

# APPENDIX

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The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2023-KH-01259

VS.

JOSHUA LUCKEY

IN RE: Joshua Luckey - Applicant Defendant; Applying for Reconsideration, Parish of Jefferson, 24th Judicial District Court Number(s) 13-751, Court of Appeal, Fifth Circuit, Number(s) 23-KH-314;

June 03, 2025

Application for reconsideration denied.

JDH

JLW

WJC

JBM

PDG

JMG

CRC

Supreme Court of Louisiana  
June 03, 2025

Katie Marganovic  
Chief Deputy Clerk of Court  
For the Court

**State v. Luckey**

Supreme Court of Louisiana. December 19, 2023 374 So.3d 975 (Mem) 2023-01259 (La. 12/19/23) (Approx. 1 page)

374 So.3d 975 (Mem)  
Supreme Court of Louisiana.

STATE of Louisiana

v.

**Joshua LUCKEY**

No. 2023-KH-01259  
December 19, 2023

Applying For Supervisory Writ, Parish of Jefferson, 24th Judicial District Court Number(s) 13-751, Court of Appeal, Fifth Circuit, Number(s) 23-KH-314.

**Opinion**

\*1 Writ application not considered. Not timely filed. See Louisiana Supreme Court Rule X, § 5(a).

**All Citations**

374 So.3d 975 (Mem), 2023-01259 (La. 12/19/23)

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Serial 1 A 70648

STATE OF LOUISIANA

NO. 23-KH-314

VERSUS

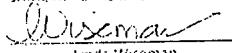
FIFTH CIRCUIT

JOSHUA LUCKEY

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL  
A TRUE COPY OF DOCUMENTS AS  
SAME APPEARS IN OUR RECORDS

  
Linda Wiseman  
First Deputy Clerk

July 24, 2023

Linda Wiseman  
First Deputy Clerk

\*\*CONFIDENTIAL\*\*  
LSA-RS 46:1844(W)  
ATTORNEYS OF RECORD  
ONLY

IN RE JOSHUA LUCKEY

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,  
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE RAYMOND S.  
STEIB, JR., DIVISION "A", NUMBER 13-751

Panel composed of Judges Stephen J. Windhorst,  
Cornelius E. Regan, Pro Tempore, and Jason Verdigets, Pro Tempore

#### WRIT DENIED

In his writ application, relator, Joshua Luckey, seeks review of the district court's denial of his application for post-conviction relief (APCR) raising a factual innocence claim pursuant to La. C.Cr.P. art. 926.2. For reasons that follow, we deny relator's writ application.

On November 14, 2014, a jury found defendant guilty of two counts of sexual battery of a child under the age of thirteen, in violation of La. R.S. 14:43.1.

On February 9, 2015, the district court sentenced relator to twenty-five years imprisonment on each count to run consecutively. On appeal, this Court affirmed relator's convictions and sentences, except to remand for the district court to correct the commitment to reflect that defendant's consecutive sentences must be served without benefit of parole, probation, or suspension of sentence. *See State v. Luckey*, 16-494 (La. App. 5 Cir. 2/8/17), 212 So.3d 1220. On October 27, 2017,

the Louisiana Supreme Court denied relator's writ applications. *See State v. Luckey*, 17-432 (La. 10/27/17), 228 So.3d 1225 and 17-617 (La. 10/27/17), 228 So.3d 1234.

In addition, on August 16, 2018, relator filed a prior APCR, which the district court denied on October 2, 2018. Relator filed a writ application with this Court seeking review of the district court's ruling. On February 12, 2019, this Court issued a ruling denying relator's writ application and provided extensive reasons as to why this Court found no error in the district court's ruling denying relator's prior APCR. *Luckey v. Warden Robert Tanner*, 18-KH-721 (La. App. 5 Cir. 2/12/19) (unpublished writ decision).

After reviewing relator's writ application, we find it is deficient because relator did not provide this Court with the following materials required by Uniform Rules – Courts of Appeal, Rule 4-5(C): 1) a copy of the district court's ruling; 2) a copy of the APCR filed with the district court; and 3) a copy of the notice of intent and return date required by Rules 4-2 and 4-3. Accordingly, we cannot fully consider relator's claims.

Furthermore, based on the arguments and limited materials provided with the instant writ application, we find on the showing made, that relator failed to comply with statutory requirements to submit a valid factual innocence claim. La. C.Cr.P. art. 926.2(B)(1) requires an applicant to "present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial." Relator's arguments do not point to any new, reliable evidence that was not known at or prior to trial. Finally, we observe that this Court addressed many of the issues raised in relator's current writ application in our prior rulings mentioned above. Therefore, these arguments are barred as repetitive and untimely.

Accordingly, relator's writ application is denied.

Gretna, Louisiana, this 24th day of July, 2023.

CER  
SJW  
JMV

SUSAN M. CHÉHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISON, JR.  
CORNELIUS E. REGAN, PRO TEM

JUDGES



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COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL  
CLERK OF COURT

**23-KH-314**

**E-NOTIFIED**

24th Judicial District Court (Clerk)  
Hon. Raymond S. Steib, Jr. (DISTRICT JUDGE)  
Thomas J. Butler (Respondent)

**MAILED**

Joshua Luckey #633134 (Relator)  
Allen Correctional Center  
3751 Lauderdale Woodyard Road  
Kinder, LA 70648

TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON  
STATE OF LOUISIANA

NO. 13-0751

SERVE DIVISION "A"

STATE OF LOUISIANA

VERSUS

JOSHUA LUCKEY

FILED: 2-7-23

Oliver J. Brown  
DEPUTY CLERKSUPERSEDING AND AMENDED ORDER<sup>1</sup>

This matter comes before the court on the petitioner/defendant's SECOND OR SUBSEQUENT APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED ON DECEMBER 28, 2022.

The petitioner/defendant was convicted after trial by jury of two counts of sexual battery of a child under the age of thirteen in violation of La. R.S. 14:43.1. The bill of information alleged that the crimes occurred from November 1, 2011 through February 3, 2013, when the two victims were, at the oldest, seven and four.

After conviction and sentencing, the petitioner appealed and the Fifth Circuit Court of Appeal affirmed his conviction and remanded for correction of the commitment order. *State v. Luckey*, 212 So.3d 494 (La.App. 5 Cir. 2/8/17), *writs denied*, 228 So.3d 1225 (La. 10/27/17). The petitioner then sought post-conviction relief (PCR) on numerous claims, all denied by this court on September 24, 2018. The Fifth Circuit upheld that denial on February 12, 2019. *Luckey v. Tanner*, 18-KH-721 (La.App. 5 Cir. 2/12/19). Federal habeas corpus relief has also been denied in a lengthy opinion. *Luckey v. Day*, 2022 WL 2712593 (E.D. La. 6/9/22), with the magistrate's recommendations formally adopted on July 12, 2022. *Luckey v. Day*, 2022 WL 2704546 (E.D. La. 7/12/22).

The petitioner now files another application for post-conviction relief, now contending that he is factually innocent of the crimes of sexual battery and raising claims that his constitutional right to confrontation was violated, that a report from a deputy was inaccurate, that there was no medical evidence, that due to a large number of complaints he should receive a new trial, that his trial attorney was constitutionally ineffective, and that testimony was inaccurate.

In support of this current PCR, the petitioner attaches five exhibits. Exhibit A contains a statement that the petitioner lived in Georgia in November 2011. Exhibit B contains a statement from the petitioner's father that the defendant lived in Georgia from January through November 2011. Exhibit C appears to be a St. Tammany Parish police report of sexual abuse of the same children from an earlier date with a different perpetrator. Exhibit D purports to be a letter to the defendant from the mother of the victims. Exhibit E contains the Supreme Court's opinion *In Re Panagoulopoulos* addressing disciplinary action against trial counsel.

The article on which the petitioner relies does not support relief. In pertinent part, the statute provides:

A. A petitioner who has been convicted of an offense may seek post conviction relief on the grounds that he is factually innocent of the offense for which he was convicted. A petitioner's first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction

<sup>1</sup> This order supersedes and replaces the order of January 11, 2023 in order to provide the current address for the petitioner and custodian.



relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict. This exception to Articles 930.4 and 930.8 shall apply only to the claim of factual innocence brought under this Article and shall not apply to any other claims raised by the petitioner. An application for post conviction relief filed pursuant to this Article by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after December 31, 2022, shall be subject to Articles 930.4 and 930.8.

B. (1)(a) To assert a claim of factual innocence under this Article, a petitioner shall present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial and that is either:

- (i) Scientific, forensic, physical, or nontestimonial documentary evidence.
- (ii) Testimonial evidence that is corroborated by evidence of the type described in Item (i) of this Subsubparagraph.

(b) To prove entitlement to relief under this Article, the petitioner shall present evidence that satisfies all of the criteria in Subsubparagraph (a) of this Subparagraph and that, when viewed in light of all of the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the state in any response that it files or at any evidentiary hearing, proves by clear and convincing evidence that, had the new evidence been presented at trial, no rational juror would have found the petitioner guilty beyond a reasonable doubt of either the offense of conviction or of any felony offense that was a responsive verdict to the offense of conviction at the time of the conviction.

La. C.Cr.P. art. 926.2, emphasis added.

The court notes at the outset that any claims relating to any matter but factual innocence are clearly out of time and also barred as successive and repetitive in this second PCR application. As such, longstanding and mandatory procedural rules bar consideration those issues in this proceeding. Pursuant to the mandatory post-conviction rules of La. C.Cr.P. art. 930.4, 930.2, and 930.8, these claims will be denied.

The Fifth Circuit, on appeal, has expressly rejected the petitioner's confrontation claim. *Luckey*, at 1230. Furthermore, this claim was raised and rejected in the petitioner's first PCR. Claims relating to the admission of the tape made at the Child Advocacy Center were rejected on appeal and in the earlier PCR.

Claims of ineffective assistance of trial and appellate counsel have already been rejected in the earlier PCR application. In addition, the Court of Appeal considered and rejected the claim that the children were not competent to testify. *Luckey* at 1232. Any claims related to the letter from the children's mother were known at trial and have been brought up and rejected previously. Any issues of omissions in the deputy's report were explored at trial and thus cannot form the basis for a claim in this second application for post-conviction relief.

The petitioner attaches a police report from St. Tammany showing an investigation of another man in early 2011 and ending with the case being closed due to inconsistent accounts regarding attempts at sexual activity. This report, learned at an unstated date (but it was included in petitioner's earlier PCR in 2018), does not contain exculpatory or relevant evidence in regard to the petitioner. Furthermore, there is no showing that the allegations would be admissible in court. This court also agrees with the federal habeas court that "The fact that E.D. made inconsistent statements of sexual abuse by her uncle and the St. Tammany Parish Sheriff's Office closed its investigation of J.J. does not establish Luckey's factual innocence." *Luckey v. Day*, 2022 WL 2712593 (E.D. La. 6/9/22).

The court also has reviewed the opinion of disciplinary proceedings against trial counsel, who failed to perfect an appeal in a timely manner. It is significant that the petitioner did receive appellate review, with the procedural history noted in the decision. *Luckey* at 1224.

The only new allegations made in this PCR application that even arguably could support a claim of factual innocence are the purported affidavits of Susan Whitehead and the petitioner's father to the effect that the petitioner lived in Georgia in 2011. The bill of information alleged, and the evidence proved, that the crimes occurred during a span of time from November 1, 2011 through February 3, 2013. The petitioner thus fails to meet his burden of establishing by clear and convincing evidence that if this new evidence had been admitted at trial, no rational juror could



have found him guilty beyond a reasonable doubt. The court finds that the petitioner fails to meet his burden under the factual innocence article.

In all aspects of post-conviction review, the burden of proof is on the petitioner to establish that he is entitled to relief. La. C.Cr.P. art. 930.2. The petitioner was convicted after a fair trial and is now serving legal sentences after careful review by this court and the court of appeal. Post-conviction relief is not warranted.

Accordingly,

**IT IS ORDERED BY THE COURT** that the application for post-conviction relief and all accompanying motions be and is hereby **DENIED**.

Gretna, Louisiana, this 7<sup>th</sup> day of February, 2023

  
JUDGE  
RAYMOND S. STEIN, JR.  
JUDGE

**PLEASE SERVE:**

DEFENDANT: Joshua Luckey, # 633164, Allen Correctional Center, 3751 Lauderdale Woodyard Center, Kinder, LA 70648

WARDEN: Allen Correctional Center, 3751 Lauderdale Woodyard Center, Kinder, LA 70648

DISTRICT ATTORNEY: Paul Connick, Thomas J. Butler, 200 Derbigny St., Gretna, LA 70053

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Deputy Sheriff, Allen Parish

