

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In Re MARK ANTHONY MORRIS - PETITIONER
ON PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

APPENDIX

RESPECTFULLY SUBMITTED,
Mark Morris
MARK ANTHONY MORRIS #287768
ELAYN HUNT CORRECTIONAL CENTER
6925 HIGHWAY 74
ST. GABRIEL, LA 70776

APPENDIX “2”

Appendix “2”

MARK MORRIS
DOC #287768

VS.

WARDEN
DAVID WADE CORRECTIONAL

* NUMBER: 05-98-0059 SEC: I

* 19TH JUDICIAL DISTRICT COURT

* PARISH OF EAST BATON ROUGE

* STATE OF LOUISIANA

COMMISSIONER'S RECOMMENDATION

The Petitioner, Mark Morris, was originally charged with four counts of armed robbery (Count #'s 1-4) and one count of felon in possession of a firearm (Count #5).¹ On April 30, 1999, the State amended the bill by charging Petitioner with: one count of felon in possession of a firearm (Count #1); four counts of armed robbery (Count #'s 2, 3, 4, & 5); and added one count of aggravated kidnapping (Count # 6); and one count of second-degree murder (Count #7).² On July 23, 1999, after trial by jury, Petitioner was found guilty as charged.³

On September 8, 1999, the Court sentenced Petitioner as follows: Count #1 (Possession of a Firearm by a Convicted Felon): 10 years at hard labor; Count #'s 2, 3, 4 & 5 (Armed Robbery): 75 years at hard labor on each count; Count #6 (Aggravated Kidnapping): life imprisonment without benefit; and Count #7 (Second-Degree Murder): life imprisonment without benefit.⁴ Count #'s 1, 2, 3, 4, & 5 were to run consecutive to Count #'s 6 & 7.⁵

On November 3, 2000, the First Circuit affirmed the convictions and sentences;⁶ the Louisiana Supreme Court denied writs on October 12, 2001.⁷ The United States Supreme Court denied certiorari on March 18, 2002.⁸

According to Petitioner, he previously filed an application for post-conviction relief alleging: *Brady* Violation; Ineffective Assistance of Counsel; and Prosecution's Knowing Use of False Evidence to Obtain a Conviction; these claims were denied by this Court on May 19, 2004.

Petitioner filed another application on January 19, 2011, claiming the PCR was based on newly discovered evidence, that his allegations require this Court to review

¹ See Bill of Information No. 5-89-59, R. p. 23.

² See Amended Bill of Information No. 5-98-59, R. p. 13; see also Minutes of Court dated 4/30/99, R. p. 6.

³ See Minutes of Court dated 7/23/99, R. p. 13.

⁴ See Minutes of Court dated 9/8/99, R. p. 16.

⁵ On September 13, 1999, the Court, in an effort to clarify the previously imposed sentence, resentenced the Petitioner to the same punishment imposed on September 8, 1999 (see mins.)

⁶ State v. Morris, 770 So.2d 908, 1999-3075 (La. App. 1 Cir., 2000).

⁷ See State v. Morris, 2000-K-3293 (La. 2001).

⁸ See Morris v. Louisiana, 122 S.Ct. 1311 (2002).

Appendix "2"

evidence submitted with his prior application which would prove his "Actual Innocence," and that he was entitled to production of additional documents/evidence. This PCR was also dismissed, and writs were denied 6/4/2012; see 2011 KH 2000.

On December 28, 2022, Petitioner filed another application alleging the same *Brady* claims and the same Ineffective of Counsel claims, and also, attaching an Affidavit of his "Actual Innocence" claim.

This Commissioner recommended dismissal and on December 5, 2023, the trial court agreed and dismissed the PCR as untimely. Petitioner did not seek writs.

On December 21, 2023, Petitioner filed a document entitled Motion to Amend and Supplement Application for Post-Convention Relief. On January 31, 2024, the State was ordered to respond. On February 5, 2024, the State filed its procedural objection and explained why Petitioner's Motion to Supplement is really a new PCR application and why it is time-barred.

For the following reasons, it is the recommendation of this Commissioner that the instant application for post-conviction relief should be dismissed without a hearing as the application is untimely on its face and does not qualify for any exception to the time limitation applicable to an application for post-conviction relief filed pursuant to La. C.Cr.P. art. 924, et seq.

Statement of Facts

The facts, as taken from the appellate decision, are as follows:

With the assistance of two accomplices, John Green and Jonathan Molden, defendant robbed the Winn Dixie supermarket manager and several customers of the store. Green waited in the parking lot with the getaway vehicle. Molden robbed customers and took money from a cash register at the front of the store as defendant entered the manager's office and forced the manager at gunpoint to open the safe. Police officers arrived while the robbery was in progress. Molden and Green fled in the getaway car and were captured several blocks away. Defendant kidnapped Jacqueline Purdue, a store employee. Purdue's body was found in St. Gabriel, Louisiana, approximately one hour later, and her abandoned car was recovered in Baton Rouge the next day. Defendant was arrested five and one-half hours after the robbery when he attempted to retrieve a second vehicle that had been left in the parking lot of a motel near the supermarket.⁹

After all three men had been arrested, defendant asked Molden and Green to sign an affidavit stating he was not with them when they committed the robbery. Green testified:

⁹ *State v. Morris*, 770 So.2d 908, 912-913 (La.App. 1 Cir.,2000).

He said it would be best for one or two of us to be on the street and while the other one locked (sic) up, the ones that's on the street could take care of business for the other one.

Molden initially refused to sign the affidavit, but he signed it after the attorney who presented it to him stated it was the only way "we" would be able to get out of the charge. Both Molden and Green specifically testified that the affidavit was not true.¹⁰

La. C.Cr.P. art. 926.2

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 must 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 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 petitioner.

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 evidence.
- (ii) Testimonial evidence that is corroborated by evidence by 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 the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the State in 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.

Timeliness Pursuant to La. C.Cr.P. art. 930.8

In prior applications, the Petitioner alleged he is actually innocent of the crimes he was convicted of committing which are the direct result of the prosecutorial misconduct and *Brady* violations, as well as ineffective assistance of counsel. I note that the claim of "actual innocence" is not a listed ground for post conviction relief, absent a claim based on DNA. Nevertheless, the three underlying claims are grounds for reversal if supported by sufficient proof of the facts offered in support.

However, to warrant any relief, the Petitioner must overcome the time bar in Art. 930.8, which states no application for post-conviction relief shall be considered "if it is filed more than two years after the judgment of conviction and sentence has become

¹⁰ *Id.* at 920.

final ...," absent certain enumerated exceptions. La. C.Cr.P. art. 930.8(A)(1) provides an exception when the facts upon which a claim is predicated were not known to the petitioner or his attorney.

The Petitioner filed the previous application on or about December 28, 2022, alleging Actual Innocence, after the Supreme Court denied certiorari and more than twenty years after the denial of his previous application for post-conviction relief.

This Commissioner recommended dismissal as the application was untimely, on its face, and the trial court agreed.

Here, rather than taking a writ to the First Circuit, Petitioner has filed another document entitled Motion to Amend and Supplement. However, there is nothing to amend or supplement because the earlier PCR has been dismissed. Thus, this Court must view the instant document as new PCR application.

Factual Innocence

As to his claim of factual innocence, I again reiterate that it is not listed as a ground for relief under Art. 930.3, but even if it could be considered under due process considerations, the alleged recently discovered facts do not meet the threshold showing required for a hearing and/or reversal. Since the evidence asserted to exist must be "material, noncumulative and conclusive evidence, which incets an extraordinarily high standard, and which *undermines the prosecutions' entire case*." The evidence relied upon and asserted by the Petitioner in this application certainly does not meet this threshold standard, even if timely presented.

It should also be noted that Commissioner Morgan rejected his claim of Actual Innocence in 2004.

As I pointed out in my earlier Recommendation, Article 926.2 is very specific in that in order to assert a claim of factual innocence pursuant this article the 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. This is certainly not the case at hand.

As stated above, and as explained by the State in its procedural objection, this document fails to state a claim for which relief might be granted based on facts not known to the Petitioner or his attorney. Contrary to Petitioner's allegations otherwise, Petitioner fails to show that his allegations require a "cumulative review" of the evidence

submitted herein, together with additional evidence now sought and any evidence raised in his first application for post-conviction relief.

Art. 926 C.Cr.P. requires Petitioner to allege any and all facts, with reasonable particularity, and any and all errors reasonably discoverable through due diligence. This is Petitioner's fourth attempt to seek review and there is no basis for "tacking" on new claims with facts or evidence submitted in older applications.

For the reasons stated, it is the recommendation of this Commissioner that the instant document entitled Motion to Amend and Supplement should be dismissed as untimely and successive without requiring a hearing.

COMMISSIONER'S RECOMMENDATION

Considering the Petitioner's document entitled Motion to Amend and Supplement, the State's response and the record and the applicable law, it is the recommendation of this Commissioner that the instant application should be dismissed as untimely without a hearing, pursuant to Art. 930.8(A) C.Cr.P. and Art. 926 and 928-9, because the application is untimely on its face, and the Petitioner offers no valid exception to the time limitation, and because he fails to assert facts that, if proven, would undermine confidence in the verdict herein.

Respectfully recommended, this 22nd day of MARCH, 2024, in Baton Rouge, Louisiana.


NICOLE L. ROBINSON
COMMISSIONER, SECTION A
NINETEENTH JUDICIAL DISTRICT COURT

PETITIONER MARK MORRIS #287768
ELAYN HUNT CORRECTIONAL
P.O. BOX 174
ST. GABRIEL, LA. 70776

ADA DYLAN ALGE

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

DONE AND MAILED ON March 25, 2024


DEBRA L. LEACH
DEPUTY CLERK OF COURT

APPENDIX “3”

Appendix “3”

MARK MORRIS
DOC #287768

VS.

WARDEN
DAVID WADE CORRECTIONAL

NO.: 05-98-0059 SECTION: I

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ORDER

Considering Petitioner's application for post-conviction relief, the Commissioner's Recommendation, the record and current law applicable, and for the reasons set forth in the Commissioner's Recommendation, which is adopted hereby;

IT IS ORDERED that the defendant's application for post-conviction relief is dismissed pursuant to La. C.Cr.P. art. 930.8 without the necessity of a hearing as it is untimely.

THUS ORDERED, in Baton Rouge, Louisiana this 4th day of December, 2023.


HONORABLE FRED T. CRIFASI
JUDGE, 19TH JUDICIAL DISTRICT COURT

Original: File

Copy: Petitioner,
Mark Morris #287768,
David Wade Correctional
670 Bell Hill Road
Homer, LA. 71040

EBRDA-Appellate
222 St. Louis Street
Baton Rouge, Louisiana 70802

Appendix "3"

APPENDIX “5”

Appendix “5”

State v. Morris

Court of Appeal of Louisiana, First Circuit. September 9, 2024 Not Reported in So. Rptr. 2024 WL 4117127 2024-0589 (La. App. 1 Cir. 9/9/24) (Approx. 1 page)

2024 WL 4117127

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeal of Louisiana, First Circuit.

STATE of Louisiana

v.

Mark Anthony MORRIS

NO. 2024 KW 0589

September 9, 2024

In Re: **Mark Anthony Morris**, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 05-98-0059.

BEFORE: McCLENDON, WELCH, AND LANIER, JJ.

Opinion***1 WRIT DENIED.****All Citations**

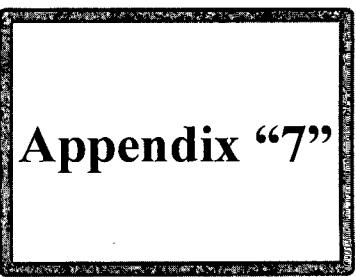
Not Reported in So. Rptr., 2024 WL 4117127, 2024-0589 (La. App. 1 Cir. 9/9/24)

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APPENDIX “7”



State v. Morris

Court of Appeal of Louisiana, First Circuit. September 9, 2024 Not Reported in So. Rptr. 2024 WL 4117127 2024-0589 (La. App. 1 Cir. 9/9/24) (App.

2024 WL 4117127

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeal of Louisiana, First Circuit.

STATE of Louisiana

v.

Mark Anthony MORRIS

NO. 2024 KW 0589

September 9, 2024

In Re: **Mark Anthony Morris**, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 05-98-0059.

BEFORE: McCLENDON, WELCH, AND LANIER, JJ.

Opinion

***1 WRIT DENIED.**

All Citations

Not Reported in So. Rptr., 2024 WL 4117127, 2024-0589 (La. App. 1 Cir. 9/9/24)

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State v. Morris

Supreme Court of Louisiana.January 14, 2025398 So.3d 641 (Mem)2024-01268 (La. 1/14/25) (Approx. 2 pages)

398 So.3d 641 (Mem)
Supreme Court of Louisiana.

STATE of Louisiana

v.

Mark Anthony MORRIS

No. 2024-KH-01268
January 14, 2025

Applying For Supervisory Writ, Parish of East Baton Rouge, 19th Judicial District Court
Number(s) 05-98-0059, Court of Appeal, First Circuit, Number(s) 2024 KW 0589.

Opinion

PER CURIAM:

****1** Writ application denied. See per curiam.

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

Denied. The application was not timely filed in the district court, and applicant ***642** fails to carry his burden to show that an exception applies. La.C.Cr.P. art. 930.8; *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So.2d 1189.

Applicant has now fully litigated several applications for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Applicant's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, applicant has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

All Citations

398 So.3d 641 (Mem), 2024-01268 (La. 1/14/25)

End of
Document

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APPENDIX “8”

Appendix “8”

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 10, 2025

Lyle W. Cayce
Clerk

IN RE MARK MORRIS,

No. 25-30143

Movant.

Motion for an Order Authorizing
the United States District Court
for the Middle District of Louisiana
to Consider a Successive 28 U.S.C. § 2254 Application

UNPUBLISHED ORDER

Before SMITH, GRAVES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

Mark Morris, Louisiana prisoner # 287768, seeks authorization to file a second or successive 28 U.S.C. § 2254 application challenging his convictions for possession of a firearm after a felony conviction, aggravated kidnapping, second-degree murder, and four counts of armed robbery. He intends to argue that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), the State used false evidence to obtain his convictions, and he received ineffective assistance from his trial counsel. Insofar as Morris seeks to argue that the State failed to disclose that his coconspirators were offered the possibility of leniency in exchange for their testimony against Morris, such a claim may not be raised in a successive § 2254 application because it was

raised in Morris's initial § 2254 application. *See* 28 U.S.C. § 2244(b)(1); *In re Flowers*, 595 F.3d 204, 205 (5th Cir. 2009).

To obtain authorization to file a successive § 2254 application, Morris must make a *prima facie* showing that (1) his claim relies on a new, previously unavailable rule of constitutional law that was made retroactive to cases on collateral review by the Supreme Court; or (2) the factual predicate for the claim could not have been discovered previously through due diligence, and the underlying facts, if proven, would be sufficient to demonstrate by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found him guilty of the underlying offense. *See* 28 U.S.C. § 2244(b)(2), (b)(3)(C). Morris has failed to make this *prima facie* showing with respect to his proposed claims. *See* 28 U.S.C. § 2244(b)(2), (b)(3)(C).

Insofar as Morris seeks to bring a claim of actual innocence, this court “does not recognize freestanding claims of actual innocence on federal habeas review.” *In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009). Moreover, Morris may not rely on an assertion of actual innocence as a gateway to filing apart from satisfying the statutory successive authorization requirements. *See In re Palacios*, 58 F.4th 189, 190 (5th Cir. 2023).

IT IS ORDERED that Morris's motion for authorization to file a successive § 2254 application is DENIED. His related motion requesting the issuance of a subpoena is likewise DENIED. Because he has made multiple unsuccessful attempts to file a successive § 2254 application that raises some of these same claims, Morris is WARNED that future frivolous, repetitive, or abusive filings will result in the imposition of sanctions, which may include dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and in any court subject to this court's jurisdiction. *See Cogħlan v. Starkey*, 852 F.2d 806, 817 n.21 (5th Cir. 1988).

APPENDIX “9”

Appendix “9”

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MARK ANTHONY MORRIS (#287768)

CIVIL ACTION

VERSUS

NO. 25-127-SDD-RLB

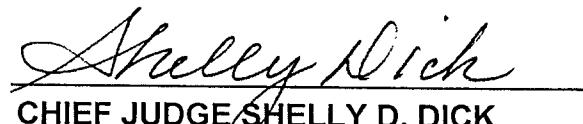
TIM HOOPER, ET AL.

JUDGMENT

For the written reasons assigned,

IT IS ORDERED that this matter is DISMISSED for lack of jurisdiction.

Signed in Baton Rouge, Louisiana, on March 11, 2025.



CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

EXHIBIT “15”

Exhibit “15”

STATE OF LOUISIANA

NUMBER 05-98-59 SECTION 1

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

MARK MORRIS

STATE OF LOUISIANA

ORDER

IT IS HEREBY ORDERED that the defendant or his representative shall tender to the District Attorney's Office a money order in the amount of \$97.75 as copy cost for his entire District Attorney's file. This money shall be tendered within 15 days of May 1, 2002 which is the date that certified notice of the copy cost was received by the defendant or his agent.

IT IS FURTHER ORDERED that upon receipt of the copy cost the District Attorney's Office shall immediately forward the documents to the defendant at Louisiana State Prison.

IT IS FURTHER ORDERED that the East Baton Rouge Parish Sheriff's office, upon notification from this Court of the name, address, date of birth and social security number of the defendant's representative, shall turn over to the defendant's representative the following items that were seized as evidence as a result of the above referenced case:

- a. one tan pair of blue dickey pants;
- b. one tan and blue striped shirt;
- c. one belt;
- d. one pair of white, blue and black reebok tennis shoes;
- e. one translucent purple pager;
- f. one set of keys on an I Love You Key Ring and Pendant (car keys, safe key, house key)
- g. one black leather wallet containing a drivers license, credit card, Exxon gas card, birth card, social security card, library card, and miscellaneous papers.

IT IS FURTHER ORDERED that the defendant shall notify this Court in writing, within 15 days of this order, of the name, address, date of birth and social security number of the representative that will receive the defendant's seized property.

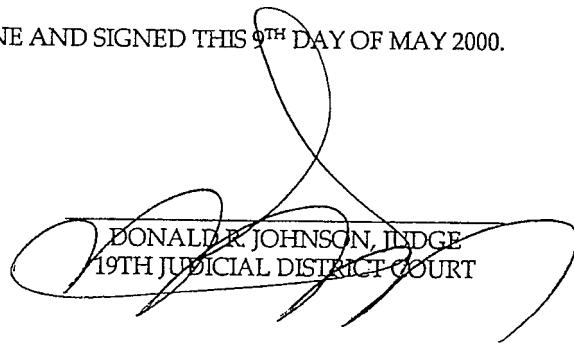
IT IS FURTHER ORDERED that the defendant's writ of mandamus directing the Clerk of Court for the 19th Judicial District Court to provide the defendant with a copy of the pre-sentence investigative reports of Johnathan Molden and John Green and a transcript of the grand jury proceedings and the request for evidence produced in case #5-98-59 is hereby denied. The defendant is not entitled to these documents under the public records law.

IT IS ALSO ORDERED that upon payment of the necessary copy cost by the defendant, the Clerk of Court for the 19th Judicial District Court shall provide the defendant with the following documents:

- a. List of grand jury forepersons from (1978 - 1998) to include the month, year, race and sex;
- b. List of register voter population from (1978 - 1998);
- c. A copy of all documents that are contained within the public record of case #5-98-59; #7-93-1250; and #5-98-596;
- d. Minute entry for June 1, 1994 for case number 7-93-1250;

e. Copies all documents contained within the public record of any cases involving Darryl Morris, DOB 11/1175; Yolandra Bell, 5958 Cadillac Street, Apt. 11074, Baton Rouge, 70811; Carl Jackson; Quadusha Woodard, 5087 Baker Blvd. Apt D Baker, La. 70714.

THUS DONE AND SIGNED THIS 9TH DAY OF MAY 2000.



DONALD R. JOHNSON, JUDGE
19TH JUDICIAL DISTRICT COURT

Please Serve:

Mark Morris
 Kurt Wall, Assistant District Attorney
East Baton Rouge Parish Sheriff's Office
Clerk of Court, 19th Judicial District Court

**Additional material
from this filing is
available in the
Clerk's Office.**