Appendix A

U.S. Fifth Circuit Court of Appeals Decision

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 21, 2023
Lyle W. Cayce
Clerk

No. 23-30184

JEREMY JERMAINE BROOKS,

Petitioner—Appellant,

versus

JAMES M. LEBLANC, *Secretary, Department of Public Safety and Corrections*,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Louisiana
USDC No. 5:19-CV-1616

ORDER:

Jeremy Jermaine Brooks, Louisiana prisoner # 588465, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application challenging his conviction and sentence for second-degree murder. He argues that his resentencing in accordance with *Miller v. Alabama*, 567 U.S. 460 (2012), Louisiana Code of Criminal Procedure article 878.1, and Louisiana Statutes Annotated § 15:574.4(E), (G), violated his right to due process because he did not receive fair notice of the penalty, which included potential parole eligibility; he contends that these

reformatory resentencing procedures do not provide a legislatively authorized penalty. Brooks also argues that his sentence is unconstitutionally excessive under *Miller*, regardless of whether the court considered youth-related mitigating factors, because the homicide in which he was involved was committed due to transient immaturity. To the extent that Brooks challenges the trial court's weighing of the mitigating factors and argues that the particular facts of his case rendered his sentence excessive, he did not raise this issue in the district court, and he may not raise this issue for the first time in his COA motion. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018); *Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

Brooks does not argue, as he argued in his § 2254 application and amended application, that (1) the evidence was insufficient to support his conviction; (2) he was denied the right to cross-examine Dr. Long Jin; (3) the State failed to provide him with exculpatory evidence; and (4) his counsel was ineffective for various reasons. Accordingly, he has abandoned these issues. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999); *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Brooks has not shown that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that his issues deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see* 28 U.S.C. § 2253(c)(2). Accordingly, his COA motion is DENIED.

Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge

Appendix B

U.S. Western District of Louisiana Judgment

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

JEREMY JERMAINE BROOKS #588465	CIVIL ACTION NO. 19-cv-1616
VERSUS	JUDGE ELIZABETH E. FOOTE
JAMES M LEBLANC	MAGISTRATE JUDGE HORNSBY

JUDGMENT

For the reasons assigned in the Report and Recommendation of the Magistrate Judge previously filed herein, and having thoroughly reviewed the record, including the written objections filed, and concurring with the findings of the Magistrate Judge under the applicable law;

IT IS ORDERED that Petitioner's petition for writ of habeas corpus, as amended, is **DENIED.**

Rule 11 of the Rules Governing Section 2254 Proceedings for the U.S. District Courts requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. The court, after considering the record in this case and the standard set forth in 28 U.S.C. Section 2253, denies a certificate of appealability because the applicant has not made a substantial showing of the denial of a constitutional right.

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 14th day of March, 2023.

ELIZABETH E. FOOTE
UNITED STATES DISTRICT JUDGE

Appendix C

U.S. Western District of Louisiana Magistrate

Judge's Recommendation

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

JEREMY JERMAINE BROOKS #588465	CIVIL ACTION NO. 19-cv-1616
VERSUS	JUDGE ELIZABETH E. FOOTE
JAMES M LEBLANC	MAGISTRATE JUDGE HORNSBY

REPORT AND RECOMMENDATION

Introduction

Jeremy Brooks ("Petitioner"), at age 17, was involved in a shootout between rival youth groups at the Canaan Village Apartments in Shreveport. Also participating were Petitioner's 16-year-old brother, Joshua, and his 16-year-old friend, Paul Jones. An innocent bystander, age 15, was killed. Petitioner, his brother, and Jones were arrested and charged with murder.

Petitioner was tried first and convicted of second-degree murder. His conviction was affirmed on direct appeal, but his mandatory life sentence was remanded for reconsideration in light of the recent Miller decision regarding mandatory life without parole for offenders under the age of 18. State v. Brooks, 108 So.3d 161 (La. App. 2d Cir. 2012), writ denied, 118 So.3d 393 (La. 2013). On remand, the trial court held a Miller hearing and, not bound to impose a mandatory sentence, found that the facts warranted a sentence of life imprisonment without the benefit of parole. State v. Brooks, 139 So.3d 571 (La. App. 2d Cir. 2014), writ denied, 159 So.3d 459 (La. 2015).

Joshua and Jones were convicted at a separate trial. Joshua previously filed a habeas petition that was denied on the merits. Brooks v. Vannoy, 2021 WL 1035110 (W.D. La. 2021), adopted, 2021 WL 1031007 (W.D. La. 2021) (Foote, J.). Jones' conviction and 60-year sentence were affirmed on appeal. State v. Jones, 166 So. 3d 406 (La. App. 2d Cir. 2015). His habeas petition was dismissed for failure to prosecute. Jones v. Hooper, 20 CV 313 (W.D. La.). Petitioner now presents a federal habeas corpus petition and seeks relief on several grounds. For the reasons that follow, it is recommended that his petition be denied.

Sufficiency of the Evidence

A. Relevant Facts

One day in April 2009, words were exchanged between Petitioner and Terrance Holden. When Holden tried to fight Petitioner, Petitioner showed him a gun, and Holden backed off. Shortly afterward, Petitioner, his brother Joshua, and friend Paul were sitting outside one of the Canaan Village Apartment buildings when Holden and a crowd of other youths walked down a nearby hill to start another fight.

Joshua got an AK-47 rifle from a nearby apartment and fired into the ground. Some said it looked like the rifle was too big for the youth, and he struggled to handle it properly. Petitioner took the rifle away from his little brother and started firing up the hill at Holden and his group. Paul began firing a 9 mm handgun. There was evidence that someone from the other group also fired, likely a .25 caliber handgun. There was testimony that some of the children in the crowd were only four or five years old.

Terrell Savore, a 15-year-old innocent bystander, was shot and killed in a parking lot at the top of the hill. No bullets were found in Savore's body, and no guns were ever recovered. A crime scene investigator found 12 spent rifle casings and 21 9mm pistol casings near the area where Petitioner was said to have fired. Police found six .25 caliber casings in the parking lot at the top of the hill. They also found six more spent pistol casings between the two areas, and another rifle casing off the sidewalk in front of the apartments.

Petitioner was charged with second-degree murder, which is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1. Important to this conviction, where it is not known which shooter fired the fatal shot(s), is the Louisiana law of principals. It provides: "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals." La. R.S. 14:24. Specific intent is the state of mind that exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act. La. R.S. 14:10(1).

B. Standard of Review

The jury voted 10-2 to convict Petitioner of second-degree murder. In evaluating the sufficiency of evidence to support a conviction "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 99 S.Ct. 2781, 2789 (1979). The Jackson inquiry "does not focus on

whether the trier of fact made the correct guilt or innocence determination, but rather whether it made a rational decision to convict or acquit." Herrera v. Collins, 113 S.Ct. 853, 861 (1993).

The state court decided a sufficiency of the evidence challenge on the merits on direct appeal. Habeas corpus relief is available with respect to a claim that was adjudicated on the merits in the state court only if the adjudication (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. § 2254(d). Thus a state-court decision rejecting a sufficiency challenge is reviewed under a doubly deferential standard. It may not be overturned on federal habeas unless the decision was an objectively unreasonable application of the deferential Jackson standard. Parker v. Matthews, 132 S.Ct. 2148, 2152 (2012); Harrell v. Cain, 595 Fed. Appx. 439 (5th Cir. 2015).

C. Analysis

The state appellate court reviewed the evidence, including the testimony of multiple witnesses who said Petitioner was firing a rifle at the crowd of youths, and found that the evidence "overwhelmingly supports the state's case, including the rejection of the defendant's claims of self-defense." State v. Brooks, 108 So.3d at 170. "All elements of second degree murder were proven beyond a reasonable doubt." Id.

Petitioner's argument is that the State did not prove that a bullet he fired actually killed the victim. The fatal bullets passed through the victim's body and were not

recovered. There was no testimony as to whether it was the rifle fired by Petitioner or the handgun fired by Paul Jones that caused the death of the victim. But that was not necessary for the conviction.

Persons who knowingly participate in the planning or execution of a crime are considered principals. A person's mere presence at the scene is not enough to concern him in a crime, but a jury may infer that he aided and abetted in a crime through his knowing participation and evidence that he had the requisite mental state. State v. Braneon, 289 So.3d 271, 277-78 (La. App. 4th Cir. 2020). And "[a]cting in concert, each person becomes responsible not only for his own acts, but also for the acts of the other." State v. Anderson, 707 So.2d 1223, 1224 (La. 1998). Under the law of principals, "[a] person may be convicted of an offense even if he has not personally fired the fatal shot." State v. Hampton, 750 So.2d 867, 880 (La. 1999).

The jury was presented ample evidence that Petitioner and Paul Jones, acting together, fired multiple rounds into a crowd of young people. One of those persons died as a result of the gunfire. The jury was reasonable in concluding that Petitioner had the requisite intent to inflict great bodily harm if not death, and he acted as a principal with Paul Jones. Thus, no matter whether the fatal round was fired by Jones or Petitioner, the evidence provided a basis to convict Petitioner of second-degree murder. The jury acted reasonably in reaching such a conclusion, and the state appellate court's application of Jackson to affirm the conviction was not an objectively unreasonable application of the deferential standard. Habeas relief is not available on this claim.

Sentencing Issues

A. Introduction; Procedural History

After Petitioner committed his crime at age 17, the Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller v. Alabama, 132 S.Ct. 2455 (2012). The Louisiana legislature responded to Miller in 2013 by enacting La. C.Cr.P. art. 878.1 and La. R.S. 15:574.4(E). Article 878.1 required courts to conduct a hearing in any case where an offender is to be sentenced to life imprisonment for first or second-degree murder where the offender was under the age of 18 at the time of the commission of the crime. The hearing would help the court determine whether the sentence should be imposed with or without parole eligibility pursuant to the provisions of La. R.S. 15:574.4(E). That statute, in turn, provided the conditions under which persons serving life sentences for first or second-degree murder committed under the age of 18 could become parole eligible.

Miller issued while Petitioner's case was on direct appeal, and the appellate court remanded for resentencing. On remand, the trial court ordered a presentence investigation report and held a sentencing hearing at which Petitioner was represented by counsel. Petitioner, his parents, and an older brother testified. The evidence showed that Petitioner's mother had drug problems and did not take good care of her children. Petitioner was rebellious, fought as a child, and quit school when he was about 14. The sentencing judge resentenced Petitioner to life imprisonment without the benefit of parole. His reasons included a lack of explanation for a senseless murder, Petitioner's lack of remorse other

than the fact that he was caught, and Petitioner's apparent failure to comprehend that he needlessly escalated the situation by taking the rifle from his brother and firing it at a crowd of young people. Also, Petitioner was just a few months shy of his 18th birthday at the time of the offense. The state appellate court affirmed the new sentence. Petitioner later filed a post-conviction application and raised additional challenges to the new sentence. The state court denied the application at all levels.

B. Fair Notice of Penalty; No Legislatively Prescribed Penalty

Mandatory life without possibility of parole is the only punishment authorized by Louisiana's second-degree murder statute. But the Supreme Court held in Miller that the constitution prohibits the imposition of that sentence on juvenile offenders. The constitution, per Miller, does not rule out life without parole sentences for juvenile offenders, but it requires sentencing discretion that could allow for parole eligibility. Petitioner, like other similarly situated juvenile offenders, argues that it is unconstitutional to resentence him under a criminal statute that authorizes no lesser, alternative punishment. He contends that the only legislatively provided statute that could apply is for manslaughter. La. R.S. 14:31 (40 years maximum, with parole eligibility).

Petitioner asserted these claims in his post-conviction application. The State argues that they are procedurally barred and lack merit. The court will address them on the merits. These claims have been raised multiple times, and federal district courts have routinely rejected similar fair notice and due process arguments. See, e.g., Calhoun v. Vannoy, 2021 WL 3612320 (W.D. La. 2021); Comeaux v. LeBlanc, 2020 WL 1934635, *4 (W.D. La.

2020); Looney v. Vannoy, 2019 WL 6034957, *3 (W.D. La. 2019; and Jackson v. Vannoy, 2019 WL 4145727 (W.D. La. 2019).

The petitioner in Jackson applied to the Fifth Circuit for a COA, and Judge Higginson issued a detailed order that explained why the petitioner had not made a showing of a debatable issue that warranted full consideration by the court. The opinion addressed at length the lack of legislative authorization and fair notice, and ultimately found that the issues were moot because the Louisiana legislature later passed legislation regarding such sentences and stated that it was retroactive. Thus, even though the second-degree murder statute under which the petitioner was convicted did not itself authorize a modified sentence, this separate, overriding and retroactive legislation now does. Accordingly, the arguments raised by Petitioner and others similarly situated are moot. Jackson v. Vannoy, 981 F.3d 408, 414-17 (5th Cir. 2020). Petitioner takes issue with Judge Higginson's analysis, but it appears to be sound, and no subsequent opinion has taken a different course. These claims should be denied.

C. Deprivation of Proportionate Sentence

Petitioner makes a similar argument that he has been deprived of due process by being sentenced under a statute without a specific penalty fitting his situation post-Miller. Petitioner concedes that he received a hearing where youth-related mitigating factors were considered, but he contends that his resulting sentence of life without parole "has been declared unconstitutional."

Miller did not rule out life without parole sentences for offenders under 18; it required sentencing discretion to account for juvenile status and the potential for a lesser

sentence that permitted parole. Judge Higginson noted that "all that is clearly established is that a sentencing court must consider youth-related mitigating factors in those cases in which it *does* impose a juvenile life-without-parole sentence." Jackson, 981 F.3d at 417. Petitioner received a hearing but was found not eligible for a lesser sentence despite his youth at the time of the crime. There is no basis for habeas relief under these circumstances. Smith v. Vannoy, 2021 WL 3605195 (E.D. La. 2021) (citing Jackson and denying similar disproportionality claim).

Amended Petition; Timeliness

A habeas petitioner generally has one year from the finality of his conviction to file a federal petition, but the time while a properly filed post-conviction application or other collateral review is pending tolls the limitations period. Petitioner began the post-conviction process before his conviction was even final, and he had some form of post-conviction process pending in the state court system until October 14, 2020 (after he filed his original habeas petition in 2019). He filed an amended habeas petition on November 2, 2020 that asserted additional claims.

The state courts apparently ignored or overlooked the claims presented in the amended petition, despite two trips from the state district court to the Supreme Court of Louisiana in which Petitioner urged the claims. The State argues that some of Petitioner's later appellate efforts were not "properly filed" so did not toll the limitations period. The proceedings are complicated and do no merit repeating here; the State has set them forth in detail in its memorandum. Doc. 21, pp. 1-11.

The undersigned is not persuaded that the timeliness/relation-back argument with respect to the amended petition is solid enough to warrant denial of the claims based solely on that defense. Accordingly, the merits of those claims will be discussed. The State concedes that none of the claims were adjudicated on the merits in state court and that, accordingly, a de novo standard of review applies. Doc. 21, p. 38, 50.

Denial of Cross-Examination of Dr. Long Jin

Dr. Todd Thoma is the Caddo Parish Coroner. He issued a Certificate of Death that set forth basic information about the victim and noted that the cause of death was "gunshot wound of the back" and that "Subject was shot by another." There was nothing in the certificate about what kind of firearm caused the death or who fired it. Tr. 382-84. An autopsy was performed by Dr. Long Jin, and he issued a written autopsy report which noted that no projectile or projectile fragment was recovered. Tr. 385-406. Both documents were provided to the defense in the State's discovery response filed in September 2009. Tr. 12.

At the beginning of the trial before Judge Michael Pitman in July 2011, prosecutor Dale Cox alerted the court that both Dr. Thoma and Dr. Jin were out of town until Thursday evening. The State had planned to call Dr. Jin as a witness. The prosecutor proposed admitting the autopsy report in lieu of testimony from the physicians if it was agreeable with the defense. The report would be offered solely to show the cause of death. Defense counsel Mary Harried was not then prepared to stipulate and said she needed time to do some research. Tr. 693-94.

The prosecutor renewed the suggestion at the end of the trial, and defense counsel made a "general objection" based on La. C.C.P. Art. 105 and Crawford v. Washington, 124

Petitioner argues that the admission of the death certificate violated Crawford, but he has not identified any statement in the certificate that was testimonial and harmful to the defense. Crime lab certificates of analysis of drugs and similar evidence have been held subject to Crawford, so the death certificate could also be subject to Crawford with respect to the cause of death. Assuming it is, a Confrontation Clause violation is subject to a harmless error analysis. Atkins v. Hooper, 979 F.3d 1035, 1049 (5th Cir. 2020); U.S. v. Bedoy, 827 F.3d 495, 511 (5th Cir. 2016). A federal habeas court may grant relief on account of constitutional error only if the error had a substantial and injurious effect or influence in determining the jury's verdict. Brecht v. Abrahamson, 113 S.Ct. 1710 (1993).

The fact that Terrell Savore was killed by gunfire was never contested by the defense, and several witnesses testified about Savore being struck by gunfire during the shootout. See, e.g., James Thomas (was with Savore when the shooting began, Savore was felled by shots to his side and arm, and he was bleeding and asking for help; Tr. 1090-93); Terrell Holden (saw Savore get shot as Savore ran across the parking lot; Tr. 922-23); and Alexis Barber (realized the victim had been shot when she saw him bloody and on the ground; Tr. 1028). The death certificate merely confirmed what was an undisputed fact, Savore was killed by gunfire, so there was no prejudice that would satisfy the Brecht standard. Habeas relief should be denied on this claim.

Brady Claim

Four days before trial began, the State filed a supplemental discovery response. The clerk of court's stamp indicates it was filed on July 21, 2011. The supplement stated that Dr. Jin "has given a verbal opinion in this case that the bullet that killed Terrell Savore was

probably fired by a handgun rather than an assault rifle." It added that the witnesses in the case have identified Petitioner as firing an assault rifle, and codefendant Paul Jones fired a handgun. The filing included a certificate of the prosecutor that a copy was "forwarded" to defense counsel "on the date stamped." Tr. 639.

After the trial, defense counsel filed a motion for new trial and stated that she did not receive a copy of the discovery update until after the verdict. She represented that she checked the docket sheet in the days before the trial, and as late as the morning trial began, but no new filing was shown. When she learned of the supplement, she checked the docket and saw the item was listed as filed on the Monday trial began, July 25, with a scan date of July 26. Tr. 662-65. Defense counsel said at a hearing that she learned of the supplement when her secretary brought it to her at 3:30 p.m. on the Monday after trial. The secretary said it was in her inbox, but she did not know when it arrived. Defense counsel said that such delays where not uncommon due to the volume of filings in the court, a point on which the prosecutor agreed. Tr. 1217-21. Judge Pitman denied the motion, based largely on lack of materiality. He noted that the State said at trial that it did not know who fired the fatal rounds, but it did not matter because of the law of principals. He pointed to the jury instructions on the law of principals, and he cited relevant jurisprudence on the topic. Tr. 1226-33. The state appellate court affirmed. Brooks, 108 So.3rd at 170-73.

Petitioner argues that this denied the defense exculpatory evidence that the State possessed prior to trial. The argument appears to be based on Brady v. Maryland, 83 S.Ct. 1194 (1963). Brady held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt

or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. 83 S.Ct. at 1196-97. To establish a Brady claim a petitioner must establish that the evidence was (1) suppressed, (2) favorable, and (3) material. Wright v. Quarterman, 470 F.3d 581, 591 (5th Cir. 2006). Evidence is not "suppressed" if the petitioner either knew or should have known of the essential facts that would have permitted him to take advantage of any exculpatory evidence. West v. Johnson, 92 F.3d 1385, 1399 (5th Cir. 1996). Evidence is material if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles v. Whitley, 115 S.Ct. 1555, 1566 (1995). In short, a petitioner must show a "reasonable probability of a different result." Banks v. Dretke, 124 S.Ct. 1256, 1276 (2004).

It does not appear that the evidence was suppressed, given that the State filed it in the record prior to trial and issued a copy to defense counsel. The fact that the filing came shortly before trial is no violation. Powell v. Quarterman, 536 F.3d 325, 335 (5th Cir. 2008); U.S. v. Walters, 351 F.3d 159, 169 (5th Cir. 2003) (collecting several Fifth Circuit decisions that denied Brady claims when material was produced during the trial). Defense counsel did not put eyes on the document until after trial, but there was no evidence that it was not in her office before trial. There was uncertainty, but the state courts never made a finding of suppression.

Most important, the evidence was not material within the meaning of Brady because the jury was instructed on the law of principals so that it did not matter which shooter fired the fatal shot. When the state appellate court reviewed the denial of the motion for new trial, it stated, "Whether Dr. Jin's testimony would have had an impact on the jury is highly

questionable, and certainly not probable." State v. Brooks, 108 So.3d at 172. The undersigned finds that Petitioner has not established an actionable Brady violation, so habeas relief on this claim should be denied.[1]

Ineffective Assistance of Counsel

A. Introduction

Petitioner argues that his attorney rendered ineffective assistance of counsel in several ways. To prevail, Petitioner must establish both that his counsel's performance fell below an objective standard of reasonableness and that, had counsel performed reasonably, there is a reasonable probability that the result in his case would have been different. Strickland v. Washington, 104 S.Ct. 2052, 2064 (1984).

B. Failure to Prepare, Investigate, etc.

Petitioner attacks trial counsel's performance on several grounds related to trial preparation and performance. He first argues that defense counsel heard the testimony of the several eyewitnesses but failed to cross-examine them and point out that there were other shooters. Contrary to Petitioner's claim, defense counsel did examine the witnesses on that issue. She had Jamil Johnson state that there was shooting from up the hill coming from Quarshay Robinson. Counsel also asked Johnson about other persons who might have been shooting. Tr. 838-39. Counsel cross-examined Sherrell Savore and had her

[1] Dr. Jin did testify in the separate trial of Joshua Brooks. He said that the victim died from gunshot wounds to his left wrist and his sacrum, with the latter wound severing a major artery that caused him to bleed to death within minutes. Based on the exit wounds and other observations, Dr. Jin opined that the wounds were caused by two separate bullets, each fired by a high-velocity rifle. Brooks v. Vannoy, 2021 WL 1035110, *2. This is at odds with the supplemental discovery filing, and it undermines any claim of prejudice by Petitioner (the rifle shooter).

state that she saw Quarshay Robinson shooting, and counsel asked about other potential shooters. Tr. 896-97. Defense counsel asked Kimberly Savore if she saw anyone else shooting, and the witness said no. Counsel then confronted her with the fact that she told an investigator that she saw Ray Ray shooting. Tr. 909-10. Counsel cross-examined Terrance Holden about whether he got a gun out of a truck and whether he told an investigator that he saw Quarshay Robinson shooting. Holden denied both. Tr. 937-40. She also cross-examined Ladarius Anderson about whether he saw anyone shooting or told an investigator that he had seen such shooting. Tr. 1003.

The record shows that counsel competently cross-examined the eyewitnesses about the possibility of other shooters. Petitioner's assertion that counsel allowed one-sided testimony to go unchallenged is not supported by the record. Counsel could not force a witness to say what Petitioner wanted to hear, but she asked questions in an effort to establish such evidence, often succeeding.

Petitioner's next claim is based on his representation that the autopsy report would have informed counsel that the victim did not receive injuries by a round fired from an AK-47 rifle. He therefore faults counsel for failure to perform a proper investigation. A Strickland claim requires that the evidence show the verdict would reasonably likely have been different had a better investigation taken place. The petitioner must show what the investigation would have revealed and how it would have altered the outcome of the trial. Moawad v. Anderson, 143 F.3d 942, 948 (5th Cir. 1998). The autopsy report did not include the findings suggested by Petitioner; the report did not state whether a rifle or handgun fired the bullets that struck the victim. This claim lacks merit.

Petitioner next argues that counsel failed to prepare a valid "alibi defense" and instead presented a defense of self-defense. Petitioner contends that the autopsy report somehow supports this claim. There is no support in the autopsy report or elsewhere in the record for an alibi defense, which would require evidence that Petitioner was not present at the scene of the crime. There were multiple eyewitnesses who placed him at the scene of the crime firing a rifle into a crowd of children. This claim lacks merit.

Petitioner claims that counsel was ineffective for not objecting more strenuously to the admission of the autopsy report. Counsel's objection to the autopsy report prevailed, and the report was not admitted into evidence. Only the death certificate was admitted, and it contained only basic information about the victim and that his cause of death was gunshot wounds. Counsel also objected to introduction of the death certificate, but the court overruled the objection. Counsel is not ineffective merely because her objection was not sustained.

Petitioner argues that counsel was ineffective because she did not make a pretrial review of surveillance video from the apartments. Before the trial started, defense counsel stated that she understood the prosecution would offer video evidence, and she asked for an opportunity to view it before it was introduced. Counsel said that several items of video evidence had been provided in discovery, but she wanted to see "exactly what's going to be offered into evidence." The prosecutor described the precise photos and particular video segments that would be offered. Tr. 693-96. Counsel stated that she was familiar with the still photos but wanted to watch the video segments that would be offered. The judge noted that it took about 23 minutes to review that evidence and have the investigator explain to

counsel the different angles and views, and the different people captured in the video. Tr. 713-14.

Petitioner argues that counsel's alleged failure to review the video before trial hindered her ability to properly cross-examine witnesses and subject the State's case to testing. First, counsel did not state that she did not watch the videos before trial. She merely wanted to see which of the "several" videos the prosecution would actually offer into evidence. And Petitioner has not suggested a single additional question or challenge that counsel might have raised to that evidence. He argues that the video evidence was prejudicial because it included gang graffiti around the apartments, but no amount of additional viewing by defense counsel could have eliminated that. This claim lacks merit.

During the trial, the prosecutor informed the court and counsel that Terrence Holden and Kimberly Savore gave trial testimony that was inconsistent with their testimony before the grand jury. That testimony had to do with whether Quarshay Robinson had fired a shot or shots during the conflict. The trial judge noted that, after this information was provided, "Defense counsel was given an opportunity and took the opportunity to question the witnesses on those inconsistencies." Tr. 1005-06.

Petitioner argues that counsel was ineffective because she did not request a continuance to obtain the grand jury transcripts of testimony by Holden and Savore so that she could use the transcripts to better impeach the witnesses. Deficient performance requires a showing that counsel made errors so serious that she was not functioning as counsel guaranteed by the Sixth Amendment and that her representation fell below an objective standard of reasonableness. Strickland, 104 S.Ct. at 2064. Strategic or tactical

trial decisions are not unreasonable just because another attorney, with the benefit of hindsight, perhaps would have made a different choice. Buckley v. Collins, 904 F.2d 263, 265 (5th Cir. 1990). Counsel should be strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Blueford v. Hooper, 798 Fed. Appx. 789, 792 (5th Cir. 2020). The court must give counsel the benefit of the doubt and affirmatively entertain the range of possible reasons she may have for proceeding as she did. Id., citing Feldman v. Thaler, 695 F.3d 372, 380 (5th Cir. 2012).

A reasonable attorney might have elected to ask for a continuance under these circumstances, but there is not guarantee that the request would have been granted. A reasonable attorney might also have elected to proceed and attempt, on the spot, to cross-examine the witnesses on those points. That is what this attorney did, and it was within the wide range of acceptable performance for defense counsel. Petitioner is not entitled to have his conviction set aside based on the second guessing of such a mid-trial strategy decision.

Petitioner's final claim is that defense counsel failed to interview or subpoena crucial witnesses. He states that Alexis Jones, Sable Jones, and Dallas Jones were eyewitnesses and would have "named all of the shooters and how this incident really begin." "Claims that counsel failed to call witnesses are not favored on federal habeas review because the presentation of witnesses is generally a matter of trial strategy and speculation about what witnesses would have said on the stand is too uncertain." Woodfox v. Cain, 609 F.3d 774, 808 (5th Cir. 2010). A petitioner who makes such a claim must

demonstrate prejudice by naming the witness, demonstrating that the witness was available to testify and would have done so, setting out the content of the proposed testimony, and showing that the testimony would have been favorable to a particular defense. Id., citing Day v. Quarterman, 566 F.3d 527, 538 (5th Cir. 2009).

Petitioner offers nothing more than a conclusory assertion about these witnesses. There are no affidavits or any other evidence indicating what these witnesses might have said if called to testify. Thus, there is no basis for habeas relief on the showing made. Evans v. Cockrell, 285 F.3d 370, 377 (5th Cir. 2000) (reversing grant of habeas relief when district court assumed that witnesses, from whom no affidavits were presented, would have testified favorably for the defense); Bruce v. Cockrell, 74 Fed. Appx. 326 (5th Cir. 2003)(rejecting Strickland claim because petitioner "did not submit any affidavits by the uncalled witnesses themselves, or offer any evidence that they would have been willing to testify at the punishment phase of his trial.").

Accordingly,

It is recommended that Petitioner's petition for writ of habeas corpus, as amended, be denied.

Objections

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Civ. P. 6(b). A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendation set forth above, within 14 days after being served with a copy, shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. See Douglass v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

An appeal may not be taken to the court of appeals from a final order in a proceeding under 28 U.S.C. § 2254 unless a circuit justice, circuit judge, or district judge issues a certificate of appealability. 28 U.S.C. § 2253(c); F.R.A.P. 22(b). Rule 11 of the Rules Governing Section 2254 Proceedings for the U.S. District Courts requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Section 2253(c)(2). A party may, within fourteen (14) days from the date of this Report and Recommendation, file a memorandum that sets forth arguments on whether a certificate of appealability should issue.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 1st day of February, 2023.

Mark L. Hornsby
U.S. Magistrate Judge

Appendix D

Louisiana Revised Statute 14:30
Louisiana Revised Statute 14:30.1
Louisiana Revised Statute 15:574.4
Louisiana Code Criminal Procedure, Article 878.1

WESTLAW

§ 30. First degree murder

LA R.S. 14:30 | West's Louisiana Statutes Annotated | Louisiana Revised Statutes | Effective: August 1, 2015 *(Approx. 3 pages)*

West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 14. Criminal Law (Refs & Annos)
Chapter 1. Criminal Code (Refs & Annos)
Part II. Offenses Against the Person
Subpart A. Homicide

Unconstitutional or Preempted Recognized as Unconstitutional by State v. Comeaux La.App. 3 Cir. Feb. 15, 2018

Effective: August 1, 2015

LSA-R.S. 14:30

§ 30. First degree murder

Currentness

A. First degree murder is the killing of a human being:

(1) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, second degree kidnapping, aggravated escape, aggravated arson, aggravated or first degree rape, forcible or second degree rape, aggravated burglary, armed robbery, assault by drive-by shooting, first degree robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to juveniles.

(2) When the offender has a specific intent to kill or to inflict great bodily harm upon a fireman, peace officer, or civilian employee of the Louisiana State Police Crime Laboratory or any other forensic laboratory engaged in the performance of his lawful duties, or when the specific intent to kill or to inflict great bodily harm is directly related to the victim's status as a fireman, peace officer, or civilian employee.

(3) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person.

(4) When the offender has specific intent to kill or inflict great bodily harm and has offered, has been offered, has given, or has received anything of value for the killing.

(5) When the offender has the specific intent to kill or to inflict great bodily harm upon a victim who is under the age of twelve or sixty-five years of age or older.

(6) When the offender has the specific intent to kill or to inflict great bodily harm while engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a

controlled dangerous substance listed in Schedules I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(7) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the activities prohibited by R.S. 14:107.1(C)(1).

(8) When the offender has specific intent to kill or to inflict great bodily harm and there has been issued by a judge or magistrate any lawful order prohibiting contact between the offender and the victim in response to threats of physical violence or harm which was served on the offender and is in effect at the time of the homicide.

(9) When the offender has specific intent to kill or to inflict great bodily harm upon a victim who was a witness to a crime or was a member of the immediate family of a witness to a crime committed on a prior occasion and:

(a) The killing was committed for the purpose of preventing or influencing the victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced; or

(b) The killing was committed for the purpose of exacting retribution for the victim's prior testimony.

(10) When the offender has a specific intent to kill or to inflict great bodily harm upon a taxicab driver who is in the course and scope of his employment. For purposes of this Paragraph, "taxicab" means a motor vehicle for hire, carrying six passengers or less, including the driver thereof, that is subject to call from a garage, office, taxi stand, or otherwise.

(11) When the offender has a specific intent to kill or inflict great bodily harm and the offender has previously acted with a specific intent to kill or inflict great bodily harm that resulted in the killing of one or more persons.

(12) When the offender has a specific intent to kill or to inflict great bodily harm upon a correctional facility employee who is in the course and scope of his employment.

B. (1) For the purposes of Paragraph (A)(2) of this Section, the term "peace officer" means any peace officer, as defined in R.S. 40:2402, and includes any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator, coroner, deputy coroner, or coroner investigator.

(2) For the purposes of Paragraph (A)(9) of this Section, the term "member of the immediate family" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild, or grandchild.

(3) For the purposes of Paragraph (A)(9) of this Section, the term "witness" means any person who has testified or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet commenced.

(4) For purposes of Paragraph (A)(12) of this Section, the term "correctional facility employee" means any employee of any jail, prison, or correctional facility who is not a peace officer as defined by the provisions of Paragraph (1) of this Subsection.

C. (1) If the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment may be capital shall apply.

(2) If the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

Credits

Amended by Acts 1973, No. 109, § 1; Acts 1975, No. 327, § 1; Acts 1976, No. 657, § 1; Acts 1979, No. 74, § 1, eff. June 29, 1979; Acts 1985, No. 515, § 1; Acts 1987, No. 654, § 1; Acts 1987, No. 862, § 1; Acts 1988, No. 779, § 2, eff. July 18, 1988; Acts 1989, No. 373, § 1; Acts 1989, No. 637, § 2; Acts 1990, No. 526, § 1; Acts 1992, No. 296, § 1; Acts 1993, No. 244, § 1; Acts 1993, No. 496, § 1; Acts 1999, No. 579, § 1; Acts 1999, No. 1359, § 1; Acts 2001, No. 1056, § 1; Acts 2002, 1st Ex.Sess., No. 128, § 2; Acts 2003, No. 1223, § 1; Acts 2004, No. 145, § 1; Acts 2004, No. 649, § 1; Acts 2006, No. 53, § 1; Acts 2007, No. 125, § 1; Acts 2009, No. 79, § 1, eff. June 18, 2009; Acts 2012, No. 679, § 1; Acts 2014, No. 157, § 1; Acts 2014, No. 390, § 2; Acts 2015, No. 184, § 1.

Editors' Notes

VALIDITY

<For validity of this section, see State v. Comeaux, 239 So.3d 920 (La.App. 3 Cir. 2/15/18).>

APPLICATION--ACTS 2015, NO. 184

<Section 9 of Acts 2015, No. 184 provides:>

<"Section 9. Nothing in this Act alleviates any person arrested, convicted, or adjudicated delinquent of aggravated rape, forcible rape, or simple rape prior to the effective date of this Act from any requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication including but not limited to any requirements regarding the setting of bail, sex offender registration and notification, parental rights, probation, parole, sentencing, or any other requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication.">

<Acts 2015, No. 184 became effective on August 1, 2015.>

REPORTER'S COMMENT

Penalty Clause--1988

WESTLAW

§ 30.1. Second degree murder

LA R.S. 14:30.1 | West's Louisiana Statutes Annotated | Louisiana Revised Statutes | Effective: August 1, 2015 *(Approx. 2 pages)*

West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 14. Criminal Law (Refs & Annos)
Chapter 1. Criminal Code (Refs & Annos)
Part II. Offenses Against the Person
Subpart A. Homicide

Unconstitutional or Preempted Recognized as Unconstitutional by State v. Brooks La.App. 2 Cir. Apr. 11, 2018

Effective: August 1, 2015

LSA-R.S. **14:30.1**

§ 30.1. Second degree murder

Currentness

A. Second degree murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm; or

(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to inflict great bodily harm.

(3) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, [1] or any combination thereof, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.

(4) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, to another who subsequently distributes or dispenses such controlled dangerous substance which is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Credits

Added by Acts 1973, No. 111, § 1. Amended by Acts 1975, No. 380, § 1; Acts 1976, No. 657, § 2; Acts 1977, No. 121, § 1; Acts 1978, No. 796, § 1; Acts 1979, No. 74, § 1, eff. June 29, 1979; Acts 1987, No. 465, § 1; Acts 1987, No. 653, § 1; Acts 1993, No. 496, § 1; Acts 1997, No. 563, § 1; Acts 1997, No. 899, § 1; Acts 2006, No. 53, § 1; Acts 2008, No. 451, § 2, eff. June 25, 2008; Acts 2009, No. 155, § 1; Acts 2015, No. 184, § 1.

Editors' Notes

VALIDITY

<For validity of this section, see State v. Comeaux, 239 So.3d 920 (La.App. 3 Cir. 2/15/18).>

<For validity of this section, see State v. Brooks, 247 So.3d 1071 (La.App. 2 Cir. 4/11/18).>

APPLICATION--ACTS 2015, NO. 184

<Section 9 of Acts 2015, No. 184 provides:>

<"Section 9. Nothing in this Act alleviates any person arrested, convicted, or adjudicated delinquent of aggravated rape, forcible rape, or simple rape prior to the effective date of this Act from any requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication including but not limited to any requirements regarding the setting of bail, sex offender registration and notification, parental rights, probation, parole, sentencing, or any other requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication.">

<Acts 2015, No. 184 became effective on August 1, 2015.>

HISTORICAL AND STATUTORY NOTES

As originally enacted, this section read:
"Second degree murder is the killing of a human being:
"(1) When the offender has a specific intent to kill or to inflict great bodily harm; or
"(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated escape, armed robbery, or simple robbery, even though he has no intent to kill.
"Whoever commits the crime of second degree murder shall be imprisoned at hard labor for life and shall not be eligible for parole, probation or suspension of sentence for a period of twenty years."
Acts 1973, No. 111, § 2, provides:
"This Act shall not apply to any crime committed before the effective date of this Act. Crimes committed before that time shall be governed by the law existing at the time the crime was committed."
Act 111 became effective on July 2, 1973.
Acts 1973, No. 111, § 5 provides:
"This Act shall take effect and become operative if, as and when Senate Bill No. 37, introduced by Mr. Windhorst at this session of the legislature becomes law."
Senate Bill No. 37 was enacted as Acts 1973, No. 109, amending R.S. 14:30 and became

WESTLAW

§ 574.4. Parole; eligibility; juvenile offenders

LA R.S. 15:574.4 West's Louisiana Statutes Annotated Louisiana Revised Statutes Effective: August 1, 2023 *(Approx. 10 pages)*

West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 15. Criminal Procedure (Refs & Annos)
Chapter 5. Reprieve, Pardon, and Parole (Refs & Annos)
Part II. Parole (Refs & Annos)
Subpart A. Committee on Parole and Rules of Parole (Refs & Annos)

Unconstitutional or Preempted Prior Version's Limitation Recognized by State v. Hampton La.App. 2 Cir. May 18, 2016

Effective: August 1, 2023

LSA-R.S. 15:574.4

§ 574.4. Parole; eligibility; juvenile offenders

Currentness

A. (1)(a) Unless eligible at an earlier date, a person otherwise eligible for parole shall be eligible for parole consideration upon serving twenty-five percent of the sentence imposed. The provisions of this Subparagraph shall not apply to any person whose instant offense is a crime of violence as defined in R.S. 14:2(B), a sex offense as defined in R.S. 15:541, or any offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or whose instant offense is a fourth or subsequent conviction of a nonviolent felony offense, regardless of the date of conviction. Notwithstanding any provisions of law to the contrary, the provisions of this Subparagraph shall be applicable to persons convicted of offenses prior to and on or after November 1, 2017.

(b)(i) A person, otherwise eligible for parole, whose instant offense is a second conviction of a crime of violence as defined in R.S. 14:2(B) or a first or second conviction of a sex offense as defined in R.S. 15:541 shall be eligible for parole consideration upon serving seventy-five percent of the sentence imposed. A person convicted a third or subsequent time of a crime of violence as defined in R.S. 14:2(B) or a third or subsequent time of a sex offense as defined in R.S. 15:541 shall not be eligible for parole.

(ii) Notwithstanding the provisions of Item (i) of this Subparagraph, a person, otherwise eligible for parole, convicted of a crime of violence as defined in R.S. 14:2(B) who does not have a prior felony conviction for a crime of violence as defined in R.S. 14:2(B) or a prior felony conviction for a sex offense as defined in R.S. 15:541 shall be eligible for parole consideration upon serving sixty-five percent of the sentence imposed. The provisions of this Item shall not apply to any person convicted of a sex offense as defined in R.S. 15:541.

(iii) The provisions of this Subparagraph shall be applicable only to persons who commit an offense or whose probation or parole is revoked on or after November 1, 2017.

(c) A person otherwise eligible for parole whose instant offense is a fourth or subsequent conviction of a nonviolent felony offense shall be eligible for parole consideration upon serving sixty-five percent of the sentence imposed. The provisions of this Subparagraph shall not apply to any person who has been convicted of a sex offense as defined in R.S. 15:541.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection or any other law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for thirty years or more shall be eligible for parole consideration upon serving at least twenty years of the term or terms of imprisonment in actual custody and upon reaching the age of forty-five. This provision shall not apply to a person serving a life sentence unless the sentence has been commuted to a fixed term of years. The provisions of this Paragraph shall not apply to any person who has been convicted of an offense that is both a crime of violence as defined in R.S. 14:2(B) and a sex offense as defined in R.S. 15:541 when the offense was committed on or after January 1, 1997. The provisions of this Paragraph shall not apply to any person who has been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541 when the offense was committed on or after August 1, 2014.

(3) Notwithstanding the provisions of Paragraph (A)(1) or (2) of this Section or any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections serving a life sentence for the production, manufacturing, distribution, or dispensing or possessing with intent to produce, manufacture, or distribute heroin shall be eligible for parole consideration upon serving at least fifteen years of imprisonment in actual custody.

(4) Notwithstanding any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole who has served at least ten years of the term or terms of imprisonment in actual custody shall be eligible for parole consideration upon reaching the age of sixty years if all of the following conditions have been met:

(a) The offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

(b) The offender has not committed any major disciplinary offenses in twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with the provisions of R.S. 15:827.1 if such programming is available at the facility where the offender is incarcerated.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained or completed at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(iv) A high school equivalency certificate.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(5)(a) Notwithstanding the provisions of Paragraph (A)(1) or Subsection B of this Section or any other provision of law to the contrary, a person committed to the Department of Public Safety and Corrections shall be eligible for parole consideration upon serving fifteen years in actual custody if all of the following conditions are met:

(i) The person was not eligible for parole consideration at an earlier date.

(ii) The person was sentenced to life imprisonment without parole, probation, or suspension of sentence for the instant offense and the instant offense was committed between June 29, 1995, and June 15, 2001.

(iii) The person is eligible for relief under R.S. 15:308, including a person serving a life sentence with or without additional terms of years.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to any person who was sentenced for a third or subsequent felony when the third or subsequent felony and two of the prior felonies are any of the following:

(i) A crime of violence pursuant to R.S. 14:2(B).

(ii) A sex offense as defined in R.S. 15:541 when the victim is under the age of eighteen years at the time of the commission of the offense.

(iii) A violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more.

(iv) Any other offense punishable by imprisonment for twelve years or more.

(v) Any combination of the offenses listed in Items (i) through (iv) of this Subparagraph.

(6)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection or Subsection B of this Section or of any provision of law to the contrary, a person committed to the Department of Public Safety and Corrections shall be eligible for parole consideration upon serving fifteen years in actual custody if all of the following conditions are met:

(i) The person was not eligible for parole consideration at an earlier date.

(ii) The person was sentenced to life imprisonment without parole, probation, or suspension

of sentence after being convicted of a third or subsequent felony offense under R.S. 15:529.1 for the instant offense.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to any person who meets any of the following criteria:

(i) The instant conviction is a crime of violence under R.S. 14:2(B).

(ii) The instant conviction or any prior conviction, whether or not that prior conviction was used in the habitual offender conviction under R.S. 15:529.1, is both a crime of violence under R.S. 14:2(B) and a sex offense under R.S. 15:541.

(iii) The person would still qualify for a sentence of life imprisonment without parole, probation, or suspension of sentence as a third or subsequent offense under R.S. 15:529.1, as it was amended by Act Nos. 257 and 282 of the 2017 Regular Session of the Legislature.

B. (1) Except as provided in Paragraph (2) of this Subsection, and except as provided in Paragraph (A)(5) and Subsections D, E, and H of this Section, no prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner sentenced as a serial sexual offender shall be eligible for parole. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner. Notwithstanding any other provisions of law to the contrary, a person convicted of a crime of violence and not otherwise ineligible for parole shall serve at least sixty-five percent of the sentence imposed, before being eligible for parole. The victim or victim's family shall be notified whenever the offender is to be released provided that the victim or victim's family has completed a Louisiana victim notice and registration form as provided in R.S. 46:1841 et seq., or has otherwise provided contact information and has indicated to the Department of Public Safety and Corrections, Crime Victims Services Bureau, that they desire such notification.

(2) Notwithstanding any provision of law to the contrary, any person serving a life sentence, with or without the benefit of parole, who has not been convicted of a crime of violence as defined by R.S. 14:2(B), a sex offense as defined by R.S. 15:541, or an offense, regardless of the date of conviction, which would constitute a crime of violence as defined by R.S. 14:2(B) or a sex offense as defined by R.S. 15:541, shall be eligible for parole consideration as follows:

(a) If the person was at least eighteen years of age and under the age of twenty-five years at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if all of the following conditions have been met:

(i) The person has served at least twenty-five years of the sentence imposed.

(ii) The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(iii) The person has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an

offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(iv) The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

(v) The person has completed substance abuse treatment, if applicable and such treatment is available at the facility where the offender is incarcerated.

(vi) The person has obtained or completed at least one of the following:

(aa) A literacy program.

(bb) An adult basic education program.

(cc) A job skills training program.

(dd) A high school equivalency certificate.

(b) If the person was at least twenty-five years of age and under the age of thirty-five years at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if all of the following conditions have been met:

(i) The person has served at least twenty years of the sentence imposed.

(ii) The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(iii) The person has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(iv) The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

(v) The person has completed substance abuse treatment, if applicable and such treatment is available at the facility where the offender is incarcerated.

(vi) The person has obtained or completed at least one of the following:

(aa) A literacy program.

(bb) An adult basic education program.

(cc) A job skills training program.

(dd) A high school equivalency certificate.

(c) If the person was at least thirty-five years of age and under the age of fifty years at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if

all of the following conditions have been met:

(i) The person has served at least fifteen years of the sentence imposed.

(ii) The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(iii) The person has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(iv) The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

(v) The person has completed substance abuse treatment, if applicable and such treatment is available at the facility where the offender is incarcerated.

(vi) The person has obtained or completed at least one of the following:

(aa) A literacy program.

(bb) An adult basic education program.

(cc) A job skills training program.

(dd) A high school equivalency certificate.

(d) If the person was at least fifty years of age at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if all of the following conditions have been met:

(i) The person has served at least ten years of the sentence imposed.

(ii) The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(iii) The person has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(iv) The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

(v) The person has completed substance abuse treatment if applicable and such treatment is available at the facility where the offender is incarcerated.

(vi) The person has obtained or completed at least one of the following:

(aa) A literacy program.

(bb) An adult basic education program.

(cc) A job skills training program.

(dd) A high school equivalency certificate.

C. (1) At such intervals as it determines, the committee or a member thereof shall consider all pertinent information with respect to each prisoner eligible for parole, including the nature and circumstances of the prisoner's offense, his prison records, the presentence investigation report, any recommendations of the chief probation and parole officer, and any information and reports of data supplied by the staff. A parole hearing shall be held if, after such consideration, the committee determines that a parole hearing is appropriate or if such hearing is requested in writing by its staff.

(2)(a) In cases where the offender has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of a violation of a sex offense as defined in R.S. 15:541 and parole is permitted by law and the offender is otherwise eligible, the committee shall consider reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, as to all of the following:

(i) Whether the offender has successfully completed the sex offender program.

(ii) Whether, in the expert's opinion, there is a likelihood that the offender will or will not repeat the criminal conduct and that the offender will or will not be a danger to society.

(b) The committee shall render its decision ordering or denying the release of the prisoner on parole only after considering this clinical evidence where such clinical evidence is available.

D. (1) Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment who was under the age of eighteen years at the time of the commission of the offense, except for a person serving a life sentence for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. **14**:**30**.**1**), shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met:

(a) The offender has served twenty-five years of the sentence imposed.

(b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with R.S. 15:827.1.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained or completed at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(iv) A high school equivalency certificate.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

(h) If the offender was convicted of aggravated or first degree rape, he shall be designated a sex offender and upon release shall comply with all sex offender registration and notification provisions as required by law.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the committee on parole shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.

E. (1) Notwithstanding any provision of law to the contrary and except as provided in Subsection G of this Section, any person serving a sentence of life imprisonment for a conviction of first degree murder (R.S. 14:30) who was under the age of eighteen years at the time of the commission of the offense and whose indictment for the offense is on or after August 1, 2017, shall be eligible for parole consideration pursuant to the provisions of this Subsection if a judicial determination has been made that the person is entitled to parole eligibility pursuant to Code of Criminal Procedure Article 878.1(A) and all of the following conditions have been met:

(a) The offender has served twenty-five years of the sentence imposed.

(b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with R.S. 15:827.1.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained or completed at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(iv) A high school equivalency certificate.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.

F. (1) Notwithstanding any provision of law to the contrary and except as provided in Subsection G of this Section, any person serving a sentence of life imprisonment for a conviction of second degree murder (R.S. **14**:**30**.**1**) who was under the age of eighteen years at the time of the commission of the offense and whose indictment for the offense is on or after August 1, 2017, shall be eligible for parole consideration if all of the following conditions have been met:

(a) The offender has served twenty-five years of the sentence imposed.

(b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with R.S. 15:827.1.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained or completed at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(iv) A high school equivalency certificate.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of

Public Safety and Corrections.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.

G. (1) Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. **14**:**30**.**1**) who was under the age of eighteen years at the time of the commission of the offense and whose indictment for the offense was prior to August 1, 2017, shall be eligible for parole consideration pursuant to the provisions of this Subsection if a judicial determination has been made that the person is entitled to parole eligibility pursuant to Code of Criminal Procedure Article 878.1(B) and all of the following conditions have been met:

(a) The offender has served twenty-five years of the sentence imposed.

(b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with R.S. 15:827.1.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained or completed at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(iv) A high school equivalency certificate.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel, and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant

evidence pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.

H. (1) Notwithstanding any provision of law to the contrary, an offender serving a life sentence for second degree murder (R.S. **14**:**30**.**1**), shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions are met:

(a) The offender committed the offense after July 2, 1973, and prior to June 29, 1979.

(b) The offender has served at least forty years of the sentence imposed.

(2) An offender who has met the requirements of Paragraph (1) of this Subsection and is granted a hearing before the committee on parole shall be released on parole if a five member panel of the committee vote unanimously to grant parole.

I. On or before August 1, 2018, and no later than August first of each year following, the Department of Public Safety and Corrections shall submit an annual report to the legislature relative to offenders released from custody during the preceding year pursuant to the provisions of this Section. This report shall include the following information:

(1) The name and offender number of the paroled offender.

(2) The date on which the offender was released on parole.

(3) The offense for which the offender was incarcerated at the time of his release, including whether the offense was a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541.

(4) A grid which shows the earliest release date that offenders would have been eligible for release notwithstanding the provisions of Section 3 of Act No. 280 of the 2017 Regular Session of the Legislature.

(5) Whether the offender obtained a GED certification or completed a literacy program, an adult basic education program, or a job skills training program before being paroled.

(6) Any information relative to juvenile offenders that is exempt from release pursuant to a public records request or otherwise considered confidential by law shall be redacted from the report provided for by this Subsection.

J. (1) Notwithstanding any provision of law to the contrary, and except as provided in Subsections D, E, F, G, and H of this Section, any person serving a term or terms of imprisonment that result in a period of incarceration of twenty-five years or more and who was under the age of eighteen years at the time of the commission of the offense shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met:

(a) The offender has served at least twenty-five years of the sentence imposed.

(b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole hearing date. A major disciplinary offense is an

offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

(c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with R.S. 15:827.1.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained or completed at least one of the following:

(i) A literacy program.

(ii) An adult basic education program.

(iii) A job skills training program.

(iv) A high school equivalency certificate.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.

(2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the committee on parole shall meet in a three-member panel, shall consider the impact that the lack of brain development in adolescence has on culpability and behavior, a juvenile offender's unique ability to mature and grow, and any other relevant evidence or testimony pertaining to the offender.

(3) The panel shall render specific findings of fact in support of its decision.

(4) The provisions of this Subsection shall not apply to a person serving a sentence of life imprisonment for a conviction of R.S. 14:30, 30.1, 42, or 44.

K. Notwithstanding any provision of law to the contrary, an offender serving a life sentence for an offense committed on or before July 2, 1973, and for which the offender pleaded guilty, shall immediately be eligible for parole consideration.

Credits

Acts 1968, No. 191, § 1. Amended by Acts 1970, No. 443, § 1; Acts 1972, No. 412, § 1; Acts 1974, No. 197, § 1; Acts 1974, No. 202, § 1; Acts 1978, No. 604, § 1; Acts 1979, No. 734, § 1; Acts 1981, No. 294, § 1; Acts 1981, No. 448, § 1; Acts 1981, No. 762, § 1, eff. July 1, 1982; Acts 1983, No. 262, § 1; Acts 1985, No. 829, § 1; Acts 1986, No. 185, § 1, eff. Sept. 1, 1986; Acts 1987, No. 60, § 1; Acts 1988, No. 167, § 1; Acts 1988, No. 270, § 1; Acts 1988, No. 320, § 1; Acts 1989, No. 15, § 1; Acts 1989, No. 194, § 2; Acts 1989, No. 791, § 1; Acts 1990, No. 331, § 1; Acts 1990, No. 566, § 1; Acts 1990, No. 790, § 1; Acts 1991, No. 119, § 1; Acts 1992, No. 413, § 1; Acts 1992, No. 962, § 2; Acts 1992, No. 1122, § 1; Acts 1993, No. 484, § 1, eff. June 10, 1993; Acts 1993, No. 671, § 1; Acts 1993, No. 874, § 1; Acts 1993, No. 922, § 1; Acts 1994, 3rd Ex.Sess., No. 58, § 1, eff. July 7, 1994; Acts 1995, No. 605, § 2, eff. June 18, 1995; Acts 1995, No. 1099, § 1, eff. Jan. 1, 1997;

Acts 1995, No. 1290, § 2; Acts 1995, No. 1303, § 1; Acts 1997, No. 134, § 2; Acts 1997, No. 137, § 2; Acts 1997, No. 820, § 1; Acts 1997, No. 870, § 1; Acts 1997, No. 1148, § 2, eff. July 14, 1997; Acts 1997, No. 1396, § 1, eff. July 15, 1997; Acts 1999, No. 119, § 1; Acts 1999, No. 359, § 1; Acts 1999, No. 923, § 1; Acts 1999, No. 1150, § 1; Acts 1999, No. 1209, § 1; Acts 2001, No. 253, § 1; Acts 2001, No. 611, § 1; Acts 2001, No. 1206, § 1; Acts 2003, No. 587, § 1; Acts 2003, No. 868, § 1; Acts 2005, No. 337, § 1; Acts 2006, No. 26, § 1; Acts 2006, No. 59, § 1; Acts 2006, No. 68, § 1; Acts 2008, No. 337, § 1; Acts 2008, No. 624, § 1; Acts 2009, No. 362, § 1; Acts 2009, No. 533, § 2; Acts 2010, No. 241, § 1; Acts 2011, No. 253, § 1; Acts 2011, No. 285, § 1; Acts 2012, No. 159, § 1; Acts 2012, No. 401, § 1; Acts 2012, No. 466, § 1; Acts 2013, No. 239, § 1; Acts 2014, No. 126, § 1; Acts 2014, No. 127, § 1; Acts 2014, No. 332, § 1; Acts 2015, No. 184, § 2; Acts 2016, No. 469, § 1; Acts 2016, No. 509, § 3; Acts 2017, No. 277, § 1; Acts 2017, No. 280, § 3, eff. Nov. 1, 2017; Acts 2018, No. 604, § 1, eff. Nov. 1, 2018; Acts 2018, No. 670, § 1, eff. June 1, 2018; Acts 2019, No. 369, § 2; Acts 2020, No. 99, § 1; Acts 2020, 2nd Ex.Sess., No. 4, § 1, eff. Oct. 20, 2020; Acts 2021, No. 122, § 1; Acts 2022, No. 544, § 1, eff. June 17, 2022; Acts 2022, No. 750, § 1; Acts 2023, No. 276, § 1, eff. June 9, 2023; Acts 2023, No. 463, § 1.

Editors' Notes

PROSPECTIVE AND RETROACTIVE APPLICATION--ACTS 2022, NO. 750

<Section 2 of Acts 2022, No. 750 provides:>

<"Section 2. The provisions of this Act shall be given prospective and retroactive application.">

APPLICATION--ACTS 2016, NO. 509

<Section 6 of Acts 2016, No. 509 provides:>

<"Section 6. The provisions of Sections 3 and 5 of this Act shall have prospective application only and shall apply only to persons convicted on or after the effective date of this Act.">

<Section 3 of Acts 2016, No. 509 amended par. (B)(1) of this section by substituting "seventy-five" for "eighty-five" following "serve at least". The effective date of Acts 2016, No. 509 is August 1, 2016.>

APPLICATION--ACTS 2015, NO. 184

<Section 9 of Acts 2015, No. 184 provides:>

<"Section 9. Nothing in this Act alleviates any person arrested, convicted, or adjudicated delinquent of aggravated rape, forcible rape, or simple rape prior to the effective date of this Act from any requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication including but not limited to any requirements regarding the setting of bail, sex offender registration and notification, parental rights, probation, parole, sentencing, or any other requirement, obligation, or consequence imposed by law as a result of that arrest, conviction, or adjudication.">

WESTLAW

Art. 878.1. Hearing to determine parole eligibility for certain juvenile offenders

LA C.Cr.P. Art. 878.1 West's Louisiana Statutes Annotated Louisiana Code of Criminal Procedure Effective: August 1, 2017 *(Approx. 2 p*

West's Louisiana Statutes Annotated
Louisiana Code of Criminal Procedure (Refs & Annos)
Title XXX. Sentence (Refs & Annos)
Chapter 1. General Sentencing Provisions

Unconstitutional or Preempted Prior Version's Limitation Recognized by State v. Jenkins La.App. 1 Cir. Jan. 23, 2015

Effective: August 1, 2017

LSA-C.Cr.P. Art. 878.1

Art. 878.1. Hearing to determine parole eligibility for certain juvenile offenders

Currentness

A. If an offender is indicted on or after August 1, 2017, for the crime of first degree murder (R.S. 14:30) where the offender was under the age of eighteen years at the time of the commission of the offense, the district attorney may file a notice of intent to seek a sentence of life imprisonment without possibility of parole within one hundred eighty days after the indictment. If the district attorney timely files the notice of intent, a hearing shall be conducted after conviction and prior to sentencing to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to the provisions of R.S. 15:574.4(E). If the district attorney fails to timely file the notice of intent, the sentence shall be imposed with parole eligibility and the offender shall be eligible for parole pursuant to the provisions of R.S. 15:574.4(E) without the need of a judicial determination pursuant to the provisions of this Article. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.

B. (1) If an offender was indicted prior to August 1, 2017, for the crime of first degree murder (R.S. 14:30) or second degree murder (R.S. **14:30.1**) where the offender was under the age of eighteen years at the time of the commission of the offense and a hearing was not held pursuant to this Article prior to August 1, 2017, to determine whether the offender's sentence should be imposed with or without parole eligibility, the district attorney may file a notice of intent to seek a sentence of life imprisonment without the possibility of parole within ninety days of August 1, 2017. If the district attorney timely files the notice of intent, a hearing shall be conducted to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to R.S. 15:574.4(G). If the

district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to R.S. 15:574.4(E) without the need of a judicial determination pursuant to the provisions of this Article. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.

(2) If an offender was indicted prior to August 1, 2017, for the crime of first degree murder (R.S. 14:30) or second degree murder (R.S. **14**:**30**.**1**) where the offender was under the age of eighteen years at the time of the commission of the offense and a hearing was held pursuant to this Article prior to August 1, 2017, the following shall apply:

(a) If the court determined at the hearing that was held prior to August 1, 2017, that the offender's sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to R.S. 15:574.4(G).

(b) If the court determined at the hearing that was held prior to August 1, 2017, that the offender's sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.

C. At the hearing, the prosecution and defense shall be allowed to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender, the offender's level of family support, social history, and such other factors as the court may deem relevant. The admissibility of expert witness testimony in these matters shall be governed by Chapter 7 of the Code of Evidence.

D. The sole purpose of the hearing is to determine whether the sentence shall be imposed with or without parole eligibility. The court shall state for the record the considerations taken into account and the factual basis for its determination. Sentences imposed without parole eligibility and determinations that an offender is not entitled to parole eligibility should normally be reserved for the worst offenders and the worst cases.

Credits

Added by Acts 2013, No. 239, § 2. Amended by Acts 2017, No. 277, § 2.

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in 2015, "Art. 878.1" was substituted for "§ 878.1" in the article heading.
Acts 2017, No. 277, § 2 rewrote the article heading, which had read "Sentencing hearing for juvenile offenders" and rewrote this article, which previously read:
"A. In any case where an offender is to be sentenced to life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. **14**:**30**.**1**) where the offender was under the age of eighteen years at the time of the commission of the offense, a hearing shall be conducted prior to sentencing to determine whether the sentence shall be imposed with or without parole eligibility pursuant to the provisions of R.S. 15:574.4(E).
"B. At the hearing, the prosecution and defense shall be allowed to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender, including but not limited to the facts and circumstances of the crime, the