

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-KP-00161

VS.

MARICE NALLS

IN RE: Marice Nalls - Applicant Defendant; Applying For Supervisory Writ, Parish
of East Baton Rouge, 19th Judicial District Court Number(s) 07-07-0697, Court of
Appeal, First Circuit, Number(s) 2021 KW 1195;

March 15, 2022

Writ application denied. See per curiam.

SJC

JLW

JDH

JTG

WJC

JBM

PDG

Supreme Court of Louisiana

March 15, 2022

Katio Marjanovic

Chief Deputy Clerk of Court

For the Court

PETITIONER'S
EXHIBIT

A

03/15/2022

SUPREME COURT OF LOUISIANA

No. 22-KP-0161

STATE OF LOUISIANA

v.

MARICE NALLS

**ON SUPERVISORY WRITS TO THE NINETEENTH
JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE**

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 several 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.



Office Of The Clerk
Court of Appeal, First Circuit
State of Louisiana
www.la-fcca.org

Rodd Naquin
Clerk of Court

Post Office Box 4408
Baton Rouge, LA
70821-4408
(225) 382-3000

Notice of Judgment and Disposition

December 22, 2021

Docket Number: 2021 - KW - 1195

State Of Louisiana

versus

Marice Nalls

TO: Brooke Delaune
8075 Jefferson Highway
Baton Rouge, LA 70809
brooke@manassehandgill.co

Hillar C. Moore III
EBR District Attorney
222 St. Louis Street
5th Floor
Baton Rouge, LA 70802
lori.olinde@ebrda.org

Hon. Beau Higginbotham
300 North Boulevard
6th Floor
Baton Rouge, LA 70802

In accordance with Local Rule 6 of the Court of Appeal, First Circuit, I hereby certify that this notice of judgment and disposition and the attached disposition were transmitted this date to the trial judge or equivalent, all counsel of record, and all parties not represented by counsel.


RODD NAQUIN
CLERK OF COURT

PETITIONER'S
EXHIBIT

B

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2021 KW 1195

VERSUS

MARICE NALLS

DECEMBER 22, 2021

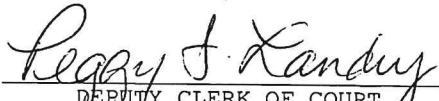
In Re: Marice Nalls, applying for supervisory writs, 19th
 Judicial District Court, Parish of East Baton Rouge,
 No. 07-07-0697.

BEFORE: McCLENDON, WELCH, AND HOLDRIDGE, JJ.

WRIT DENIED.

PMc
JEW
GH

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT

07-07-0697

MARICE NALLS
#423240

VERSUS

STATE OF LOUISIANA

NUMBER: 07-07-0697, SECTION: VII

19TH JUDICIAL DISTRICT COURT


PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ORDER DENYING POST-CONVICTION RELIEF

HAVING CONSIDERED the petitioner's initial application for post-conviction relief, as well as the petitioner's traversal filed April 27th, 2021, in the record in the above-captioned matter, and the applicable law, petitioner's claims are hereby DISMISSED, without the necessity of a hearing, for the reasons set forth in the Commissioner's Recommendations in accordance with the La. C.Cr.P.

JUDGMENT READ AND SIGNED this 13th day of September, 2021.


THE HONORABLE BEAU HIGGINBOTHAM
JUDGE, 19TH JUDICIAL DISTRICT COURT

Copy: Petitioner, Marice S. Nalls, #423240
LA State Prison
Angola, La 70712

District Attorney's Office – Appellate Division

PETITIONER'S
EXHIBIT

C

19th JUDICIAL DISTRICT COURT

IN THE
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

MARICE S. NALLS
Petitioner

Docket No. 7-07-0697

Versus

Date Filed _____

DARREL VANNOY, Warden
Louisiana State Prison
Respondent

Clerk of Court

OBJECTION AND TRAVERSE TO THE
COMMISSIONER'S RECOMMENDATION

MAY IT PLEASE THE COURT:

NOW INTO COURT COMES Marice S. Nalls, Petitioner *pro se*, who files the instant Objection and Traverse to the Commissioner's Recommendation and presents and avers the following:

On April 20, 2021, Mr. Nalls signed for and received, through the Louisiana State Prison mail room, a copy of Commissioner Kina Kimble's Recommendation which was stamped as received on April 19, 2021 by the Louisiana State Prison Legal Programs Department. (Appendix A). This objection is timely filed according to the Clerk of Court's instruction letter attached to the Commissioner's Recommendation, stating, "You have fifteen days from the receipt of this Notice to Traverse the Commissioner's findings."

Mr. Nalls respectfully objects to Commissioner Kimble's Recommendation for misconstruing Mr. Nalls's original arguments, and/or misquoting or projecting Mr. Nalls's argument out of context.

PETITIONER'S
EXHIBIT

D

Specifically, Mr. Nalls avers:

The Commissioner's Recommendation misconstrued Mr. Nalls's claims when stating:

Petitioner's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6. Petitioner has already been granted relief by the Louisiana Supreme Court in regard to his claim for ineffective assistance of counsel.

(Commissioner's Recommendation, pages unnumbered).

The Commissioner's Recommendation states this despite the fact that the Louisiana Supreme Court was just previously quoted by the Commissioner as finding that:

Given that the time limitations for instituting prosecution on the armed robbery count had prescribed, relator's trial counsel rendered ineffective assistance when he failed to file a motion to quash on that basis.

The Commissioner's Recommendation basically says that Mr. Nalls has already gotten relief on his ineffective assistance of counsel issue when the Louisiana Supreme Court vacated the armed robbery charge.

However, this is not the issue now raised. The fact that during the trial, the jury was exposed to the prejudicial effect of the prescribed charge that should not have been presented to them, is itself a constitutional violation. *Edwards v. Carpenter*, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591, 146 L.Ed.2d 518 (2000): "In other words, ineffective assistance adequate to establish cause for the procedural default of some other constitutional claim is itself an independent constitutional claim."

Mr. Nalls was clearly brought to trial on both aggravated rape, and armed robbery, even though the time limitations on the armed robbery charge had long since prescribed. This allowed the prescribed armed robbery charge to be used as evidence against him at trial on the aggravated rape charge. This is improper evidence introduced that is so

unduly prejudicial that it renders the trial fundamentally unfair. This is a separate and distinct claim of ineffective assistance of counsel - not simply that trial counsel failed to file a motion to quash the armed robbery charge, but that Mr. Nalls was prejudiced at his trial by trial counsel's failure to ensure that the jury did not receive this inadmissible armed robbery evidence, and failure to object to the trial court's admission of this evidence at trial.

The trial court's erroneous admission of the prescribed offense allegedly committed by him - the vacated armed robbery charge - deprived him of a fair trial due to the prejudicial nature of the evidence. The erroneous admission of this evidence had a substantial and injurious effect or influence on the verdict at trial. See *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993).

"In the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief. See *Darden v. Wainwright*, 477 U.S. 168, 179-183, 106 S.Ct. 2464, 2470-2472, 91 L.Ed.2d 144 (1986)."

Payne v. Tennessee, 501 U.S. 808, 825, 111 S.Ct. 2597, 2608, 115 L.Ed.2d 720 (1991).¹

In conducting this analysis, it is irrelevant whether the evidence was correctly admitted pursuant to state law. *Estelle v. McGuire*, 502 U.S. 62, 67-68, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991). Rather, the court's inquiry is whether the admission violated the Constitution. *Id.* at 68, 112 S.Ct. 475.

This claim did not exist until the Louisiana Supreme Court made its ruling on PCR. It has only been since January 30, 2020 that Mr. Nalls has been cleared of being procedurally time barred by the United States Fifth Circuit Court of Appeal, since it was events beyond his control that caused the delayed filing in the Louisiana Supreme Court on direct appeal. The instant PCR application was filed within 30 days of that ruling in order to show diligence in this case. On federal habeas corpus, the State argued that Mr.

¹ See also, *Dawson v. Delaware*, 503 U.S. 159, 179, 112 S.Ct. 1093, 117 L.Ed.2d 309 (1992); *Donnelly v. De Christoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974).

Nalls was time barred. The Magistrate agreed with the State, and the District Court Judge adopted the Magistrate's Report. The United States Fifth Circuit Court of Appeal granted COA and Mr. Nalls appealed.

On January 08, 2020, the United States Fifth Circuit Court of Appeal Reversed the federal district court ruling, and Remanded the case for further proceedings. The 5th Circuit found that Mr. Nalls showed "due diligence," and "extraordinary circumstances," which deserved equitable tolling.

Mr. Nalls's claim is timely and properly filed based on the post conviction statutes, and constitutional violations involved.

Louisiana Code of Criminal Procedure, Article 930.8(A)(1) establishes an exception to the 2-year time limitation of that article for "facts upon which the claim is predicated were not known to the petitioner or his prior attorneys." Additionally, this article provides that, "Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist."

Louisiana Code of Criminal Procedure, Article 930.3 (Grounds) reads, in pertinent part:

"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; . . .
- (4) The limitations on the institution of prosecution had expired; . . ."

Further, under Louisiana Code of Criminal Procedure, Article 930.4, the court has discretion to consider the merits of any claim in the interests of justice.

These statutory provisions involve the constitutional guarantee of Due Process in the United States Constitution, Amendments 5 and 14, and the Louisiana Constitution, Article 1, §§ 2 and 22.

Petitioner contends that he is entitled to Post Conviction Relief as he has shown record evidence that he received ineffective assistance of counsel at trial and his rights to due process and a fair trial were violated.

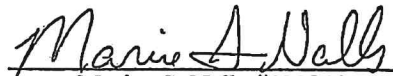
CONCLUSION

Mr. Nalls maintains that he has stated claims, and has pointed to record evidence that entitles him to Post Conviction Relief.

Additionally, Mr. Nalls respectfully objects to Commissioner Kimble's Recommendation for misconstruing the original arguments of Mr. Nalls, and/or misquoting or projecting his arguments out of context.

Therefore, Petitioner asserts that he should be granted the relief requested in his Post Conviction Application.

Respectfully submitted, *pro se*, this 23 day of April, 2021.



Marice S. Nalls #423240
M.P. - Oak 4
LA State Prison
Angola, LA 70712.

CERTIFICATE OF SERVICE

I, Marice S. Nalls, the aforementioned Petitioner, do hereby attest and affirm that the information contained herein is true to the best of my knowledge and belief. Further, that all allegations in the foregoing are those of Marice S. Nalls.

Additionally, I hereby certify that a copy of the foregoing has been sent, via U.S. Mail, postage prepaid and properly addressed to:

Hillar C. Moore, III, District Attorney
19th Judicial District
222 St. Louis St., 5th Fl. Govt. Bldg.
Baton Rouge, LA 70802-5878

Done and signed this 23 day of April, 2021 at Angola, Louisiana.

Marice S. Nalls
Marice S. Nalls #423240
M.P. - Oak 4
LA State Prison
Angola, LA 70712

MARICE NALLS

VERSUS

STATE OF LOUISIANA

* NUMBER 07-07-0697 SECTION III
* 19TH JUDICIAL DISTRICT COURT
* PARISH OF EAST BATON ROUGE
* STATE OF LOUISIANA

COMMISSIONER RECOMMENDATION

Procedural History

On July 26, 2007, Petitioner, Marice Nalls, was charged by grand jury indictment with aggravated rape and armed robbery in violation of Louisiana Revised Statutes 14:42 and 14:64. On October 1, 2008, Petitioner was found guilty as charged during a bench trial. On January 12, 2009, Petitioner was sentenced to life imprisonment without benefit of probation and parole or suspension of sentence for aggravated rape and to fifteen years on armed robbery with both sentences running concurrently.

On October 10, 2011, Petitioner filed his first Post-Conviction Relief (PCR) application. Ultimately, Commissioner Robinson dismissed Petitioner's PCR application on January 31, 2013. Thereafter, on November 26, 2013, Petitioner filed a *Writ of Certiorari* to the Louisiana Supreme Court that was granted in part on November 7, 2014, vacating Petitioner's armed robbery conviction and sentence.¹

On March 2, 2020, Petitioner filed the instant PCR application alleging the following:

1. Mr. Nalls was prejudiced at his trial by his attorney's ineffective assistance of counsel, as determined by the Louisiana Supreme Court, who failed to file a motion to quash the prescribed armed robbery charge, which had a prejudicial effect or influence on the verdict at trial.

Subsequently, this Commissioner ordered Petitioner to state reasons for failure to include the instant claims in his prior application on May 11, 2020. On May 30, 2020, Petitioner filed an answer to the previously mentioned order, specifying his reasons for failure to include his claims in his previous application.

¹ Application for Writ of Certiorari or Review, at 4, Nov. 26, 2013.

PETITIONER'S
EXHIBIT

E

Procedural Objections:

Louisiana Code of Criminal Procedure article 930.4(A) states, "Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered." The Louisiana Supreme Court held in *State v. Lee*, "A petitioner's attempt to re-litigate a claim that has been previously disposed of, by couching it as a post-conviction ineffective assistance of counsel claim, is generally unavailing."²

In this instance, Petitioner has fully litigated his ineffective assistance of counsel claims at the Louisiana Supreme Court. Similar to federal habeas relief,³ 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 time limitations set out in La. C. Cr. P. art. 930.8. The legislature in 2013, amended La. Act 251 to make the procedural bars against successive filings mandatory.⁴

When Commissioner Robinson denied Petitioner's initial PCR application in 2013, Petitioner timely sought writ applications to the Louisiana Court of Appeals, and finally to the Louisiana Supreme Court. The Supreme Court granted Petitioner's writ application in part, holding:

Given that the time limitations for instituting prosecution on the armed robbery count had prescribed, relator's trial counsel rendered ineffective assistance when he failed to file a motion to quash on that basis...The application is therefore granted for the sole purpose of vacating relator's armed robbery conviction and sentence. Relators conviction for aggravated rape and sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence remain undisturbed. In all other respects, the application is denied.⁵

Petitioner's claims have now been fully litigated in accord with La. C. Cr. P. art. 930.6. Petitioner has already been granted relief by the Louisiana Supreme Court in regard to his claim for ineffective assistance of counsel. However, the Supreme Court specifically left his conviction and sentence for aggravated rape undisturbed. Consequently, Petitioner has exhausted his right to state collateral review because he failed to show that one of the narrow exceptions authorizing the filing of a successive application applies.⁶ Thus, it is the recommendation of this Commissioner

² *State v. Lee*, 181 So. 3d 631 (La. 2015).

³ See 28 U.S.C. § 2244

⁴ *State v. Delong*, 251 So. 3d 1063 (La. 2018).

⁵ *Supreme Court Writ*, Nov. 7, 2014.

⁶ *State v. Delong*, 251 So. 3d 1063, 1064 (La. 2018).

that Petitioner's PCR application be dismissed without service upon the State and without a hearing.⁷

COMMISSIONER'S RECOMMENDATION

Having considered the application for post-conviction relief, the applicable law, and the record in this matter, I conclude that the issue raised herein can be resolved upon this record, and recommend that the Court dismiss this application without the necessity of a response on the merits for reasons stated hereinabove.

Respectfully recommended, this 16 day of April, 2021.



KINA KIMBLE
COMMISSIONER, SECTION B
19TH JUDICIAL DISTRICT COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS FOR JUDGMENT /
JUDGMENT / ORDER / COMMISSIONER'S
RECOMMENDATION WAS MAILED BY ME WITH
SUFFICIENT POSTAGE AFFIXED.
SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON April 08, 2021



DEPUTY CLERK OF COURT

⁷ See La. C.Cr.P. art. 928.

IN THE
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

MARICE S. NALLS

Petitioner

Versus

DARREL VANNOY, Warden
Louisiana State Prison

Respondent

Docket No. 7-07-0697

Date Filed _____

Clerk of Court

ANSWER TO COURT'S ORDER FOR REASONS

MAY IT PLEASE THE COURT:

NOW COMES Marice S. Nalls, *pro se* Petitioner, who respectfully presents to this Honorable Court the ordered reasons that Petitioner failed to include the new claims in a prior petition. On June 11, 2020, Magistrate Kina T. Kimble ordered Petitioner to assign these reasons within 30 days.

Wherefore, Petitioner presents the following:

1.

On June 19, 2007, Mr. Nalls was arrested by the Baton Rouge Police Department for aggravated rape and armed robbery. It was alleged that, nearly 10 years earlier, on September 24, 1998, the instant Petitioner, Marice S. Nalls, and an unknown person, went to Warren House on Greenwell Springs Road, Baton Rouge, Louisiana and picked out one of the apartments, specifically Apartment # 12, to rob or rape the occupant.

On July 26, 2007, Mr. Nalls was charged by Grand Jury indictment of committing

PETITIONER'S
EXHIBIT

F

aggravated rape and armed robbery on the alleged victim. After a judge trial, Mr. Nalls was found guilty as charged on October 1, 2008, and was sentenced on January 12, 2009 to a sentence of life without benefits, and 15 years to run concurrently.

On November 07, 2014, the Louisiana Supreme Court ordered that Mr. Nalls' armed robbery conviction and sentence be vacated because the time limitation for the institution of prosecution had expired. *Nalls v. State*, 152 So.3d 164 (La. 2014).

Mr. Nalls filed for federal habeas corpus, and the State immediately argued that he was time-barred from raising any claims, due to his failure to timely file for Certiorari in the Louisiana Supreme Court on appeal. After many years of maintaining his argument that the state appellate court and his trial attorney failed to notify him of the state court's decision, and this was beyond his control, Petitioner remained time barred by the courts.

However, on January 30, 2020, the U.S. 5th Circuit Court of Appeal reversed the federal district court's decision, and remanded the case for consideration of the merits of his claims. The U.S. 5th Circuit found that the state appellate court and trial counsel should have notified Mr. Nalls of its decision, and that their failure to do so was beyond his control and warranted equitable tolling.

Since Mr. Nalls is now considered timely, and he is not time-barred, he now makes the instant claims. Mr. Nalls was prejudiced at his trial by his attorney's ineffective assistance of counsel, as determined by the Louisiana Supreme Court, who failed to file a motion to quash the prescribed armed robbery charge. This allowed the prescribed armed robbery charge to be used as evidence against him at trial on the aggravated rape charge. This is improper evidence introduced that is so unduly prejudicial that it renders the trial fundamentally unfair.

The trial court's erroneous admission of the prescribed offense allegedly committed by him - the vacated armed robbery charge - deprived him of a fair trial due to the prejudicial nature of the evidence. The erroneous admission of this evidence had a substantial and injurious effect or influence on the verdict at trial.

In short, it was not until the Louisiana Supreme Court vacated Petitioner's armed robbery charge that the issue of prejudice at trial on a prescribed charge became an issue. However, Petitioner was time barred by the lower courts until January 30, 2020, when the U.S. 5th Circuit Court of Appeal reversed the time bar placed on Petitioner. The U.S. 5th Circuit found that the state appellate court and trial counsel should have notified Mr. Nalls of its decision, and that their failure to do so was beyond his control and warranted equitable tolling.

Since Mr. Nalls is now considered timely and he is not time-barred, he now makes the instant claims. It was not possible to raise the claims in an earlier petition because of the fact that Petitioner was time barred up until January 30, 2020, the date that the U.S. 5th Circuit reversed the time bar placed on Petitioner. Less than 30 days later, on February 27, 2020, Petitioner filed the instant claims, and should be considered timely.

CONCLUSION

Wherefore, Petitioner prays that he has shown this Honorable Court sufficient reasons to have not filed the instant claims in an earlier petition, and that he is entitled to Post Conviction Relief.

Respectfully submitted, *pro se*, this 26 day of June, 2020.

Mario S. Nalls

Marice S. Nalls #423240

M.P. - Oak 4

LA State Prison

Angola, LA 70712

CERTIFICATE OF SERVICE

I, Marice S. Nalls, the aforementioned Petitioner, do hereby attest and affirm that the information contained herein is true to the best of my knowledge and belief. Further, that all allegations in the foregoing are those of Marice S. Nalls.

Additionally, I hereby certify that a copy of the foregoing has been sent, via U.S. Mail, postage prepaid and properly addressed to:

Hillar C. Moore, III, District Attorney
19th Judicial District
222 St. Louis St., 5th Fl. Govt. Bldg.
Baton Rouge, LA 70802-5878

Done and signed this 26 day of June, 2020 at Angola, Louisiana.

Marice S. Nalls
Marice S. Nalls #423240
M.P. - Oak 4
LA State Prison
Angola, LA 70712

MARICE NALLS
DOC #423240

VERSUS

STATE OF LOUISIANA

NUMBER: 07-07-0697 SECTION: III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ORDER

This matter comes before the court on the petitioner's *Application and Memorandum in Support of Post-Conviction Relief* directed to the 19th Judicial District Court, Parish of East Baton Rouge, filed and date-stamped on March 31, 2020.

This Court notes that the petitioner previously filed an application for post-conviction relief on or about October 18, 2011. On October 3, 2012 this Court, by Order, dismissed said application. Subsequently, the instant application, filed on March 31, 2020 with new claims is successive.

Louisiana Code of Criminal Procedure article 930.4 (E) requires that "a successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application."

PURSUANT TO CCRP ART. 930.4 (F), PETITIONER IS HEREBY ORDED TO STATE REASONS FOR HIS FAILURE TO INCLUDE THE INSTANT CLAIMS IN HIS PRIOR APPLICATION.

IT IS FURTHER ORDED THAT PETITIONER'S REASONS SHALL BE FILED WITHIN 30-DAYS OF THIS ORDER.

THUS SO ORDERED, this 11 day of June, 2020.



KINA T. KIMBLE
COMMISSIONER, SECTION B
19TH JUDICIAL DISTRICT COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS FOR JUDGMENT /
JUDGMENT / ORDER / COMMISSIONER'S
RECOMMENDATION WAS MAILED BY ME WITH
SUFFICIENT POSTAGE AFFIXED.
SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON June 12, 2020


DEPUTY CLERK OF COURT

PETITIONER'S
EXHIBIT

G

ISSUES PRESENTED

Ineffective Assistance of Counsel

1. TRIAL COUNSEL FAILED TO SECURE EXPERT TESTIMONY TO AID DEFENSE AT TRIAL, AND CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL.
2. TRIAL COUNSEL FAILED TO CALL WITNESSES FOR DEFENSE AT TRIAL, AND CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. FURTHER, ALLOWING TESTIMONY OF WITNESSES NOT CALLED AT TRIAL, THROUGH POLICE TESTIMONY AT TRIAL, VIOLATES *CRAWFORD V. WASHINGTON*.
3. TRIAL COUNSEL FAILED TO NOTIFY THE COURT HE HAD WITHDRAWN FROM PETITIONER'S CASE, FAILED TO NOTIFY PETITIONER OF COURT RULING, AND LIED TO PETITIONER ABOUT NOTIFYING THE COURT THAT HE HAD WITHDRAWN FROM THE CASE.
4. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY ARGUE ISSUES OF FLAWS IN INDICTMENT.
5. TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO ARGUE THAT THE STATUTE OF LIMITATIONS ON THE INSTITUTION OF PROSECUTION HAD EXPIRED. APPELLATE COUNSEL FAILED TO ARGUE ISSUE ON APPEAL.
6. TRIAL COUNSEL FAILED TO ENSURE THAT THE TRIAL JUDGE COMPLIED WITH THE REASONABLE DOUBT STANDARD OF *IN RE WINSHIP*, AND ALLOWED THE TRIAL JUDGE TO DISREGARD PETITIONER'S DEFENSE.

**SECOND OR SUBSEQUENT UNIFORM APPLICATION FOR
POST CONVICTION RELIEF**

Please review La. C.Cr.P. Arts. 924-930.9 for the correct procedure for filing an application for post conviction 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 post conviction 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 post conviction 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 post conviction 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 post conviction 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 post conviction 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:	02 / 27 / 20	Name of Applicant:	Marice S. Nalls
DOC Number:	423240	Place of Confinement:	LA State Prison
District Court Case Number:	07-07-0697	Parish of Conviction:	East Baton Rouge

PETITIONER'S
EXHIBIT

H

Name of Trial Judge:		Judge Donald Johnson	
Offense(s) for which you were convicted:		armed robbery and aggravated rape	
Do any of the convictions involve 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(3) and 46:1844(W)(2))? [Check One]			Yes [X] No []
Date of Conviction:	10 / 01 / 08	Conviction by: [Check One]	Guilty Plea [] Trial by Jury [] Trial by Judge [X]
Date of Sentencing:	01 / 12 / 09	Sentence	life without benefits and 15 years to run concurrently
Name of Counsel who represented you at the time of trial, sentence and / or conviction:		Dele A. Adebamiji	
Multiple Offender Proceeding: [Check One]		Yes [] No [X]	
If yes, answer both of the following questions:			
Result of Proceeding: [Check One]		Pled [] Adjudicated to be a Multiple Offender [] Adjudicated No Bill []	
Sentence on Multiple Offender Bill:			
Name of Counsel who represented you on appeal:		Dele A. Adebamiji	
Appeal of conviction and sentence: [Check One]	Yes [X] No []	Appellate Case #:	2009-KA-0772 24 So.3d 1030 (La.App. 1 Cir. 10/23/09)
Appeal of Multiple Bill: [Check One]	Yes [] No []	Appellate Case #:	
Writ to Louisiana Supreme Court: [Check One]	Yes [X] No []	Supreme Court Case #:	2011-KH-1489
Action by Supreme Court: [Check if Applicable]	Granted [] Denied [X]	Date of Action	04 / 09 / 12
Rehearing to Supreme Court: [Check if Applicable]	Granted [] Denied []	Date of Action	___ / ___ / ___

PRIOR APPLICATIONS INSTRUCTIONS—READ CAREFULLY			
Please provide a list of all prior applications for post conviction 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		07-07-0697	Parish of Conviction: East Baton Rouge
Date of Filing:	10 / 10 / 11	Is this the same case challenged in this application? [Check One]	Yes [X] No []

Claims Raised:	1. Trial counsel failed to secure expert testimony to aid defense at trial, and constitutes ineffective assistance of counsel.			
	2. Trial counsel failed to call witnesses for defense at trial, and constitutes ineffective assistance of counsel. Further, allowing testimony of witnesses not called at trial, through police testimony at trial, violates Crawford v. Washington.			
	3. Trial counsel failed to notify the court he had withdrawn from petitioner's case, failed to notify petitioner of court ruling, and lied to petitioner about notifying the court that he had withdrawn from the case.			
	4. Trial counsel was ineffective for failing to properly argue issues of flaws in indictment.			
	5. Trial counsel rendered ineffective assistance by failing to argue that the statute of limitations on the institution of prosecution had expired. appellate counsel failed to argue issue on appeal.			
	6. Trial counsel failed to ensure that the trial judge complied with the reasonable doubt standard of In Re Winship, and allowed the trial judge to disregard petitioner's defense.			
[Use Additional Sheets if Necessary]				
Was relief granted ? [Check One]		Yes [] No [X]	Date of Disposition:	03 / 15 / 13
Did you receive an evidentiary hearing? [Check One]		Yes [] No [X]	Did you file a writ to the Court of Appeal? [Check One]	Yes [X] No []
Which Circuit? [Check One]		1[X] 2[] 3[] 4[] 5[]	Appellate Case #:	2013-KW-1360
Sought writ to Louisiana Supreme Court? [Check One]		Granted [X] [In Part]* Denied [] Not Sought []	Supreme Court Case #:	2013-KH-2806
		Date of Ruling	11 / 07 / 14	
*. Vacated armed robbery conviction and sentence as the armed robbery count had prescribed.				
District Court Case Number		Parish of Conviction:		
Date of Filing: ____ / ____ / ____	Is this the same case challenged in this application? [Check One]			Yes [] No []
Claims Raised:	1.			
	2.			
	3.			
	4.			
[Use Additional Sheet if Necessary]				
Was relief granted or denied? [Check One]		Yes [] No []	Date of Disposition:	____ / ____ / ____
Did you receive an evidentiary hearing? [Check One]		Yes [] No []	Did you file a writ to the Court of Appeal? [Check One]	Yes [] No []

Which Circuit? [Check One]	1[] 2[] 3[] 4[] 5[]	Appellate Case #:	
Sought writ to Louisiana Supreme Court? [Check One]	Granted [] Denied []	Supreme Court Case #:	
	Not Sought []	Date of Ruling	____ / ____ / ____

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:

(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.

First, the Louisiana Supreme Court has ruled that the limitations on the institution of prosecution of the armed robbery charge had expired, and that Mr. Nalls' trial counsel was ineffective assistance of counsel for failing to file a motion to quash that charge on that basis. (Appendix A).

Secondly, the trial court clearly exceeded its jurisdiction - 930.3 (2) - in allowing Mr. Nalls to be tried on prescribed charges.

Next, Mr. Nalls was clearly brought to trial on both aggravated rape, and armed robbery, even though the time limitations on the armed robbery charge had long since prescribed - 930.3(4) - which also violates both state and federal constitutional due process - 930.3 (1). The erroneous admission of this evidence at trial had a substantial and injurious effect or influence on the verdict at trial.

On November 07, 2014, the Louisiana Supreme Court ordered that Mr. Nalls' armed robbery conviction and sentence be vacated because the time limitation for the institution of prosecution had

expired. *Nalls v. State*, 152 So.3d 164 (La. 2014). (Appendix A).

Mr. Nalls filed for federal habeas corpus, and the State immediately argued that he was time-barred from raising any claims, due to his failure to timely file for certiorari in the Louisiana Supreme Court on appeal. After maintaining his argument that the state appellate court and his trial attorney failed to notify him of the state court's decision, and this was beyond his control, after three years the federal district court denied his habeas petition as untimely.

However, on January 30, 2020, the U.S. 5th Circuit Court of Appeal reversed the federal district court's decision, and remanded the case for consideration of the merits of the claims. The U.S. 5th Circuit found that the state appellate court and trial counsel should have notified Mr. Nalls of its decision, and that their failure to do so was beyond his control and warranted equitable tolling.

Since Mr. Nalls is now considered timely and he is not time-barred, he now makes the instant claims. Mr. Nalls was prejudiced at his trial by his attorney's ineffective assistance of counsel, as determined by the Louisiana Supreme Court, who failed to file a motion to quash the prescribed armed robbery charge. Mr. Nalls contends that the trial court's erroneous admission of other offenses allegedly committed by him - the vacated armed robbery charge - deprived him of a fair trial due to the prejudicial nature of the evidence. The erroneous admission of this evidence had a substantial and injurious effect or influence on the verdict at trial.

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

2 / 27 / 20
Month / Day / Year

Marice A Nalls
[Signature of Applicant or Applicant's Attorney]

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF WEST FELICIANA

I, Marice S. Nalls, [Name of Applicant / Attorney], being first duly sworn says that he / she has read the application for post conviction relief and swears or affirms that all of the information therein is true and correct.

Marice A Nalls
[Signature of Applicant or Applicant's Attorney]

SWORN TO AND SUBSCRIBED before me this 27th day of February, 2020.

Ch. Quarter 168865
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 Post Conviction 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
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Docket No. 7-07-0697

MARICE S. NALLS

Petitioner

Versus

DARREL VANNOY, Warden


Louisiana State Prison

Respondent

MEMORANDUM IN SUPPORT OF SECOND
APPLICATION FOR POST CONVICTION RELIEF

ORIGINAL APPLICATION FOR POST CONVICTION
RELIEF FILED ON OCTOBER 10, 2011

Respectfully submitted, *pro se*, this 27th day of February, 2020.



Marice S. Nalls #423240
M.P. - Oak 4
LA State Prison
Angola, LA 70712

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IN THE
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

MARICE S. NALLS

Petitioner

Versus

DARREL VANNOY, Warden
Louisiana State Prison

Respondent

Docket No. 7-07-0697

Date Filed _____

Clerk of Court

MEMORANDUM IN SUPPORT OF SECOND
APPLICATION FOR POST CONVICTION RELIEF

MAY IT PLEASE THE COURT:

NOW COMES Marice S. Nalls, through undersigned counsel, who files the instant Application for Post Conviction Relief and Memorandum in Support, pursuant to La. C.Cr.P. Arts. 924, et seq. This is a second or subsequent Petition for Post Conviction Relief. Mr. Nalls's Original Application for Post Conviction Relief was filed in this Honorable Court on October 10, 2011. Mr. Nalls respectfully contends that he is entitled to post conviction relief, and petitions the Court for an order vacating the judgment of conviction and sentence imposed upon him by this Court. Alternatively, Mr. Nalls requests an evidentiary hearing in this matter.

JURISDICTION AND VENUE

The District Courts have original jurisdiction over all civil and criminal matters, and exclusive original jurisdiction of felony cases pursuant to the Louisiana Constitution, Article 5, §§ 16 (A)(1) and 16 (A)(2).

Jurisdiction and venue of post conviction proceedings are conferred upon this Court by the Louisiana Code of Criminal Procedure, Articles 924-925.

STATEMENT OF THE CASE

Mr. Nalls was charged with aggravated rape and armed robbery by Bill of Indictment on July 26, 2007, for an incident alleged on September 24, 1998.

On June 19, 2007, Mr. Nalls was arrested by the Baton Rouge Police Department for aggravated rape and armed robbery. On July 26, 2007, he was indicted by an East Baton Rouge Parish Grand Jury alleging aggravated rape and armed robbery on the alleged victim, M. V.

Mr. Nalls was convicted, after a judge trial, of aggravated rape and armed robbery on October 1, 2008, and sentenced on January 12, 2009, to life imprisonment without benefits and 15 years to run concurrently.

On June 12, 2009, Mr. Nalls' trial and appellate attorney, Mr. Dele Adebamiji, filed an appellate brief in the First Circuit. *State v. Nalls*, 24 So.3d 1030 (La.App. 1 Cir. 2009). Mr. Nalls filed a *pro se* supplemental brief on August 12, 2009. The appeal was denied on October 23, 2009. Mr. Nalls was not notified of this ruling by the court or by his attorney.

On October 10, 2011, his post conviction was filed, and a final ruling was issued on March 15, 2013. Application for Supervisory Writs was filed on April 15, 2013. The Circuit Court issued orders for refile and it was refiled on July 24, 2013. Ruling on this was issued on November 04, 2013.

On November 26, 2013, certiorari was filed into the Louisiana Supreme Court. On November 07, 2014 the Louisiana Supreme Court granted writs in part. (Appendix B).

On November 19, 2014, Mr. Nalls filed a petition for Habeas Corpus Review in the United States District Court, Middle District of Louisiana. On November 07, 2017, a Magistrate's Report and Recommendation was filed. (Appendix F). On November 17, 2017, an Objection to the Magistrate's Report and Recommendation was filed. (Appendix G).

On December 06, 2017, the U.S. District Court denied Mr. Nalls' Petition for Habeas Corpus Review, with prejudice as untimely. On December 12, 2017, Mr. Nalls filed his Notice of Appeal in the District Court. On January 08, 2018, the District Court denied IFP and COA.

On January 22, 2018, Mr. Nalls filed an Application for COA in the United States Fifth Circuit Court of Appeal which was granted. On January 30, 2020, the United States Fifth Circuit Court of Appeal reversed the judgment of the federal district court and remanded the case for a ruling on the merits of his claims. (Appendix A).

Mr. Nalls has remained in continued custody since his arrest, and is currently an inmate at Louisiana State Prison at Angola, Louisiana, Darrel Vannoy, Warden.

Wherefore, Mr. Nalls asks that his efforts herein be liberally construed as he is a *pro se* litigant, and he has made a good faith effort to follow form. *United States v. Kayode*, 777 F.3d 719, 741, n. 5¹ (5th Cir. 2014).

STATEMENT OF THE FACTS

On June 19, 2007, Mr. Nalls was arrested by the Baton Rouge Police Department for aggravated rape and armed robbery. It was alleged that, nearly 10 years earlier, on September 24, 1998, the instant Petitioner, Marice S. Nalls, and an unknown person, went to Warren House on Greenwell Springs Road, Baton Rouge, Louisiana and picked out one of the apartments, specifically Apartment # 12, to rob or rape the occupant.

On July 26, 2007, Mr. Nalls was charged by Grand Jury indictment of committing aggravated rape and armed robbery on the alleged victim. After a judge trial, Mr. Nalls was found guilty as charged on October 1, 2008, and was sentenced on January 12, 2009

¹ [FN 5] See, e.g., *McNeil v. United States*, 508 U.S. 106, 113 S.Ct. 1980, 124 L.Ed.2d 21 (1993) (acknowledging that the Supreme Court has "insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed") (citing *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)). See also *Hernandez v. Thaler*, 630 F.3d 420, 426 (5th Cir. 2011) ("The filings of a federal habeas petitioner who is proceeding *pro se* are entitled to the benefit of liberal construction."); *Johnson v. Quarterman*, 479 F.3d 358, 359 (5th Cir. 2007) (Briefs by *pro se* litigants are afforded liberal construction...."); *Melancon v. Kaylo*, 259 F.3d 401, 407 (5th Cir. 2001) (reasoning that the *pro se* habeas petitioner's argument that he should not be punished for the improper setting of the return date should be construed as a request for equitable tolling, despite his failure to "explicitly raise the issue of equitable tolling").

to a sentence of life without benefits, and 15 years to run concurrently.

On November 07, 2014, the Louisiana Supreme Court ordered that Mr. Nalls' armed robbery conviction and sentence be vacated because the time limitation for the institution of prosecution had expired. *Nalls v. State*, 152 So.3d 164 (La. 2014). (Appendix B).

Mr. Nalls filed for federal habeas corpus, and the State immediately argued that he was time-barred from raising any claims, due to his failure to timely file for certiorari in the Louisiana Supreme Court on appeal. After maintaining his argument that the state appellate court and his trial attorney failed to notify him of the state court's decision, and this was beyond his control, after three years the federal district court denied his habeas petition as untimely.

However, on January 30, 2020, the U.S. 5th Circuit Court of Appeal reversed the federal district court's decision, and remanded the case for consideration of the merits of the claims. (Appendix A). The U.S. 5th Circuit found that the state appellate court and trial counsel should have notified Mr. Nalls of its decision, and that their failure to do so was beyond his control and warranted equitable tolling.

Since Mr. Nalls is now considered timely and he is not time-barred, he now makes the instant claims. Mr. Nalls was prejudiced at his trial by his attorney's ineffective assistance of counsel, as determined by the Louisiana Supreme Court, who failed to file a motion to quash the prescribed armed robbery charge. This allowed the prescribed armed robbery charge to be used as evidence against him at trial on the aggravated rape charge. This is improper evidence introduced that is so unduly prejudicial that it renders the trial fundamentally unfair.

The trial court's erroneous admission of the prescribed offense allegedly committed by him - the vacated armed robbery charge - deprived him of a fair trial due to the prejudicial nature of the evidence. The erroneous admission of this evidence had a substantial and injurious effect or influence on the verdict at trial.

LAW AND STATUTORY PROVISIONS INVOLVED

Louisiana Code of Criminal Procedure, Article 930.8(A)(1) establishes an exception to the 2-year time limitation of that article for "facts upon which the claim is predicated were not known to the petitioner or his prior attorneys." Additionally, this article provides that, "Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist."

Louisiana Code of Criminal Procedure, Article 930.3 (Grounds) reads, in pertinent part:

"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; . . .
- (4) The limitations on the institution of prosecution had expired; . . ."

Further, under Louisiana Code of Criminal Procedure, Article 930.4, the court has discretion to consider the merits of any claim in the interests of justice.

These statutory provisions involve the constitutional guarantee of Due Process in the United States Constitution, Amendments 5 and 14, and the Louisiana Constitution, Article 1, §§ 2 and 22.

ISSUES PRESENTED

1. MR. NALLS WAS PREJUDICED AT HIS TRIAL BY HIS ATTORNEY'S INEFFECTIVE ASSISTANCE OF COUNSEL, AS DETERMINED BY THE LOUISIANA SUPREME COURT, WHO FAILED TO FILE A MOTION TO QUASH THE PRESCRIBED ARMED ROBBERY CHARGE, WHICH HAD A PREJUDICIAL EFFECT OR INFLUENCE ON THE VERDICT AT TRIAL.

SUMMARY OF THE ARGUMENT

Under La.C.Cr.P. Art. 930.8(A)(1), neither Mr. Nalls, nor his attorneys knew, or could have known, that the Louisiana Supreme Court would vacate his armed robbery conviction. Further, the fact that Mr. Nalls pursued this claim, *pro se*, to the Louisiana Supreme Court and was granted relief on this claim, shows the required due diligence on his part.

Under La.C.Cr.P. Arts. 930.3 (1), (2), and (4), Mr. Nalls shows through record evidence that: (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; and (4) The limitations on the institution of prosecution had expired.

First, the Louisiana Supreme Court has ruled that the limitations on the institution of prosecution of the armed robbery charge had expired, and that Mr. Nalls' trial counsel was ineffective assistance of counsel for failing to file a motion to quash that charge on that basis. (Appendix A).

Secondly, the trial court clearly exceeded its jurisdiction - 930.3 (2) - in allowing Mr. Nalls to be tried on prescribed charges.

Next, Mr. Nalls was clearly brought to trial on both aggravated rape, and armed robbery, even though the time limitations on the armed robbery charge had long since prescribed - 930.3(4) - which also violates both state and federal constitutional due process - 930.3 (1). The erroneous admission of this evidence at trial had a substantial and injurious effect or influence on the verdict at trial and merits Post Conviction Relief.

ARGUMENT

1. MR. NALLS WAS PREJUDICED AT HIS TRIAL BY HIS ATTORNEY'S INEFFECTIVE ASSISTANCE OF COUNSEL, AS DETERMINED BY THE LOUISIANA SUPREME COURT, WHO FAILED TO FILE A MOTION TO QUASH THE PRESCRIBED ARMED ROBBERY CHARGE, WHICH HAD A PREJUDICIAL EFFECT OR INFLUENCE ON THE VERDICT AT TRIAL.

Mr. Nalls maintains that he has standing to file the instant Second Application for Post Conviction Relief (PCR) pursuant to La. C.Cr.P. Arts. 930.8(A)(1), 930.3 (1), (2), and (4), and 930.4

Mr. Nalls was prejudiced at his trial by his attorney's ineffective assistance of counsel, as determined by the Louisiana Supreme Court, who failed to file a motion to quash the prescribed armed robbery charge. Mr. Nalls was clearly brought to trial on both aggravated rape, and armed robbery, even though the time limitations on the armed robbery charge had long since prescribed. This allowed the prescribed armed robbery charge to be used as evidence against him at trial on the aggravated rape charge. This is improper evidence introduced that is so unduly prejudicial that it renders the trial fundamentally unfair.

The trial court's erroneous admission of the prescribed offense allegedly committed by him - the vacated armed robbery charge - deprived him of a fair trial due to the prejudicial nature of the evidence. The erroneous admission of this evidence had a substantial and injurious effect or influence on the verdict at trial. See *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993).

"In the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief. See *Darden v. Wainwright*, 477 U.S. 168, 179-183, 106 S.Ct. 2464, 2470-2472, 91 L.Ed.2d 144 (1986)."

Payne v. Tennessee, 501 U.S. 808, 825, 111 S.Ct. 2597, 2608, 115 L.Ed.2d 720 (1991).²

² See also, *Dawson v. Delaware*, 503 U.S. 159, 179, 112 S.Ct. 1093, 117 L.Ed.2d 309 (1992); *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974).

In conducting this analysis, it is irrelevant whether the evidence was correctly admitted pursuant to state law. *Estelle v. McGuire*, 502 U.S. 62, 67-68, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991). Rather, the court's inquiry is whether the admission violated the Constitution. *Id.* at 68, 112 S.Ct. 475.

The United States Fifth Circuit Court of Appeal has held that when evidence of an extraneous offense is wrongly admitted, habeas relief is proper if the error is of such magnitude that it resulted in "fundamental unfairness." *Hafidahl v. Johnson*, 251 F.3d 528, 536 (5th Cir. 2001) (quoting *Blankenship v. Estelle*, 545 F.2d 510, 516-17 (5th Cir. 1977)). The habeas court should assume that the admission of the other crimes evidence was error and determine whether such error was harmless under *Brecht*. See *Corwin v. Johnson*, 150 F.3d 467, 476 (5th Cir. 1998) (assuming admission of evidence constituted error and determine whether the petitioner was entitled to federal habeas relief pursuant to *Brecht*).

The law clearly guarantees that prescribed charges cannot be prosecuted, and no amount of evidence is sufficient to change that.

Stogner v. California, 539 U.S. 607, 615-616, 123 S.Ct. 2446, 2452, 156 L.Ed.2d 544 (2003):

Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. See *United States v. Marion*, 404 U.S. 307, 322, 30 L.Ed.2d 468, 92 S.Ct. 455 (1971). And that judgment typically rests, in large part, upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable. *United States v. Kubrick*, 444 U.S. 111, 117, 62 L.Ed.2d 259, 100 S.Ct. 352 (1979); 4 W. LaFave, J. Israel, & N. King, *Criminal Procedure* § 18.5(a), p 718 (1999); Wharton, *Criminal Pleading and Practice* § 316, at 210. Indeed, this Court once described statutes of limitations as creating "a presumption which renders proof unnecessary." *Wood v. Carpenter*, 101 U.S. 135, 139, 25 L.Ed.807 (1879).

The law clearly presumes that prescribed charges are prejudicial, and beyond their limitation period, there can be no fair trial.

United States v. Marion, 404 U.S. 307, 322, 92 S.Ct. 455, 464, 30 L.Ed.2d 468

(1971):

As we said in *United States v. Ewell*, *supra*, 386 U.S., at 122, 86 S.Ct., at 777, 'the applicable statute of limitations . . . is . . . the primary guarantee against bringing overly stale criminal charges.' Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they 'are made for the repose of society and the protection of those who may (during the limitation) . . . have lost their means of defense.' *Public Schools v. Walker*, 9 Wall. 282, 288, 19 L.Ed. 576 (1870). These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced.

As trained professionals in the law, there is no question as to whether the prosecutor knew the charge was prescribed, the judge knew the charge was prescribed, and that trial counsel knew the charge was prescribed. In this case, Mr. Nalls' defense to the aggravated rape charge was that he had consensual sex with the alleged victim the previous night. In order to attack the credibility of his account, the prescribed armed robbery charge was added. Otherwise, this was simply a case of "he said; she said."

State v. Brunet, 521 So.2d 594, 597 (La.App. 1 Cir. 1988):

In a case wherein there is no corroboration on either side, the importance of the defendant's credibility becomes so significant that prosecutorial error attacking that credibility cannot be harmless beyond a reasonable doubt. See *Velarde v. Shulsen*, 757 F.2d 1093 (10th Cir. 1985).

There can be no doubt that the prescribed armed robbery charge was deliberately added to prejudice Mr. Nalls at trial on the aggravated rape charge; nonetheless, the law presumes prejudice and an unfair trial in cases such as this one.

Mr. Nalls and his prior attorneys did not know and could not have known of this prejudicial evidence since it did not exist until the Louisiana Supreme Court made its ruling on PCR. It has only been since January 30, 2020 that Mr. Nalls has been cleared

of being procedurally time barred by the United States Fifth Circuit Court of Appeal, since it was events beyond his control that caused the delayed filing in the Louisiana Supreme Court on direct appeal. This application is being filed within 30 days of that ruling in order to show diligence in this case.

This Honorable Court should grant Mr. Nalls the requested post conviction relief and reverse his convictions and sentence, and remand the case for a new trial.

Moreover, the failure to grant Mr. Nalls a new trial would be a fundamental miscarriage of justice, and deprive him of his constitutional right to Due Process under the United States Constitution, Amendments 5 and 14, as well as the Louisiana Constitution, Article 1, §§ 2 and 22.

Alternatively, Mr. Nalls calls for an evidentiary hearing in this matter, pursuant to La. C.Cr.P., Art. 930, requiring an evidentiary hearing when there are factual issues contested that cannot be resolved on the record alone. Mr. Nalls submits that there are now questions of fact "sharply contested" which cannot be resolved in accordance with La.C.Cr.P. Arts. 928 and 929, entitling Mr. Nalls to an evidentiary hearing. *State ex rel. Tassin v. Whitley*, 602 So.2d 721, 722-723 (La. 1992); "When there is a factual issue of significance to the outcome that is sharply contested, the trial court will not be able to resolve the factual dispute without a full evidentiary hearing. La. C.Cr.P., Art. 929, Official Revision Comment.

LOUISIANA UNIFORM COMMITMENT ORDER STATEMENT

The Second or Subsequent Uniform Application for Post Conviction relief states: "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." Mr. Nalls states that this commitment order is unavailable at this time. A copy of the commitment order has been requested from the Records Office at this institution, and it will be forwarded to the court once it has been received.

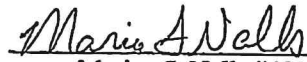
CONCLUSION

Wherefore, Mr. Nalls maintains that his convictions and sentence were obtained in violation of the United States Constitution, Amendments 5 and 14, as well as the Louisiana Constitution, Article 1, §§ 2 and 22. Further, that he has standing to file the instant second or subsequent PCR under La. C.Cr.P. Arts. 930.8 (A)(1) and 930.3(1), (2) and (4).

Additionally, under Louisiana Code of Criminal Procedure, Article 930.4, the court has discretion to consider the merits of any claim in the interests of justice.

Mr. Nalls prays that after careful consideration of the issues presented herein, this Honorable Court will grant him the requested post conviction relief and reverse his convictions and sentence, and remand the case for a new trial. Alternatively, this Honorable Court should order an evidentiary hearing to facilitate a full and fair adjudication of the issues presented.

Respectfully submitted, *pro se*, this 27th day of February, 2020.


Marice S. Nalls #423240
M.P. - Oak 4
LA State Prison
Angola, LA 70712

CERTIFICATE OF SERVICE

I, Marice S. Nalls, the aforementioned Petitioner, do hereby attest and affirm that the information contained herein is true to the best of my knowledge and belief. Further, that all allegations in the foregoing are those of Marice S. Nalls.

Additionally, I hereby certify that a copy of the foregoing has been sent, via U.S. Mail, postage prepaid and properly addressed to:

Hillar C. Moore, III, District Attorney
19th Judicial District
222 St. Louis St., 5th Fl. Govt. Bldg.
Baton Rouge, LA 70802-5878

Done and signed this 27th day of February, 2020 at Angola, Louisiana.

Marice S. Nalls
Marice S. Nalls #423240
M.P. - Oak 4
LA State Prison
Angola, LA 70712

The Supreme Court of the State of Louisiana

STATE EX REL. MARICE S. NALLS

NO. 2013-KH-2806

VS.

STATE OF LOUISIANA

IN RE: Nalls, Marice S.; - Plaintiff; Applying For Supervisory and/or Remedial Writs, Parish of E. Baton Rouge, 19th Judicial District Court Div. B, No. 07-07-0697; to the Court of Appeal, First Circuit, No. 2013 KW 1360;

VII

November 7, 2014

Writ granted in part; otherwise denied. Given that the time limitations for instituting prosecution on the armed robbery count had prescribed, relator's trial counsel rendered ineffective assistance when he failed to file a motion to quash on that basis. See La.C.Cr.P. art. 572(A)(1); R.S. 14:64(B); La.C.Cr.P. art. 532(7). *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Washington*, 491 So.2d 1337 (La. 1986). The application is therefore granted for the sole purpose of vacating relator's armed robbery conviction and sentence. Relator's conviction for aggravated rape and sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence remain undisturbed. In all other respects, the application is denied.

GGG

BJO

JPV

JLW

JDA

KNOLL, J., would deny.

CLARK, J., would deny.

2014 NOV 20 PM 3:30
J. B. Young
Deputy Clerk of Court

Supreme Court of Louisiana
November 7, 2014

J. B. Young
Deputy
Clerk of Court
For the Court

PETITIONER'S
EXHIBIT

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