

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-KP-01613

VS.

KIRBY R. THOMAS

IN RE: Kirby R. Thomas - Applicant Defendant; Applying For Supervisory Writ,
Parish of Assumption, 23rd Judicial District Court Number(s) 17-CR-000123, Court
of Appeal, First Circuit, Number(s) 2022 KW 0909;

March 28, 2023

Writ application denied.

JLW

JDH

SJC

JTG

WJC

JBM

Griffin, J., would grant and assigns reasons.

Supreme Court of Louisiana

March 28, 2023

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court



SUPREME COURT OF LOUISIANA

No. 2022-KP-01613

STATE OF LOUISIANA

VS.

KIRBY R. THOMAS

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Assumption

GRIFFIN, J., would grant and assigns reasons.

This matter presents a clear allegation of racial discrimination concerning the selection of Black citizens for the Assumption Parish Jury Pool. "The troubling disparity between the percentage of potentially eligible Black jurors in Assumption Parish and those who were summoned for jury duty implicates fundamental rights." *State v. Thomas*, 19-1819 (La. 6/22/20), 297 So.3d 727, 728. (Johnson, C.J., concurring). Defense counsel's failure to file a motion to quash to challenge the jury venire potentially gives rise to a valid claim of ineffectiveness of counsel.

Ineffectiveness of counsel requires a showing of deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Defendant argues the ineffectiveness of counsel deprived him of a fair cross section of the community to judge his case. Establishing a fair cross violation requires three components: 1) that the group alleged to be excluded is a "distinctive" group in the community; 2) that the representation of this group in venires from which juries are selected is fair and reasonable in relation to the number of such persons in the community; and 3) that this underrepresentation is due to systemic exclusion of the group in the jury-selection process. *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 668, 58 L.Ed.2d 579 (1979). Because a proper analysis would require a deeper investigation into the parish's jury selection process, I would grant and remand this matter for further evidentiary development.