="checkbox"/>	
Sentence on Multiple Offender Bill:		N/A	
Name of Counsel who represented you on appeal:		Peggy J. Sullivan	
Appeal of conviction and sentence: [Check One]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Appellate Case #:	37,162-KA
Appeal of Multiple Bill: [Check One]	Yes <input type="checkbox"/> No <input type="checkbox"/>	Appellate Case #:	N/A
Writ to Louisiana Supreme Court: [Check One]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Supreme Court Case #:	2003-KO-3400
Action by Supreme Court: [Check if Applicable]	Granted <input type="checkbox"/> Denied <input checked="" type="checkbox"/>	Date of Action	March 26, 2004
Rehearing to Supreme Court: [Check if Applicable]	Granted <input type="checkbox"/> Denied <input type="checkbox"/>	Date of Action	N/A
PRIOR APPLICATIONS INSTRUCTIONS—READ CAREFULLY			
Please provide a list of all prior applications for postconviction relief filed by you or on your behalf in connection with the judgment of conviction and sentence challenged in this application. If you have filed more than two prior applications, provide the information for each additional application on a separate sheet of paper.			
District Court Case Number	203, 173	Parish of Conviction:	Caddo
Date of Filing:	February 9, 2005	Is this the same case challenged in this application? [Check One]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Claims Raised:	1. Ineffective assistance of trial counsel.		
Was relief granted or denied? [Check One]		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Date of Disposition: October 19, 2005
Did you receive an evidentiary hearing? [Check One]	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Did you file a writ to the Court of Appeal? [Check One]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Which Circuit? [Check One]	1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/>	Appellate Case #:	41016-KH
Sought writ to Louisiana Supreme Court? [Check One]	Granted <input type="checkbox"/> Denied <input checked="" type="checkbox"/>	Supreme Court Case #:	2006-KH-0818
	Not Sought <input type="checkbox"/>	Date of Ruling	October 27, 2006

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CLAIMS FOR RELIEF INSTRUCTIONS—READ CAREFULLY

You must include in this application all allowable claims relating to this conviction. If you do not, you may be barred from presenting additional claims at a later date. See La. C. Cr. P. Art. 930.4. You must state facts upon which your claims are based. Do not just set out conclusions.

Please refer to La. C. Cr. P. Art. 930.3 (Grounds), which reads:

"If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

- (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana;
 - (2) The court exceeded its jurisdiction;
 - (3) the conviction or sentence subjected him to double jeopardy;
 - (4) The limitations on the institution of prosecution had expired;
 - (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional;
- or
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
 - (7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted."

Using a separate sheet of paper, provide the following information as it relates to claims available under La. C. Cr. P. Art. 930.3.

For each claim: Turner's trial counsel conceded guilt over his express objection. See Memorandum in Support. Turner does not have a copy of the Uniform Commitment Order at the time; however, he is in the process of obtaining it and, with the Court's permission, will supplement this filing with it at a later date.

(A) You must state your claim, the ground on which it is based under La. C. Cr. P. Art. 930.3, and the facts that support your claim.

(B) If there are witnesses who could testify in support of your claim, you must list their names and current addresses. If you cannot do so, explain why.

(C) If you failed to raise this claim in the trial court prior to conviction or on appeal, you must explain why. This is your opportunity to state reasons for your failure before the court considers dismissing the application in accordance with La. C. Cr. P. Art. 930.4(F).

In the following space, provide a brief summary of the reasons why you are legally entitled to file a second or subsequent application. If you fail to justify your right to file a second or subsequent application in accordance with La. C. Cr. P. Arts. 930.4 and 930.8, your application may be automatically dismissed.

A new rule of law was handed down by the United States and Louisiana Supreme Court's concerning an attorney conceding guilt over a client's express objection:

On May 14, 2018, in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018), the United States Supreme Court held that a trial counsel cannot concede guilt over a client's express objection.

On September 7, 2018, in *State v. Horn*, 2016-0559 (La. 9/7/18), --- So.3d ---, 2018 WL 4279696, the Louisiana Supreme adopted the holding of the United States Supreme Court and also held that a trial counsel cannot concede guilt over the client's express objection.

Both rulings have settled that it is not a matter of trial strategy for a counsel to concede guilt; moreover, both Courts have made it clear that this claim is not governed by ineffective-assistance-of-counsel jurisprudence because, although it is a structural error that defies harmless error analysis, it concerns a client's autonomy and not an attorney's competence. Please see Memorandum in Support.

Wherefore, Applicant prays that the Court grant Applicant relief to which he / she may be entitled.

13 / May / 2019

Nolan Turner

[Day / Month / Year]	[Signature of Applicant or Applicant's Attorney]	
AFFIDAVIT		
STATE OF LOUISIANA		
PARISH OF WEST FELICIANA		
<u>Nolan C. Turner III</u> [Name of Applicant / Attorney], being first duly sworn says that he / she has read the application for postconviction relief and swears or affirms that all of the information therein is true and correct.		
<u>Nolan Turner</u> SWORN TO AND SUBSCRIBED before [Signature of Applicant or Applicant's Attorney] me this ____ day of _____, 2019.		
_____ NOTARY or person authorized to administer oath		
Case Name:	JUDGMENT {May be used by the Court in Lieu of or in addition to written reasons}	Case Number:
Considering the foregoing Application for Postconviction Relief, this Honorable Court hereby:		
DENIES this application in accordance with La. C. Cr. P. Art.		
926(E) <input type="checkbox"/> 928 <input type="checkbox"/> 929 <input type="checkbox"/> 930.4 <input type="checkbox"/> or 930.8 <input type="checkbox"/> , or		
ORDERS that the Applicant show cause in writing on or before the ____ day of _____, 20 ____ why the application should not be dismissed in accordance with La. C. Cr. P. Art.		
926(E) <input type="checkbox"/> 928 <input type="checkbox"/> 929 <input type="checkbox"/> 930.4 <input type="checkbox"/> or 930.8 <input type="checkbox"/> , or		
ORDERS that the State be required to file a response to this application on or before the ____ day of _____, 20 _____.		
Signed in _____, Louisiana, this ____ day of _____, 20 ____.		
_____ JUDGE		

IN THE
FIRST JUDICIAL DISTRICT COURT
PARISH OF CADDO

NUMBER: 203, 173, DIVISION "B"

NOLAN C. TURNER III
Petitioner-Appellant

VS.

DARREL VANNOY, Warden
Louisiana State Penitentiary
Respondent-Appellee

MEMORANDUM IN SUPPORT OF SECOND OR SUBSEQUENT
APPLICATION FOR POST-CONVICTION RELIEF

TITLE XXXI-A OF THE
LOUISIANA CODE OF CRIMINAL PROCEDURE
PETITIONER REQUESTS AN EVIDENTIARY HEARING

RESPECTFULLY SUBMITTED:

Nolan Turner III
NOLAN C. TURNER III
326872, CYPRESS—2
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

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1. Turner's trial counsel conceded guilt over his explicit objection in violation of Article I, § 13 of the Louisiana Constitution and the Sixth Amendment to the United States Constitution.

Conclusion.....5

Affidavit/Certificate of Service.....6

Attachments

- A. October 19, 2005, Trial Court Judgment Denying Original Application for Post-Conviction Relief
- B. March 24, 2005, Judgment of the Appellate Court Denying Application for Supervisory Writ after Denial of Application for Post-Conviction Relief
- C. October 27, 2006, Judgment of the Louisiana Supreme Court Denying Application for Writ of Certiorari after Denial of Application for Post-Conviction Relief
- D. Cited Record Citations
- E. Motion for Appointment of Counsel
- F. Motion for Evidentiary Hearing
- G. Motion to Compel Answer

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La. C. Cr. P. art. 930.4.....1, 2

La. C. Cr. P. art. 930.8.....1, 2

Federal Case

McCoy v. Louisiana, 138 S.Ct. 1500 (U.S. La. 2018).....passim

State Cases

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United States v. Cronie, 466 U.S. 648, 104 S.Ct. 2039 (1984).....3

MAY IT PLEASE THE COURT:

NOW INTO COURT comes pro se petitioner Nolan C. Turner III ("Turner") respectfully submitting the following in support of his Second or Subsequent Application for Post Conviction Relief ("SAPCR").

STATEMENT OF JURISDICTION

Jurisdiction is vested in this honorable Court by virtue of Article V, § 16 of the Louisiana Constitution of 1974 and La. C. Cr. P. Art. 925.

PERTINENT INFORMATION UNDER LA. C. CR. P. ART'S. 930.3 & 930.8

- (A) Turner was deprived of his right to counsel in violation of Article I, § 13 of the Louisiana Constitution and the Sixth Amendment to the United States Constitution.
- (B) This claim was initially raised as an ineffective-assistance-of-counsel claim during Turner's original collateral attack of his conviction and sentence. It is being resubmitted in light of the client autonomy rule announced in *McCoy v. Louisiana*, 138 S.Ct. 1500 (U.S. La. 2018) and *State v. Horn*, 2016-0559 (La. 9/7/18), 2018 WL 4279696, under the exception provided for in La. C. Cr. P. art. 930.8(A)(2).

STATEMENT OF THE CASE

Turner was charged, tried, convicted and sentenced to life imprisonment by twelve-member jury for first degree murder. Turner lost his direct appeal and the Louisiana Supreme Court denied discretionary review. Turner timely filed his Original Application for Post-Conviction Relief ("APCR") with the Court raising one claim: ineffective assistance of counsel. The Court summarily denied Turner's APCR. His writ applications to the Court of Appeal, Second Circuit and the Louisiana Supreme Court were unsuccessful. Turner also unsuccessfully sought federal habeas corpus relief.

The subject of this SAPCR is the May 14, 2018, decision of the United States Supreme Court which held that a criminal defendant has the right to insist his attorney refrain from admitting guilt because some decisions, like whether or not to plead guilty, are for the client to make.¹ Also the September 7, 2018, decision of the Louisiana Supreme Court that echoed the sentiments of the

¹See *McCoy v. Louisiana*, 138 S.Ct., at 1508.

McCoy Court.² The *Horn* Court also decided the holding in *McCoy* is not restricted to “cases where a defendant maintains his absolute innocence to any crime [because] *McCoy* is broadly written and focuses on a defendant’s autonomy to choose the objective of his defense.”³

In open court, Turner said:

I’m being prosecuted in a case in which the State is asking for the death penalty. And the only evidence against the defendant, which is me, is eyewitness testimony. And I contend that the eyewitnesses are unreliable. I also contend that the photographic lineup was suggestive and tainted and [] irreversibly poisoned the minds of the witnesses....I also intend to pursue an alibi defense therefore claiming my innocence.⁴

Turner’s trial counsel (“Mr. Vergis”) on the other hand, conceded guilt to second degree murder over Turner’s express objection and defense. Accordingly, this second application for post-conviction relief with memorandum in support follows in a timely manner and is not barred by *La. C. Cr. P. art. 930.4* or *La. C. Cr. P. art. 930.8*.

CLAIM PRESENTED

1. Turner’s trial counsel conceded guilt over his express objection in violation of Article I, § 13 of the Louisiana Constitution and the Sixth Amendment to the United States Constitution.

According to the United States Supreme Court, the decision whether to plead guilty or not rests solely in the discretion of a criminal defendant and not his attorney.⁵ The *McCoy* Court held that:

[A] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel’s experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. Guaranteeing a defendant the right “to have the Assistance of counsel for *his* defence,” the Sixth Amendment so demands. With individual liberty—and, in capital cases, life—at stake, it is the defendant’s prerogative, not counsel’s, to decide on the objective of his defense: to admit guilt in the hope of gaining

²*State v. Horn*, 2016-0559 (La. 9/7/18), 2018 WL 427969.

³*Id.*, at **5.

⁴R. pp 134-35 (emphasis added).

⁵*McCoy v. Louisiana*, 138 S.Ct. 1500 (2018)

mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.⁶

Accordingly, the Louisiana Supreme Court—after being reversed by the United States Supreme Court—concluded that:

... there is no question that a criminal defendant's decision whether to concede guilt implicates fundamental constitutional rights and the right to exercise that decision is protected under the Sixth Amendment. Moreover, a violation of this Sixth Amendment right is a structural error and not subject to harmless error review. [Thus] ... [a] criminal defendant's express refusal to concede guilt is safeguarded by core constitutional protections.⁷

Because a criminal defendant does not surrender complete control of his defense to his counsel, Turner was deprived of his Sixth Amendment right to counsel when Mr. Vergis conceded guilt to second degree murder.⁸ It is now settled that the Sixth Amendment grants an accused the right to make his own defense and when it "speaks of the 'assistance' of counsel, [that] assistant, however expert, is still an assistant."⁹

Mr. Vergis, along with other co-counsels, tried to convince Turner to plead guilty to second degree murder. Turner, however, refused. The record of this case is clear, guilt was conceded over Turner's objection. In fact, Turner exhausted the issue all the way to the United States Supreme Court under *Strickland v. Washington*, and *United States v. Cronin*, and their progeny.¹⁰ Again, this was before the High Court settled this issue with the decision handed down in *McCoy v. Louisiana*. Contrary to law, Mr. Vergis changed Turner's defense and conceded

⁶*McCoy v. Louisiana*, 138 S.Ct., at 1505.

⁷*State v. Horn*, 2018 WL 4279696 at **6, **7.

⁸See *McCoy v. Louisiana*, 138 S.Ct., at 1508.

⁹*Id.*

¹⁰*Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *United States v. Cronin*, 466 U.S. 648, 652, 104 S.Ct. 2039, 2046, 80 L.Ed.2d 657 (1984).

guilt without his consent. Mr. Vergis argued second degree murder in opposition to Turner's adamant plea of not guilty.¹¹

In his closing statement, Mr. Vergis told the jury:

Now, the question is, we have someone who is now deceased, **that makes it murder**. I believe, in this case, **it's second degree murder**, not first. And here's why: In order to have first degree murder you have to show the specific intent to kill. It was the outcome they wanted. They went there with the intent to kill people. They wanted to do this, but that's not what happened. **The robbery was taking place**, things were going fine and then a gunfight started and at that point, there was no intent to kill, there was intent to get out. That is general intent. Yes, he should have known better, but you sure weren't trying to kill anyone. You were going to be shot or be shot [sic]. And that doesn't justify it. It's still wrong. **It is still murder**, but it's not first degree murder; **it is clearly second degree murder**. It is general intent.

Mr. McClatchey during his long voir dire explained that, if you specifically intend to do this, it is going to be specific intent. Now, if this was something going to be a likely consequence of your actions, it is general intent. It wasn't intended. All right. Now that **we have established that it's a second degree murder** and what took place, let's move on to the some of the evidence which has been used.¹²

Mr. Vergis's concession was a violation of Turner's right to insist on his innocence which robbed him of his right to counsel—the right to the effective assistance of counsel to aid him in presenting his defense. As stated above, Turner's defense was his actual innocence and an alibi witness who was willing to testify that he was somewhere other than the scene of the crime. Counsel's strategy of conceding guilt, over Turner's objection, to a lesser charge of second-degree murder during closing argument was not strategy but a violation of Turner's autonomy right to decide what his defense should be.

Turner informed the trial judge (Judge Leon Emanuel) of his counsels representation of him and that he believed they were inadequately representing his cause. He specifically stressed to the trial court that his attorneys were not consulting with him and no defense on his behalf was being discussed. Turner's

¹¹See R. p. 135 ("I also intend to pursue an alibi defense therefore claiming my innocence.")

¹²R. p. 35-36 (emphasis added).

plea of not guilty at arraignment was only one way he informed his attorneys of his innocence concerning the instant offense. Turner further informed the trial court:

My appointed counsel here thinks I'm guilty and wants me to plead guilty against my will. They're also trying to get me to plead to a crime I'm innocent of. I mean, Your Honor, this is my life here we're talking about and I will not let these two lawyers, Mr. Goins and Mr. McClatchey, throw my life down the drain based on them assuming the fact that I'm guilty and that they are overworked with an abundance of other cases to bear. I mean, to my understanding basically they don't even have a defense on their mind or a defense period. They're using the death penalty as a scare tactic to get me to take a deal... I mean, the only thing that they issued or told me, you know what I'm saying, is to plead guilty or they're going to plead me guilty; if not I'm going to be found guilty and get the death penalty. I mean, Mr. McClatchey came to see me Friday, May 10, 2002, and told me to plead guilty. He hasn't talked to me about a trial strategy or defense strategy. I mean, I have no confidence in Mr. Goins or McClatchey that they will defend me to the best of their ability as guaranteed under the Sixth Amendment.

Turner has to be honest and inform the Court that some of his documents have been misplaced; therefore, he is asking the Court to grant him some additional time to produce the documents he is having trouble locating and supplement the record at a time determined by the Court. Being pressed for time to get the instant SAPCR filed, Turner wanted to get everything he had into the hands of a classification officer before May 14, 2019.

Contrary to clearly established law, as determined by the United States Supreme Court, Mr. Vergis, in concluding his argument, said: "We have established that it a [sic] second degree murder and the State has to prove beyond a reasonable doubt that Nolan Turner committed this act. Now, the question is, if Nolan wasn't there, then where was he?"¹³ Counsel alleviated the State's burden and established for the jury that Turner was guilty of second degree murder. Accordingly, Turner's conviction and sentence must be vacated and his case remanded "for further proceedings consistent with *McCoy v. Louisiana*."¹⁴

¹³R. p. 44 (emphasis added).

¹⁴*State v. McCoy*, 2014-1449 (La. 8/31/18), 2018 WL 425778.

CONCLUSION

The issue to be decided by the Court is Turner's autonomy and not Mr. Vergis's competence; therefore, ineffective-assistance-of-counsel jurisprudence is not applicable here.¹⁵ Moreover, Turner is entitled to post-conviction relief because the violation of a defendant's Sixth Amendment-secured autonomy is a structural error and is not amenable to harmless error analysis.¹⁶

Respectfully submitted,

Nolan Turner
Nolan C. Turner III
326827, Cypress—2
Louisiana State Penitentiary
Angola, LA 70712

AFFIDAVIT/CERTIFICATE OF SERVICE

I do hereby certify that the foregoing is true to the best of my knowledge and belief and has been served upon:

Opposing Counsel:

Honorable James Edward Stewart Sr., District Attorney
Caddo Parish Court House
501 Texas Street Fifth Floor
Shreveport, LA 71101-5408

By placing a copy of same in a properly addressed envelope into the hands of the Classification Officer assigned to my unit along with a Withdrawal form made out to the General Fund, LSP, Angola, LA 70712 for the cost of postage and a properly filled out Inmate's Request for Indigent/Legal Mail form, receiving receipt for same in accordance with the institution's rules and procedures for the sending of legal mail.

Done this 13th day of May, 2019.

Nolan Turner

¹⁵State v. Horn, **6.

¹⁶Id.

NOLAN C. TURNER III

DOCKET NO: 203, 173; DIVISION "B"

VERSUS

FIRST JUDICIAL DISTRICT COURT

DARREL VANNOY, Warden
Louisiana State Penitentiary

CADDO PARISH LOUISIANA

MOTION FOR APPOINTMENT OF COUNSEL

NOW INTO COURT comes pro se petitioner Nolan C. Turner III ("Turner") who respectfully submits that he is unlearned and unskilled with respect to legal matters: having had no formal training, is not an attorney and does not have any practical experience in such matters.

Only with the aid of counsel will Turner be able to more fully develop the law and facts before this Court during the upcoming evidentiary hearing regarding his claim to help him ensure that his rights are protected.

Turner requests that counsel be appointed to represent him so that he may further develop his substantial claim, particularly in light of *Martinez v. Ryan*, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), and *Trevino v. Thaler*, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013).

Signed this 13th day of May, 2019.

Respectfully submitted,

Nolan C. Turner III
Nolan C. Turner III
326872, Cypress—2
Louisiana State Penitentiary
Angola, LA 70712

NOLAN C. TURNER III

DOCKET NO: 203, 173; DIVISION "B"

VERSUS

FIRST JUDICIAL DISTRICT COURT

DARREL VANNOY, Warden
Louisiana State Penitentiary

CADDO PARISH LOUISIANA

ORDER

THE ABOVE AND FOREGOING MOTION CONSIDERED:

IT IS HEREBY ORDERED that _____, Attorney at Law,
is hereby appointed to represent Nolan C. Turner III during the evidentiary
proceedings regarding his Second Application for Post-Conviction Relief, and
that said attorney shall file any and all required pre-hearing motions and filings
on behalf of Turner for the purposes of protecting his rights during any upcoming
proceedings in this matter, including but not limited to, any and all necessary
supplemental claims for relief, Motion for Funds for the Hiring of Ineffective
Assistance of Counsel Experts, Motion for Funds to Hire Forensic Experts,
Motion for Funds to Hire Mental Health Experts, Motion for Production of any
and all Necessary Records, Motion to Preserve the Evidence, etc.

Shreveport, Louisiana this _____ day of _____, 2019.

JUDGE—FIRST JUDICIAL DISTRICT COURT

NOLAN C. TURNER III

DOCKET NO: 203, 173; DIVISION "B"

VERSUS

FIRST JUDICIAL DISTRICT COURT

DARREL VANNOY, Warden
Louisiana State Penitentiary

CADDO PARISH LOUISIANA

MOTION FOR EVIDENTIARY HEARING

NOW INTO COURT comes pro se petitioner Nolan C. Turner III who respectfully avers that the claim presented in his second application for post-conviction relief, if established, would entitle him to post conviction relief and respectfully moves the Court to hold an Evidentiary Hearing where the facts and law may be more fully developed to aid the Court in rendering a decision regarding Turner's claim for relief.

Respectfully submitted this 13th day of May, 2019.

Nolan Turner
Nolan C. Turner III
326872, Cypress—2
Louisiana State Penitentiary
Angola, LA 70712

NOLAN C. TURNER III

DOCKET NO: 203, 173; DIVISION "B"

VERSUS

FIRST JUDICIAL DISTRICT COURT

DARREL VANNOY, Warden
Louisiana State Penitentiary

CADDO PARISH LOUISIANA

ORDER

THE ABOVE AND FOREGOING MOTION CONSIDERED:

IT IS HEREBY ORDERED that Nolan C. Turner III be allowed to supplement his Memorandum in Support of his Second Application for Post Conviction Relief as necessary.

IT IS HEREBY ORDERED that an evidentiary hearing be held on the ____ day of _____, 2019, at ____ a.m./p.m. whereby evidence may be introduced and the facts and law may be more fully developed to aid this Court in rendering a just decision regarding Turner's claim for relief.

IT IS HEREBY ORDERED that Warden Darrel Vannoy, Louisiana State Penitentiary, produce Petitioner, Nolan C. Turner III, #326872, currently confined under his custody and control, before the honorable First Judicial District Court, Parish of Caddo, on the ____ day of _____, 2019, as previously ordered by this Court.

Shreveport, Louisiana this ____ day of _____, 2019.

JUDGE—FIRST JUDICIAL DISTRICT COURT

NOLAN C. TURNER III

DOCKET NO: 203, 173; DIVISION "B"

VERSUS

22ND JUDICIAL DISTRICT COURT

DARREL VANNOY, Warden
Louisiana State Penitentiary

CADDO PARISH LOUISIANA

MOTION TO COMPEL ANSWER

NOW INTO COURT comes pro se petitioner Nolan C. Turner III who respectfully avers that the claim presented in second application for post-conviction relief, if established, would entitle him to post conviction relief, and respectfully moves the Court to require the District Attorney for the Parish of Caddo, State of Louisiana, to file an answer in opposition within the period specified under *La. C. Cr. P. art. 927(A)*.

Respectfully submitted this 13th day of May, 2019.

Nolan Turner
Nolan C. Turner III
326872, Cypress—2
Louisiana State Penitentiary
Angola, LA 70712

NOLAN C. TURNER III

DOCKET NO: 203, 173; DIVISION "B"

VERSUS

FIRST JUDICIAL DISTRICT COURT

DARREL VANNOY, Warden
Louisiana State Penitentiary

CADDO PARISH LOUISIANA

ORDER

THE ABOVE AND FOREGOING MOTION CONSIDERED:

IT IS HEREBY ORDERED that the District Attorney for the Parish of
Caddo, State of Louisiana, file an answer to the foregoing Application for Post-
Conviction Relief on or before the ____ day of _____, 2019.

Shreveport, Louisiana this ____ day of _____, 2019.

JUDGE—FIRST JUDICIAL DISTRICT COURT