Nº. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ERNEST MILLS, JR.

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE LOUISIANA SUPREME COURT

PETITIONER'S APPENDIX

ERNEST MILLS, #551356
ALLEN CORRECTIONAL CENTER
3751 LAUDERDALE WOODYARD RD.
KINDER, LA 70648
PRO-SE

ORIGINAL

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CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA CASE NUMBER: 472-876
VERSUS SECTION 'J'
ERNEST MILLS

Transcript of the Ruling in the above-entitled Matter, as heard before the Honorable Darryl Derbigny, Judge presiding under the date of January 15, 2025.

APPEARANCES:

FOR THE STATE:
Danny Tran, Esq., ADA
Stephanie Bruno, AAG
Irena Zajickova, AAG

FOR THE DEFENSE:
Jennifer Cameron, Esq.

REPORTED BY:
Linda B. Legaux,
Certified Court Reporter

I N D E X

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P R O C E E D I N G S

MR. TRAN:

Ernest Mills on page 15, set for a Ruling.

MS. BRUNO:

Irena Zajickova and Stephanie Bruno for the State.

MS. CAMERON:

Jennifer Cameron on behalf of Ernest Mills, Your Honor.

THE COURT:

Is Mr. Mills with us? Is he here?

MS. CAMERON:

He is not, Your Honor. We'll will waive his presence.

THE COURT:

Mr. Mills is scheduled for - you're waiving his appearance for purposes of this Ruling?

MS. CAMERON:

Yes, sir.

MS. ZAJICKOVA:

Your Honor, this is a case that is in -

MS. CAMERON:

Post-conviction. This Case is in Post-Conviction Relief posture.

THE COURT:

Yes, ma'am, I understand that.

MS. ZAJICKOVA:

The State has filed procedural objections, which is what is set for

Ruling today. We filed procedural objections. Mr. Mills' counsel has filed a response to our Procedural Objection.

If Your Honor is prepared to move forward, we can make argument, or if you want to hear argument, we can make argument.

THE COURT:

I don't think it will be necessary. I am in receipt of the pleadings from either side, and I have reviewed those with the staff. Based thereupon, the Court is going to deny the State's Procedural Objections and order the Matter be set for an Evidentiary Hearing. Note your objection.

MS. ZAJICKOVA:

Please note the State's objection. We would notice our intent to seek a Writ.

THE COURT:

Pick a date for that. Very well.

MS. ZAJICKOVA:

We would ask for a Writ Return date and we would ask for a Stay of the proceedings pending the Writ.

THE COURT:

I will Grant the Stay.

MS. CAMERON:

Yes, Your Honor.

THE COURT:

Can we do this in a week? Two?

MS. ZAJICKOVA:

Two weeks?

THE COURT:

Two weeks. Okay. 2-20 for a Writ status.

OFF THE RECORD DISCUSSION

THE COURT:

2-20.

MS. ZAJICKOVA:

Is the Return date for the Writ 2-20, or -

THE COURT:

2-20 On the Return Writ Application.

MS. ZAJICKOVA:

Okay. I will appear and advise if it's filed or if we need more time, which I don't think we will.

THE COURT:

You can make application to request such if you need it.

MS. ZAJICKOVA:

Actually, I think it has to be a 30-day return date, so -

THE COURT:

That's what I thought. That's why I asked of you could abbreviate it, then with your permission.

MS. ZAJICKOVA:

What if we did 2-13 for the Return date and then 2-20 for status to see if it's been acted upon?

THE COURT:

I can do that. So 2-13 will be the new -

MS. ZAJICKOVA:

And that's not a court date. That's just a -

THE COURT:

An internal.

MS. ZAJICKOVA:

Due date for the application, yes --

THE COURT:

Yes.

MS. ZAJICKOVA:

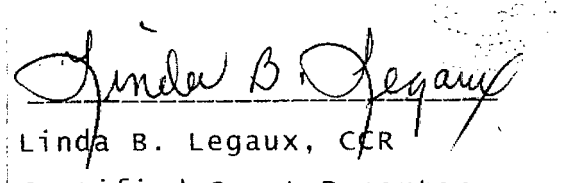
- for us to file with the Fourth Circuit. Thank you, Judge.

REPORTER'S PAGE

I, Linda B. Legaux, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434 (b) of the Louisiana Code of Civil Procedure, before whom these proceedings were held, do hereby state for the Record:

That due to the interaction in the spontaneous discourse of the proceedings, dashes (--) have been used to indicate pauses, changes in thought, and/or talk-overs; that same is the proper method of a court reporter's transcription of proceedings, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with the phrase "(phonetic)."



Linda B. Legaux, CCR
Certified Court Reporter

CERTIFICATE

This certificate is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, Linda B. Legaux, Official Court Reporter in and for the State of Louisiana, employed as an Official Court Reporter by the Orleans Parish Criminal District Court, for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the steno mask reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding, that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board or by the Supreme Court of Louisiana, and that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this Matter.

Linda B. Legaux

Linda B. Legaux (91214)
Certified Court Reporter
Criminal District Court
Parish of Orleans
State of Louisiana

NO. 2025-K-0106

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

ERNEST MILLS

IN RE: STATE OF LOUISIANA

APPLYING FOR: SUPERVISORY WRIT

DIRECTED TO: HONORABLE DARRYL A. DERBIGNY
CRIMINAL DISTRICT COURT ORLEANS PARISH
SECTION "J", 472-876

WRIT DENIED

The Relator, the State of Louisiana, seeks review of the January 15, 2025 district court ruling that determined the Respondent, defendant Ernest Mills', second application for post-conviction relief was timely pursuant to La. Code Crim. Proc. art. 930.8. The district court also rejected the Relator's procedural objections to the Respondent, defendant Ernest Mills', application for post-conviction relief. The Relator's writ application is denied.

New Orleans, Louisiana this 25th day of March, 2025.

RDJ

JUDGE RACHAEL D. JOHNSON

LOBRANO, J., DISSENTS AND ASSIGN REASONS

JUDGE JOY COSSICH LOBRANO

TGC

JUDGE TIFFANY GAUTIER CHASE

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STATE OF LOUISIANA	*	**NO. 2025-K-0106**
VERSUS	*	**COURT OF APPEAL**
ERNEST MILLS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

* * * * * * *

JCL **LOBRANO, J., DISSENTS AND ASSIGNS REASONS**

I respectfully dissent from the majority's denial of the State's writ, which seeks supervisory review of the district court's erroneous ruling denying the State's procedural objections to the successive application for post-conviction relief filed by Ernest Mills ("Defendant"). The State correctly asserts that Defendant's application is untimely, repetitive, and procedurally barred under La. C.Cr.P. arts. 930.8 and 930.4.

Moreover, I agree with the State's argument that Defendant's claim fails as a matter of law because it does not state a valid ground for relief.[1] I find that Defendant's claim is legally meritless, as his application does not allege a claim which, if established, would entitle him to relief. It is this fundamental error that I address in my dissent.

Once an evidentiary hearing is ordered for his post-conviction application, the defendant is afforded the opportunity to present evidence and subpoena witnesses, including the now-adult victim, to testify about her past fears and

[1] *See* La. C.Cr.P. art. 927 ("If an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, through the district attorney in the parish in which the defendant was convicted, to file any procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days. . . . In any order of the court requiring a response by the district attorney pursuant to this Article, the court shall render specific rulings dismissing any claim which, if established as alleged, would not entitle the petitioner to relief, and shall order a response only as to such claim or claims which, if established as alleged, would entitle the petitioner to relief."); La. C.Cr.P. art. 928 ("The application may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief.").

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uncertainties about testifying. Such a hearing not only undermines the finality of convictions but also makes the post-conviction process a tool for abuse, subjecting the survivor to unnecessary retraumatization.

Louisiana law strongly protects victims of sexual abuse, especially children, from repeated litigation that would retraumatize them and undermine the finality of their cases. Courts recognize that subjecting victims to unnecessary and prolonged court proceedings perpetuates psychological harm and contravenes the legislative intent behind laws designed to safeguard their well-being. *See Folse v. Folse*, 98-1976, pp. 16-17 (La. 6/29/99), 738 So.2d 1040, 1049 (noting that "[c]hildren . . . are more likely to be traumatized by the courtroom experience"). To allow post-conviction challenges to proceed based solely on allegations that a child victim hesitated or was reluctant to testify would create an untenable precedent, incentivizing endless collateral attacks on final convictions and discouraging victims from coming forward at all.

Defendant argues that his guilty plea should be revisited based on the alleged nondisclosure of two letters indicating that the child victim was reluctant to testify. This argument is legally flawed. The United States Supreme Court has held that the Constitution does not require disclosure of impeachment evidence prior to a guilty plea. *See United States v. Ruiz*, 536 U.S. 622, 633, 122 S.Ct. 2450, 2457, 153 L.Ed.2d 586 (2002); *see also Alvarez v. City of Brownsville*, 904 F.3d 382, 392 (5th Cir. 2018) (noting Supreme Court's holding in *Ruiz* that "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant"); *Mansfield v. Williamson Cnty.*, 30 F.4th 276, 280 (5th Cir. 2022) (noting that "*Brady* focuses on the integrity of trials and does not reach pre-trial guilty pleas"); *United States v. Conroy*, 567 F.3d 174, 179 (5th Cir. 2009) (per curiam) (rejecting argument that exculpatory evidence must be turned over before entry of a plea); *Orman v. Caine*,

228 F.3d 616, 617 (5th Cir. 2000) (stating that "*Brady* requires disclosure only to ensure a fair trial, which is not implicated when a defendant waives trial and pleads guilty"); *Matthew v. Johnson*, 201 F.3d 353, 361-62 (5th Cir. 2000) (holding that failure to disclose exculpatory evidence does not violate the Constitution when the defendant waives trial).

Thus, under well-settled precedent, Defendant's *Brady* claim fails because he pleaded guilty. A guilty plea constitutes a waiver of all non-jurisdictional defects, including the right to contest pretrial discovery violations. *See, e.g.*, *Conroy*, 567 F.3d at 178 ("[A] guilty plea precludes the defendant from asserting a *Brady* violation."); *United States v. Meza*, 843 F. App'x 592, 599 n. 3 (5th Cir. 2021) ("It is well-settled that a defendant's guilty plea waives his pre-plea rights to *Brady* material.").

Even assuming, arguendo, that Defendant's claim were not procedurally barred by his guilty plea, his argument still fails under the required elements of a *Brady* violation. To make out a successful *Brady* claim, a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material. *Strickler v. Greene*, 527 U.S. 263, 281, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999).

In the case *sub judice*, Defendant does not explicitly state whether the alleged letters are exculpatory or merely impeachment evidence. However, his argument that knowledge of the victim's reluctance "would have influenced his decision to go to trial" suggests that the letters are, at most, impeachment evidence rather than direct exculpation. *Ruiz* makes clear that the prosecution's duty to disclose impeachment evidence does not extend to the plea-bargaining stage. *Ruiz*, 536 U.S. at 633, 122 S.Ct. at 2457.

The prosecution is not required to disclose every fluctuation in a victim's willingness to testify, particularly when a defendant has already made the strategic choice to plead guilty rather than risk a life sentence. The issue is not whether the victim expressed fear or uncertainty about testifying, but whether Defendant's guilty plea was lawfully entered in accordance with constitutional and legal standards. Defendant has failed to demonstrate how this evidence would have rendered his plea involuntary, unreliable, or otherwise invalid.

The district court erred in allowing this successive post-conviction application to proceed. Defendant's claim is procedurally barred under La. C.Cr.P. arts. 930.8 (untimely) and 930.4 (repetitive and successive claims); precluded by his guilty plea, which waived any *Brady* claim; and substantively meritless, as *Brady* does not apply to impeachment evidence in the plea-bargaining context. For these reasons, I would grant the State's writ, reverse the district court's ruling, and dismiss Defendant's post-conviction application.

09/16/2025 "See News Release 041 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2025-KP-00512

VS.

ERNEST MILLS

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Supervisory Writ, Parish of Orleans Criminal, Criminal District Court Number(s) 472-876, Court of Appeal, Fourth Circuit, Number(s) 2025-K-0106;

September 16, 2025

Writ application granted. See per curiam.

JDH
JLW
WJC
JBM
PDG
JMG
CRC

Supreme Court of Louisiana
September 16, 2025

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

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SUPREME COURT OF LOUISIANA

No. 25-KP-00512

STATE OF LOUISIANA

v.

ERNEST MILLS

ON SUPERVISORY WRIT TO THE CRIMINAL DISTRICT COURT,
PARISH OF ORLEANS

PER CURIAM:

Writ granted. The district court's ruling granting an evidentiary hearing is reversed, and the defendant's application for post-conviction relief is dismissed for the reasons assigned by Judge Lobrano, dissenting in the court below. *State v. Mills*, 2025-K-0106 (La. App. 4 Cir. 3/25/25) (unpub'd) (Lobrano, J., dissenting with reasons).

Supreme Court
STATE OF LOUISIANA
New Orleans

VERONICA O. KOCLANES
CLERK OF COURT

400 Royal St., Suite 4200
NEW ORLEANS, LA 70130-8102

TELEPHONE (504) 310-2300
HOME PAGE http://www.lasc.org

November 25, 2025

Re: STATE OF LOUISIANA VS. ERNEST MILLS
2025-KP-00512

Dear Counsel:

Action in the referenced case is linked to writ news release number 52 issued by this Court. Please go to https://www.lasc.org/CourtActions/2025 to view the Court's ruling.

Regards,

Veronica O. Koclanes
Clerk of Court

VOK: KM
ccs: All Counsel
Hon. Darryl Derbigny
Hon. Darren Lombard
Hon. Justin I. Woods, Clerk
Criminal District Court: 472-876 - Div:J
Court of Appeal, Fourth Circuit: 2025-K-0106

11/25/2025 "See News Release 052 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2025-KP-00512

VS.

ERNEST MILLS

IN RE: Ernest Mills- Applicant Defendant; Applying for Rehearing, Parish of Orleans Criminal, Criminal District Court Number(s) 472-876, Court of Appeal, Fourth Circuit, Number(s) 2025-K-0106;

November 25, 2025

Application for rehearing denied.

CRC

JLW

JDH

WJC

JBM

PDG

JMG

Supreme Court of Louisiana
November 25, 2025

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

IN THE

FOURTH CIRCUIT COURT OF APPEAL

STATE OF LOUISIANA

NO.

STATE OF LOUISIANA

VERSUS

ERNEST MILLS

APPLICATION FOR WRIT OF SUPERVISORY REVIEW
FROM A RULING BY THE ORLEANS CRIMINAL DISTRICT COURT
CASE NO. 472-876, SECTION "J"
THE HONORABLE DARRYL DERBIGNY, JUDGE PRESIDING

ORIGINAL WRIT APPLICATION OF
THE LOUISIANA ATTORNEY GENERAL, APPLICANT

LIZ MURRILL
Louisiana Attorney General

Irena Zajickova, #35394
Stephanie May Bruno, #
J. Taylor Gray, #33562
Louisiana Department of Justice
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GrayJ@ag.louisiana.gov

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EXHIBITS

Exhibit 1: Indictment

Exhibit 2: First Application for Post-Conviction Relief

Exhibit 3: State's Procedural Objections to Defendant's First PCR Application

Exhibit 4: Minute Entry, July 1, 2014

Exhibit 5: Second Application for Post-Conviction Relief (with attached exhibits A-N)

Exhibit 6: State's Procedural Objections to Defendant's Second PCR Application (with attached exhibits 1 and 2)

Exhibit 7: Defendant's Response to State's Procedural Objections[1]

Exhibit 8: Minute Entry, January 15, 2025

Exhibit 9: State's Notice of Intent to File Writ and Motion for Stay of Proceedings

Exhibit 9.1: Signed Copy of Notice of Intent and Motion for Stay[2]

Exhibit 10: Docket Master, 472-876 "J"

Exhibit 11: Transcript, January 15, 2025[3]

[1] This exhibit is not certified, because the Attorney General was unable to locate it within the court record.
[2] The Attorney General was unable to locate the copy of the Notice of Intent and Motion for Stay that was signed by the District Judge in the court record. The Attorney General has therefore attached an unsigned, certified copy of the documents as Exhibit 9, and a signed, but uncertified, copy of the document as Exhibit 9.1.
[3] The Attorney General has requested the transcript of the trial court's ruling but has not received it yet. The Attorney General will supplement its writ application with the transcript upon receipt.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Article 5, Section 10(a) of the Louisiana Constitution, which provides that a court of appeal "has supervisory jurisdiction over cases which arise within its circuit." La. Const. art. V. § 10(a).

STATEMENT OF FACTS

Because the defendant pled guilty and did not proceed to trial, the facts of the case are not set forth in the record.

STATEMENT OF THE CASE

I. Trial Court Proceedings and Guilty Plea

On September 13, 2007, an Orleans Parish grand jury returned an indictment charging the Defendant with two counts of Aggravated Rape and one count of Sexual Battery, violations of La. R.S. 14:42 and La. R.S. 14:43.1, respectively.[4] On April 8, 2009, the State, through the Orleans District Attorney's Office, announced that it was ready for trial, and jury selection began. Before a jury was sworn in, the Defendant reached a plea agreement with the State.[5] At that time, the State amended the bill of indictment to one count of Forcible Rape, a violation of La. R.S. 14:42.1, to which the Defendant pled guilty.[6] The State dismissed the other charges, and the Defendant was sentenced to serve 30 years at hard labor pursuant to the plea agreement.[7]

II. Defendant's First Application for Post-Conviction Relief

On April 6, 2011, the Defendant filed his first counseled application for post-conviction relief ("First PCR Application"), along with a motion to withdraw his guilty plea.[8] In the First PCR Application, he claimed: (1) his plea was not knowing, voluntarily, and intelligent; (2) a *Brady* violation; and (3) Ineffective Assistance of

[4] Ex. 1, Indictment.
[5] Ex. 10, Docket Master, p. 3 (04/08/2009 Minute Entry).
[6] *Id.*
[7] *Id.*
[8] Ex. 2, First PCR Application.

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Counsel.[9] As part of the ineffective assistance claim, he asserted that his attorney failed to verify the availability of the State's key witness (the rape Victim) at trial.[10] The State filed procedural objections on May 2, 2014.[11] On July 1, 2014, the District Court denied this PCR application.[12] This Honorable Court denied writs, 2014-K-0937 (10/23/14), and the Louisiana Supreme Court declined to consider the Defendant's writ application as untimely, 2014-KH-0423 (12/7/15).

III. Second Application for Post-Conviction Relief

On November 10, 2021, Orleans Parish District Attorney Jason Williams recused himself because he represented the Defendant in the case prior to taking office, and the Attorney General took over the matter on behalf of the State.[13]

On February 15, 2023, the Defendant filed a *Second or Subsequent Uniform Application for Post-Conviction Relief* ("Second PCR Application"), claiming that the State withheld evidence that the Victim was uncooperative at the time of trial, a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).[14] Thereafter, the District Court set a deadline of July 25, 2023 for the Attorney General to file an answer or procedural objections to the application.

The Attorney General filed procedural objections to the Defendant's Second PCR Application on July 25, 2024, arguing that it was untimely and repetitive in violation of La. C.Cr.P. arts. 930.8 and 930.4, and that it failed to state a claim upon which relief could be granted.[15] The Defendant filed a response to the Attorney General's procedural objections on November 2, 2023.[16]

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[9] *Id.* at 3–11.
[10] *Id.* at 7.
[11] Ex. 3, State's Procedural Objections to First PCR Application.
[12] Ex. 4, Minute Entry from July 1, 2014.
[13] Ex. 10, p. 4 (11/10/2021 Minute Entry).
[14] Ex. 5, Defendant's Second Application for Post-Conviction Relief, pp. 7-9 of attached Memorandum of Support for Application for Post-Conviction Relief.
[15] Ex. 6, State's Procedural Objections to Defendant's Second PCR Application.
[16] Ex. 7, Defense Response to State's Procedural Objections.

On January 15, 2025, the District Court overruled the Attorney General's Procedural Objections and ordered that the matter be set for a hearing.[17] The Attorney General orally noticed intent to seek supervisory writs and moved for a stay of the proceedings, which was granted.[18] The District Court set a return date of February 13, 2025 for the filing of the State's writ application.[19] The Attorney General's writ application timely follows.

ISSUE PRESENTED

Whether the District Court erred in overruling the Attorney General's procedural objections to the Defendant's Second PCR Application.

ASSIGNMENT OF ERROR

The District Court erred in overruling the Attorney's General's procedural objections to the Defendant's Second PCR Application.

SUMMARY OF THE ARGUMENT

The District Court erred in overruling the Attorney's General's procedural objections to the Defendant's Second PCR Application because it is both untimely and repetitive, in violation of Articles 930.8 and 930.4 of the Louisiana Code of Criminal Procedure. It also fails to state a claim upon which relief can be granted, and the District Court erred in ordering a hearing on the merits of the Defendant's claim.

LAW AND ARGUMENT

I. The Second PCR Application is Untimely by More Than Ten Years and it is Repetitive Because It Raises the Same Claim as the Prior Application.

A. The Second PCR Application is Untimely by More Than A Decade.

The District Court erred in overruling the Attorney General's procedural objection related to untimeliness. The Defendant's Second PCR Application is

[17] Ex. 8, Minute Entry from January 15, 2025.
[18] Ex. 9.1, State's Notice of Intent to File Writ Application and Motion for Stay of Proceedings (signed by the District Court).
[19] *Id.*

untimely by more than a decade, and he has failed to prove that an exception applies. The Louisiana Code of Criminal Procedure states, in pertinent part, "No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922 ..." La. C.Cr.P. art. 930.8. Because the Defendant's conviction became final in 2013, the Second PCR Application is at least ten years untimely.

B. The Defendant Has Failed to Establish That He Should Be Exempt From the Two-Year Time Limitation Or That He Diligently Sought the Newly-Discovered Information That Supports His Claim.

Additionally, the Defendant failed to establish that he should be exempt from the two-year time limitation for seeking post-conviction relief. A defendant may circumvent the time bar if "[t]he application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys." La. C.Cr.P. art. 930.8(A)(1). However, he must also "prove that he exercised diligence in attempting to discover any post conviction claims that may exist. 'Diligence' for the purposes of this Article is a subjective inquiry that shall take into account the circumstances of the petitioner." *Id.*

The Defendant alleged that the Second PCR Application was triggered by the discovery of previously-unknown information about the victim's uncooperativeness. This is patently untrue, which will be discussed in more detail below. However, even assuming the truth of his assertion, the Defendant did not provide any explanation for his failure to exercise diligence in obtaining the "new" information earlier. In his First PCR Application filed in 2011, the Defendant alleged as part of his claim of ineffective assistance of counsel, "The record indicates some problems early in the case with obtaining the presence of the complaining witness in open court. The

record does not indicate whether the witness was available for testimony at the time Mr. Mills entered his plea."[20]

It is clear from this statement that when the Defendant filed his first PCR application in 2011, he was already aware that the District Attorney's Office may have had some issues getting in touch with the victim early on in the case. He had been formulating a claim regarding the Victim's uncooperativeness as early as April 2011 (if not earlier) and included it in the First PCR Application. Therefore, he should have been seeking out any and all documentation to support such a claim when he first made the claim, in April 2011.

Notably, the First PCR Application states "Mr. Mills reserves the right to supplement this assignment of error as evidence presents itself."[21] Based upon this language, it is clear that in 2011, the Defendant was aware that he should be gathering information in support of his claim that trial counsel was ineffective for failing to verify the availability of the Victim. Around the time he filed that Application, the Defendant engaged in a public records request with the District Attorney's Office, as evidenced by the following language contained within the First PCR Application: "Here, because Mr. Mills is still waiting on a return on his public records request, his ***Brady*** claim is not yet ripe. Mr. Mills expressly reserves the right to supplement this filing should evidence of the claim present itself."[22]

However, the Defendant never supplemented any of his claims before the District Court denied the First PCR Application in 2014. Even though he was actively seeking public records from the District Attorney's Office to support his assertion of the victim's unavailable at trial, he failed to supplement the First PCR Application. If the Defendant was so concerned about the Victim's uncooperativeness, why did he not specifically seek out the kinds of records he

[20] Ex. 2, p. 7.
[21] *Id.*
[22] *Id.* at 11.

would later seek in 2021? Why did he make no such efforts to obtain them during the intervening ten years?[23]

The Defendant fails to answer these questions in filing his Second PCR Application, which is fatal to his claim. He cannot establish that he is entitled to an exception of the two-year time limitation to seek post-conviction relief, because he cannot establish that he exercised any diligence in obtaining the "newly-discovered information" on which the Second PCR Application is based.

C. The Second PCR Application Is Also Repetitive—It Presents Two Separate Claims That Were Both Already Raised In the First PCR Application.

The Second PCR Application is not only untimely, it is repetitive. The First PCR Application also includes an assertion that the Victim was not cooperative at the time of trial. "A successive application shall be dismissed if it fails to raise a new or different claim," or "if it raises a new or different claim that was inexcusably omitted from a prior application." La. C.Cr.P. art. 930.4(D),(E). The Defendant's Second PCR Application raises two issues that were also previously raised in the First Application. The Second PCR Application raises a *Brady* claim and makes assertions that the Victim was uncooperative. Likewise, the First PCR Application raises a *Brady* claim and makes assertions that the Victim was uncooperative. The only difference is that in the Second PCR Application, the Defendant combines these two issues into a single claim.

Although the Second PCR Application does not specifically tie the Defendant's *Brady* claim to the Victim's alleged uncooperativeness, he made a *Brady* claim and raised issues with the Victim's uncooperativeness, discussing both of the issues that comprise his "new" claim. The "new" claim (if it can even be called

[23] Based on the Defendant's allegation that he was previously unaware of the letters at issue, the Attorney General can only speculate that he had not, in fact, previously possessed them. However, the Attorney General notes that the Defendant received a disclosure from the District Attorney in connection with his prior public records request in or around 2011, and that it is entirely possible that defendant has been in possession of these documents since that time and has simply failed to make this claim until now. This is bolstered by the fact that, as discussed above, the Defendant raised this exact issue—the victim's uncooperativeness—in his 2011 PCR application.

that) in the Second PCR application was, therefore, inexcusably omitted from the First PCR Application. In the First PCR Application, the Defendant argued that the District Attorney withheld favorable evidence—but he did not assert that the District Attorney withheld information that the Victim was not cooperative. It is clear, however, that in 2011 the Defendant was under the belief that the Victim was not cooperative at the time of trial, because he also mentions it in the First PCR Application. He should have based a *Brady* claim on this information when he filed the First PCR application in 2011, not waited another 12 years to raise the issue in a subsequent PCR application.

In the alternative, the existence of the above assertions—a *Brady* claim, and the victim's alleged lack of cooperation—in the 2011 application also arguably make their presence in the instant application repetitive, because the substance of the claim is simply not new, and the Defendant has failed to raise a new claim, which is also procedurally barred pursuant to La. C.Cr.P. Art. 930.8.

With some diligence, the Defendant and his attorneys could have made the claim, as it exists in the Second PCR Application, in 2011 or soon thereafter. Of course, it would have been facially and procedurally barred, just as it is here, because the allegation's demonstrable falsity would have resulted in an outright failure to state a valid claim on which relief may be granted—an issue which will be discussed more fully below. But, at the very least, the Defendant could have made the allegation *years earlier* had he and his attorneys diligently sought out documentation to support a claim *they knew they wanted to make for a decade*. For these reasons, the District Court erred in overruling the Attorney General's procedural objections pursuant to La. C.Cr.P. arts. 930.4 and 930.8.

II. The Defendant's Assertion That the Victim was Uncooperative is Untrue.

Although either of the above procedural bars (untimeliness and repetitiveness) constitute a sufficient basis for summarily denying the defendant's Second PCR Application, it also fails to state a valid claim for relief. This is likewise procedurally fatal to the Defendant's claim. Because the substance of his claim is untrue, he has failed to state a claim on which relief can be based. At issue is the Defendant's allegation that the State withheld evidence of the Victim being uncooperative leading up to trial; and, had the Defendant's trial counsel been aware of this lack of cooperation, he would not have advised him to accept a plea agreement. This is facially inaccurate.

More specifically, the alleged evidence is two letters, dated October 26 and November 27, 2007, in which the District Attorney's Office attempted to reach the Victim and her mother. However, these letters were written right after the charges has been filed in September of that year, and nearly 18 months before the matter would eventually proceed to trial. On their own, they do not establish that the Victim was uncooperative at the time the State announced its readiness for trial. Even worse, the Defendant offers nothing else whatsoever in support of his allegation. Even assuming that the State would be obligated to disclose the Victim's lack of cooperation prior to entering plea negotiations,[24] the Defendant has failed to establish that the Victim in this case was uncooperative at the time he pled guilty to the reduced charge of forcible rape. At most, he has established that in October and November 2007, the District Attorney's Office was having difficulty contacting the Victim. The October and November 2007 letters do not establish that the Victim did not want to cooperate with the prosecution, and the Defendant has not presented any

[24] The Attorney General does not concede that a victim's lack of cooperation is subject to disclosure pursuant to *Brady v. Maryland*, but the merits of the defendant's PCR Application are not the subject of this writ application. It should be noted, however, that uncooperative witnesses can be compelled to appear in court via the trial court's issuance of an instanter subpoena.

other evidence to support his argument. Simply put, the Second PCR Application fails to state a valid claim for relief.

Even taking the Defendant's claim and evidence at face value, it is evident that the defendant's core allegation—that the Victim was uncooperative—is false. For instance, the Defendant points to the language in both letters (but primarily the second one) stating that the case may be dismissed if the Victim or her mother fail to get back in touch with the District Attorney's Office.[25] As the record reflects, the case was never dismissed, which would lead a reasonable person to infer that the District Attorney's Office ultimately got back in touch with the Victim.

Likewise, the Defendant has presented no evidence that the State ever sought to delay trial due to the Victim's lack of cooperation. In fact, of the five trial settings, the State only moved for a continuance on the first trial date on July 22, 2008.[26] The Defendant has presented no evidence that the reason for the continuance was the Victim's unavailability. The next two trial settings, August 12 and November 12 of 2008, were both continued on *the Defendant's* motion.[27] It is reasonable to infer that the State was prepared for trial on those dates, whereas the defense was not. The fourth trial setting, on January 28, 2009, was continued by joint motion of the State and defense.[28] The fifth trial setting, on April 8, 2009, concluded with the Defendant's guilty plea, where he greatly benefited from the State's plea offer by avoiding a mandatory life sentence if convicted of either count of Aggravated Rape.

Additionally, the minute entry for December 11, 2007 indicates that a motion hearing was continued on the State's motion because the "Victim is school aged and unable to attend court."[29] Because the State represented that the Victim was *unable* to attend court, it is reasonable to infer that the Victim *wanted to be present in court*

[25] Ex. 5, Second PCR Application, attached exhibits J and K (letters to Victim).
[26] Ex. 10, p. 2 (07/22/2008 Minute Entry).
[27] *Id.* at 2–3 (08/12/2008 and 11/12/2008 Minute Entries).
[28] *Id.* at 3 (01/28/2009 Minute Entry).
[29] *Id.* at 2 (12/11/2007 Minute Entry).

but could not do so due to still being in school. Once again, this contravenes the Defendant's baseless assertion that the Victim was uncooperative throughout the pendency of this case.

In addition to the above reasonable inferences, the District Attorney's case file specifically demonstrates that the Office had multiple contacts with the Victim and her mother *after* the mailing of the aforementioned letters and that the Victim was cooperative at the time of trial. The Defendant's attorney, having viewed the DA's case file in connection with their most recent public records request, would be well aware that the whole of the documents contained within that file completely upend the assertion that the Victim was uncooperative. This is evidenced by the fact that the Second PCR Application includes certain documents from the District Attorney's case file, but does not include or discuss later documentation showing conversations between the Victim and the District Attorney's Office—because such documentation is fatal to the substance of the defendant's claim.

In contrast, the Attorney General attached several documents to its procedural objections to the Second PCR Application which established that the District Attorney's Office had contact with the victim and/or her mother *after* the two letters were mailed. The Victim's mother called ADA Isaka Williams back on December 7, 2007, only a few days after the date on the second letter, and ADA Rachel Africk (née Luck) spoke to the victim's mother in 2009 leading up to a trial date.[30] These documents support the logical inference that after the District Attorney's Office sent letters to the victim's mother requesting that the get in touch, the Victim's mother indeed got back in touch with the District Attorney's Office. Conspicuously absent from the Defendant's Second PCR Application is any documentation from *after* November 2007 (the date of the second letter upon with the Defendant's entire

[30] Ex. 6, State's Procedural Objections to Second Application for Post-Conviction Relief, attachments 1 and 2.

argument is based) which shows that the District Attorney's Office lost touch with the Victim and/or her mother again after she established contact. There are no letters from December 2007 or anytime in 2008 or 2009 asking the Victim's mother to get back in touch and notifying her that the case will be dismissed if she does not—because no such communications exist. The Defendant's claim that the Victim was uncooperative is untrue, and he has failed to prove he is entitled to post-conviction relief.

What should be instructive to this Honorable Court is the fact that while the defendant makes vague allusions to the Victim's uncooperativeness leading up to trial—itself a huge logical leap from two letters from the DA's Office attempting to reach her—he does not specifically allege, for the purposes of actually validating his claim, that the Victim was absent, uncooperative, or otherwise unavailable on the morning of trial itself. He focuses on the two letters from 2007 because no evidence from any later date exists to lend any support to his claim.

Notably absent from the Second PCR Application is the transcript of the defendant's *Boykin* colloquy and guilty plea. Additionally, the Defendant points to nothing in the record to support any allegation that the Victim was uncooperative. The 2007 letters establish, at most, that there may have been scheduling issues very early on in the prosecution. The fact, however, is that the Victim and her mother *were present* to testify on the day of trial before the Defendant entered a guilty plea, *and they were cooperative.*

As an attachment to the Second PCR Application, the Defendant attached an affidavit executed by Jason Williams, who represented the Defendant leading up to and during his guilty plea.[31] At the time he executed the affidavit in December 2022, Mr. Williams was the elected District Attorney of Orleans Parish. The Defendant

[31] Ex. 5, Second PCR Application, attached Exhibit "N."

attempts to use DA Williams's affidavit to bolster his claim that the victim was uncooperative at the time of trial. Several issues exist with this argument. First, DA Williams's affidavit states that he met with post-conviction counsel for the defendant and was shown the letters sent to the victim by the District Attorney's Office.[32] The affidavit states "These letters showed attempts by the DA's Office to obtain the presence for trial of the complainant."[33] With all due respect, this is incorrect. The letters are dated October and November 2007. The first trial date was July 2008. Notably, there was a motion hearing scheduled for December 2007 (shortly after the date on the second letter) that the State moved to continue because the "victim is school aged and unable to attend court." The letters were sent long before a trial date was ever set, and therefore the letters were not written to "obtain the [Victim's] presence for trial" as DA Williams's affidavit states.

DA Williams's affidavit also states that the letters "occurred after her lack of attendance indicated that she did not wish to take part in the ongoing prosecution."[34] The Attorney General respectfully submits that this statement is speculative and conclusory. The letters[35] *do not* state that the Victim indicated she did not want to cooperate or participate, they simply requested that she or her mother get in touch with the DA's Office. As discussed above, the letters do not prove that the Victim was uncooperative, only that the DA's Office could not get in touch with her. Any attorney will tell you that sometimes, victims and witnesses do not answer the phone when you call them or appear for scheduled meetings—this does not necessarily mean that they do not wish to cooperate.

Notably absent from DA Williams's affidavit is any discussion of what occurred on the date of trial itself. The affidavit does not state that the Victim *was*

[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] Ex. 5, attached exhibits J and K.

not present on the day of trial—it is silent on whether or not the Victim or her mother were in court at the time the Defendant pled guilty. The affidavit does not bolster the Defendant's argument, because (just like the letters from October and November 2007) it fails to prove that the Victim was ever uncooperative or was not present in court on the date the defendant appeared for trial and entered a guilty plea.

To be clear, the Defendant has the burden of proving that post-conviction relief should be granted. La. C.Cr.P. art. 930.2. Here, he has failed to do so. Ultimately, because his core allegation is demonstrably false, his other allegation—that the State withheld evidence that the Victim was uncooperative—is also false. Simply put, there can be no *Brady* violation because the State cannot withhold evidence of something that did not happen. Therefore, on the most basic level, the Defendant has failed to state a claim on which relief may be granted, and the District Court erred in overruling the Attorney General's procedural objections.

CONCLUSION AND PRAYER

Considering the facts of the case and the law and argument presented above, the District Court erred in overruling the Attorney General's procedural objections to the defendant's Second PCR Application. The Attorney General respectfully prays that this Honorable Court reverse the District Court's ruling and enter an order dismissing the defendant's Second Application for Post-Conviction Relief.

Respectfully submitted,

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ATTORNEY GENERAL

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AFFIDAVIT OF VERIFICATION AND CERTIFICATE OF SERVICE

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, a Notary Public in and for the Parish of East Baton Rouge, State of Louisiana, duly commissioned and qualified, personally came and appeared:

IRENA ZAJICKOVA

who, being by me first duly sworn did depose and say:

That she is attorney for applicant in this case; that all the information contained therein are true and correct to the best of her knowledge; that the trial court and all counsel have been or will be promptly notified that this Writ Application has been filed; and that copies of this Writ Application were mailed, e-mailed, and/or hand-delivered to the following:

Jennifer Cameron, Esq. Longman Jakuback, APLC 830 Main Street Baton Rouge, Louisiana 70802 jennifer@ljlaw.org (225) 383-3644 *Counsel for Ernest Mills*	**Hon. Darryl Derbigny** 2700 Tulane Avenue New Orleans, LA 70119 (504) 658-9150 SectionJ@criminalcourt.org

Irena Zajickova
ASSISTANT ATTORNEY GENERAL

SWORN TO AND SUBSCRIBED BEFORE ME, this 13th day of February, 2025.

NOTARY PUBLIC
Andrea Neal Quick
LA Bar No. 37239
My Commission is for life

APPENDIX F
34a

SUPREME COURT OF LOUISIANA

No. 2025-C-_____

STATE OF LOUISIANA,
Relator

VERSUS

ERNEST MILLS,
Respondent/Defendant

On Application for Supervisory Writs of Certiorari from Judgment of
Court of Appeal Fourth Circuit, Docket No. 2025-K-0106,
Honorable Judges Johnson, Lobrano, and Chase,
On Appeal from the Criminal District Court, Parish of Orleans
Criminal Case No. 472-876, Section J
Honorable Darryl A. Derbigny, presiding

STATE OF LOUISIANA'S ORIGINAL APPLICATION FOR SUPERVISORY WRITS

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SUPREME COURT OF LOUISIANA
CRIMINAL
WRIT APPLICATION FILING SHEET

TO BE COMPLETED BY COUNSEL OR PRO SE LITIGANT FILING APPLICATION

CASE TITLE: State of Louisiana v. Ernest Mills

APPLICANT PARTY NAME(S): State of Louisiana

Have there been any other filings in this Court in this matter: ☐ YES ■ NO

Are you seeking a Stay Order? ☐ YES ■ NO. If so, you MUST complete a criminal priority form.

Are you seeking Priority Treatment? ☐ YES ■ NO. If so, you MUST complete a criminal priority form.

Does this pleading contain confidential information? ☐ YES ■ NO. If so, please file a motion to seal.

Does any pleading contain a constitutional challenge to any Louisiana codal or statutory provision? ☐ YES ■ NO

If yes, which pleading? _____

If yes, has the Office of the Louisiana Attorney General been notified pursuant to La. R.S. 13:4448? ☐ YES ☐ NO

LEAD COUNSEL / PRO SE LITIGANT INFORMATION

APPLICANT:

Lead Counsel Name: Zachary Faircloth Bar Roll No. 39875

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RESPONDENT:

Lead Counsel Name: Jacob Longman Bar Roll No. 38042

Email address: jacob@ljlaw.org Cell No. 225-383-3644

Is the pleading being filed: ■ In proper person. ☐ In forma pauperis

Are there any pro se litigants involved in this matter: ☐ YES ■ NO

TYPE OF PLEADING

☐ Felony (death penalty) ☐ Felony (non-death penalty) ☐ Misdemeanor ☐ Post-Conviction (death penalty)

■ Post-Conviction (non-death penalty) ☐ Criminal other

LOWER COURT INFORMATION

Parish and Judicial District Court: Orleans Parish, Criminal District Court Docket No: 472-876

Judge and Section: Honorable Darryl A. Derbigny, Section J Date of Ruling: 1/15/2025

APPELLATE COURT INFORMATION

Circuit: 4th Docket No.: 2025-K-0106 Applicant: State of Louisiana Filing date: 2/13/2025

Was this pleading simultaneously filed? ☐ YES ■ NO

Ruling date: 3/25/2025 Action: Writ Denied

Panel of Judges: Judge Rachael D. Johnson, Judge Joy Cossich Lobrano, Judge Tiffany Gautier Chase En Banc: ☐

REHEARING INFORMATION

Applicant: _____ Filing date: _____ Ruling date: _____

Action: _____ Panel of Judges: _____ En Banc: ☐

PRESENT STATUS

☐ pre-trial

■ hearing; scheduled date: none

☐ trial. Scheduled date: _____

☐ trial in progress

Is there a stay now in effect? ■ YES ☐ NO

VERIFICATION

I certify that the above information and all of the information contained in this application is true and correct to the best of my knowledge and that all relevant pleadings and rulings, as required by Supreme Court Rule X, are attached to this filing. I further certify that a copy of this application has been mailed or delivered to the appropriate court of appeal, to the lower court judge, and to all other counsel and unrepresented parties.

Date: 4/24/2025 Signature: Zachary Faircloth (Rev. 12/2022)

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SUMMARY OF THE ARGUMENT

Ernest Mills, Jr., raped his girlfriend's 11-year-old niece K.O. in May 2007. Three times, Mills "forced her to rub his penis" and performed "unprotected sexual acts" on her, causing the 11-year-old to contract chlamydia. If her aunt's confirmation that Mills had infected her too was not enough, Mills's own post-arrest positive chlamydia test pinned him as the obvious culprit. A grand jury indicted Mills for sexual battery and aggravated rape—which carried a death sentence at the time.

Rather than face trial, Mills pleaded guilty to a lesser charge of forcible rape and received a 30-year prison sentence. He did so on the sound advice of his trial counsel: That "both parties tested positive for the STI chlamydia ... would be taken" by a jury "as conclusive proof" that "Mills had had intercourse with"—that is, raped—the 11-year-old girl. More, the State's rape-shield laws would have prohibited cross-examining her "about any prior sexual history that could otherwise explain her contraction of chlamydia." And if Mills forewent trial, he might "be eligible for parole in two years." So Mills took the plea. Louisiana courts then roundly rejected his follow-on requests for post-conviction relief based on his counsel's effectiveness, the voluntariness of his plea, and a supposed *Brady* violation.

A decade later, Mills now pushes a second application based on a lone *Brady* claim. That born-again claim turns on two letters from the State to K.O.'s mother in 2007 that, Mills says, show the 11-year-old was reluctant to testify at his 2009 trial. That information, Mills speculates, might have changed his decision to plead guilty. Mills's *Brady* claim is procedurally barred and substantively meritless. Yet a district court and two court of appeal judges gave the application life over Judge Lobrano's dissent. The State now faces the prospect of hailing into court the now-29-year-old K.O. to testify before her rapist about her recollection of her feelings about testifying against him when she was in the sixth grade. Permitting that circus makes a mockery of the State's post-conviction procedures. This Court needs to step in to restore order by dismissing the application and admonishing Mills against future abuses, as his state post-conviction rights were exhausted before this Court a decade ago.

WRIT CONSIDERATIONS

The Court should exercise it sound juridical discretion to grant this application. La. Sup. Ct. R. X, § 1(a). This case is appropriate for review because the court of appeal erroneously applied Louisiana Code of Criminal Procedure articles 930.4 and 930.8 and the Supreme Court's binding decision in *United States v. Ruiz*, 536 U.S. 622 (2002), in a way that will cause material injustice to the minor victim of the underlying sex offense and significantly affect the public's interest in the finality of criminal judgments—especially as it relates to guilty pleas. La. Sup. Ct. R. X, § 1(a)(4).

ASSIGNMENT OF ERRORS

1. Whether a second application for post-conviction relief is procedurally barred under Louisiana Code of Criminal Procedure articles 930.4 and 930.8 when it raises the same *Brady* claim and same factual allegations rejected in a prior application and is filed more than a decade after the judgment of conviction became final.

2. Whether a *Brady* claim following a guilty plea and predicated solely on impeachment evidence is legally cognizable despite being foreclosed by the Supreme Court's decision in *United States v. Ruiz*, 536 U.S. 622 (2002).

CONCISE STATEMENT OF THE CASE

I. Over the course of three nights in May 2007, Ernest "E.J." Mills, Jr., repeatedly raped 11-year-old K.O. At the time, Mills was dating K.O.'s aunt, who lived with K.O. in their family's apartment in Algiers. App.082.

The nightmarish three days began May 24, 2007—just four days removed from K.O.'s eleventh birthday. While her "mother and stepfather were gone to work," "sister and brother were asleep," and aunt "was gone to the store," App.083, K.O. stayed at home and answered a call on the house phone. App.083. Someone was looking for "E.J.," so she "brought the telephone" to Mills, "who was laying on the bed." App.083. He told K.O. to wait until his call ended and then asked her, "Do you want to see something?" App.083. When K.O. resisted, Mills "removed his penis from within his pants and put her hands on it." App.083. K.O. "fled the room." App.083.

The next evening, another call for Mills prompted K.O. to bring him the phone "in the bedroom." App.083. That night, Mills appeared drunk. App.083. He told K.O. to "come here" before "grabb[ing] her and plac[ing] her on the bed with her hands behind her back." App.083. "He got on top of her and penned her legs with his legs" and then "pulled down her clothes and pulled down her pants." App.083. Mills "inserted his penis into her vagina." App.083. K.O. "asked him to 'Please stop'" but Mills "responded by 'going harder.'" App.083. When she "forcefully asked him to stop again," Mills finally got "off of her." App.083.

A night later, while they were "home alone," Mills "grabbed [K.O.] by her mouth and brought her into the bed room." App.083. Mills held the 11-year old upright while he "removed her pants and underwear" before making her "insert[] his penis into her vagina." App.083. K.O. escaped by "kicking" Mills and "forcing him to stop." App.083.

Sadly, it was not until a friend's slumber party months later on July 18 that the friend's mother overheard K.O. confiding to her friends about Mills's horrendous acts. App.081–082. The same day, K.O.'s mother reported the rape to the New Orleans Police Department, who confirmed the allegations in an interview and

referred K.O. to Children's Hospital. App.082. When she arrived, K.O. again confirmed the allegations in another interview—"that her aunt's boyfriend [Mills] 'forced her to have sex with him' and 'made her touch his penis.'" App.082. The hospital tested the 11-year-old for "various sexually transmitted diseases." App.083.

Two days later, K.O. "participated in a forensic interview" at the Louisiana Department of Children & Family Services' Child Advocacy Center. App.083. This time, the interview was videotaped. App.083. And once again, K.O. recounted the disturbing details. App.083. The "VHS cassette" of that interview was turned over to NOPD. App.083.[1] That day, NOPD applied for and obtained an arrest warrant for Mills charging one count of sexual battery and two counts of aggravated rape. App.083–084.

A week removed from reporting the rape, the hospital shared more horrifying news: K.O. "tested positive for Chlamydia via a urine test"—"results" that "were definitive for previous sexual contact." App.084. K.O.'s family told NOPD that her aunt "informed [them] that she also had Chlamydia from sexual contact with" Mills. App.084. The next day, NOPD arrested Mills, App.090, and placed him in the Orleans Parish Sheriff's custody, App.084–085.

Over the next weeks, NOPD investigators interviewed K.O.'s friends. They, too, confirmed that K.O. confided in them "that she was having sex with Ernest Mills Jr." App.084. On their telling, "three times" when K.O. "brought the telephone" to Mills, he "grabbed her and made her have sex with him" and "made her touch his 'thing.'" App.084–085. One also said that K.O. had told "her sister ... and asked her not to tell anyone." App.085. The younger sister also shared that "Mills made [K.O.] touch his penis and raped her." App.085. NOPD investigators also applied for and obtained a warrant to swab Mills for chlamydia. App.085. At the University Hospital,

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[1] Two days later, medical professionals at the Children's Hospital also interviewed K.O. App.084. She confirmed (for a fourth time) that Mills had "forced her to touch his penis with her hands and "forcefully inserted his penis into her vagina." App.084. And each time, her "resistance was overcome by Ernest Mills." App.084.

though Mills refused to give a statement relative to the investigation, his chlamydia swab tested positive. App.086.

In September 2007, a grand jury indicted Mills for two counts of aggravated rape and one count of sexual battery—both of an individual under the age of 13 years. App.016–019. At the time, aggravated rape carried a mandatory sentence of "life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence." La. R.S. 14:42(D)(1) (2006). And if the victim was younger than 13, the district attorney could seek "a capital verdict." La. R.S. 14:42(D)(2) (2006); *see Kennedy v. Louisiana*, 554 U.S. 407 (2008) (rendering that option unconstitutional).

Days later, Mills stood for arraignment, represented by the late Joe Meyer for that limited purpose. App.119. The trial court appointed Jason Williams to represent Mills for his trial. App.119. On October 23, 2007, Williams formally assumed that representation. App.119. Over the course of the next 18 months, the court continued the trial date several times and the State regularly turned over discovery to Mills, including K.O.'s July 2007 recorded interview. App.119–120.

As the April 8, 2009, trial date approached, Mills opted to plead guilty rather than face a jury. App.120. The morning of his scheduled trial, Mills entered a guilty plea to the lesser charge of forcible rape and waived his trial rights. App.064; *see* App.093 (same). The court sentenced Mills to 30 years at hard labor. App.120.[2] Whatever little solace that sentence gave then-12-year-old K.O. was short-lived. Three days later, her best friend and brother were murdered in her new home in Terrytown. *See State v. Davis*, 12-512 (La. App. 5 Cir. 4/24/13), 115 So. 3d 68, 72, *writ denied*, 2013-1205 (La. 11/22/13), 126 So. 3d 479 ("As soon as this gunfire stopped, K.O. crawled to her brother's bedroom where she found F.O. and R.C. lying in pools of their own blood.").

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[2] Mills applied to the Fourth Circuit for a supervisory writ, which was denied in part and granted in part on May 11, 2010. *State v. Mills*, 2010-K-0262 (La. App. 4 Cir. May 11, 2010) (writ granted in part); *see State v. Mills*, 2010-K-1612 (La. App. 4 Cir. Dec. 21, 2010) (writ denied).

II. A year later, Mills filed an application for post-conviction relief. App.020–032; *see* App.065–077 (same). In that first application, Mills complained that his trial counsel had been constitutionally ineffective, App.022–026, that his guilty plea was not knowing and voluntary, App.026–028, and that the State had withheld *Brady* material, App.028–030. Relevant here, Mills complained that Williams was ineffective because of his "[f]ailure to verify the availability of the State's key witness"—namely, K.O. App. 026. As Mills put it in his 2011 application, there were "some problems early in the case with obtaining the presence of the complaining witness in open court," leaving it unclear "whether the witness [K.O.] was available for testimony at the time [he] entered his plea." App.026. And despite this, Mills says, he ultimately pleaded guilty on Williams's advice that "he w[ould] be eligible for parole in two years" if he did so. App.028.

The trial court did not act on the application for three years until it set a status conference for May 2, 2014. App.121. The conference prompted the Orleans Parish District Attorney's Office to file an opposition to Mills's application. App.062. It argued that (1) all claims were procedurally defaulted for failing to use the Supreme Court's mandatory uniform application and (2) the *Brady* claim lacked a factual basis. App.033–034. On July 1, 2014, the trial court denied Mills's application for post-conviction relief, App.035, and set a return date of September 1 to seek writs, App.121. The Fourth Circuit denied his application. *State v. Mills*, 2014-K-0937 (La. App. 4 Cir. Oct. 23, 2014). This Court denied his writ application as untimely. *State ex rel. Mills v. State*, 2015-KH-0423 (La. Dec. 7, 2015).

III. Six years later, in November 2021, Williams noticed his recusal from representing Mills because of Williams's elevation to District Attorney. App.122. And so the Attorney General assumed representation on behalf of the State. App.122. Six days later, Mills's current counsel enrolled. App.080; *see* App.122. Yet he waited *another fifteen months* to file a second application for post-conviction relief. App.036–040; *see* App.122.

Mills's application contains two glaring falsehoods. *First*, he misrepresents that his forcible-rape conviction did *not* involve a sex offense in which the victim was a minor under the age of 18 years. *See* App.037; *see* La. 15:541(24)(a) (listing "forcible or second degree rape" as a "sex offense"). In doing so, he blows roughshod through Louisiana's protections for the confidentiality of minor victims of sex offenses. *See* La. R.S. 46:1844(W). *Second*, Mills falsely claims that his first application for post-conviction relief raised just one claim for ineffective assistance of counsel, App.038—omitting his prior claims about the voluntariness of his plea and the *Brady* violation, App.026–030. That omission is especially troubling because Mills's only claim in his second application is a *Brady* violation. *See* App.048–051.

Substantively, that lone *Brady* claim hinges on supposedly novel impeachment evidence aimed at Mills's then-12-year-old rape victim. On his telling, his current counsel obtained the District Attorney's entire trial file related to his 2007 indictments in 2022. App.047. In it were letters to K.O.'s family from the District Attorney's Office dated October and November 2007—over a year before Mills's trial date—that were not turned over as *Brady* material. App.047. Here they are in their entirety:

> Dear Ms. [redacted]
>
> I am writing to you in regarding the above-mentioned case in which your daughter was a victim of a Rape. I have made several unsuccessful attempts at contacting you via telephone. It is very important that I speak to you and your daughter. In order to prepare for trial, I would like to meet with you in person as well as set up a telephone interview. Without your testimony and cooperation, this case *may* be dismissed and the defendant will be released from jail. Please call me at the District Attorney's Office: 504-571-2850 or 504-234-1655. If you fail to contact me, I will assume that you do not want to prosecute.
>
> Sincerely,
>
> Isaka Williams
> Assistant District Attorney

App.091 (letter dated October 26, 2007).

Re: State vs. Ernest Mills
Case No. 472-876, Section "J"

Dear Ms. O[redacted]:

Please allow this letter to serve as formal notification of your failing to appear for your scheduled interviews on November 20th and 26th, 2007 regarding the above referenced matter.

Unfortunately, your failing ot appear without prior cancellation by telephone or other means dose not bode well for this matter. Please understand that in order to prove this case against the defendant, you will have to testify at trial. Consequently, it is essential that I meet with you and K[redacted] O[redacted] to assess the facts of this case.

As such, if I do not hear from you before 5:00 p.m. on December 3, 2007, I will assume you do not want to proceed and this case may be dismissed. If you have any questions or comments, I can be contacted at any time at the District Attorney's Office. My direct extension is 504-571-2850 or 234-1655. Thank you for your prompt attention to this matter.

Sincerely,

Isaka R. Williams
Assistant District Attorney

App.092 (letter dated November 27, 2007).

Mills reads these letters as groundbreaking conclusive evidence that K.O. was lying the whole time and would not testify against Mills in April 2009. App.050 ("it very well could have meant that [she] was having second thoughts about the veracity of her statements and desired to recant her statements entirely"). In August 2022, Mills's counsel met with Williams, who had not seen the letters before. App.047–048; *see* App.095. For his part, Williams says in a two-paragraph sworn affidavit that the "letters showed attempts by the DA's Office to obtain the presence for trial of the complainant" K.O., which came "after her lack of attendance[,] indicated that she did not wish to take part in the ongoing prosecution." App.095. So Mills "entered a plea without knowing the content of these letters or their existence." App.095. And "[h]ad [Williams] known that [K.O.] was not compliant with the prosecution," Williams "would not have advised [Mills] at the time to take a plea deal." App.095. All that notwithstanding that Williams actually advised Mills that the evidence "that both parties tested positive for the STI chlamydia," once shown to a jury, "would be taken as conclusive proof" that Mills "had intercourse with" K.O. and that "there was no way for him to prove that he had not given it to her." App.051.

The State objected to Mills's second application for post-conviction relief. App.096–101. Four months later, Mills responded to the State's objections. App.104–109. On November 19, 2024, the trial court held a hearing and later issued a ruling on January 15, 2025, App.122–123, in which it overruled the State's objections to the successive application for post-conviction relief and ordered an evidentiary hearing on Mills's *Brady* claim, App.112; *see* App. 124–133. The trial court set a return date for the State to seek writs and stayed the case pending resolution of those writ applications. App.118.

After noticing its intent, the State sought supervisory writs from the Fourth Circuit. App.1–15. A divided panel denied the State's writ in a one-paragraph order. App.134. Judge Lobrano dissented. App.135–138. She would have dismissed the application outright, App.138, both because it "is untimely, repetitive, and procedurally barred under La. C.Cr.P. arts. 930.8 and 930.4," and because "Defendant's claim is legally meritless." App.135. Indeed, as she noted, "the letters are, at most, impeachment evidence," App.137, and "the Constitution does not require disclosure of impeachment evidence prior to a guilty plea." App.136–137 (collecting cases and citing *United States v. Ruiz*, 536 U.S. 622, 633 (2002)). And even if it did, Mills's "guilty plea constitutes a waiver of all non-jurisdictional defects, including the right to contest pretrial discovery violations." App.137.

Judge Lobrano also acknowledged the absurdity of affording Mills "the opportunity to present evidence and subpoena witnesses, including the now-adult victim, to testify about her past fears and uncertainties about testifying." App.135–136. That charade, in her view, "not only undermines the finality of convictions but also makes the post-conviction process a tool for abuse, subjecting the survivor to unnecessary retraumatization." App.136. It also bastardizes the "strong[] protect[ions]" in Louisiana law for "victims of sexual abuse, especially children." App.136. The State now respectfully asks this Court to exercise its supervisory jurisdiction to dismiss Mills's application.

STANDARD OF REVIEW

When this Court exercises its supervisory jurisdiction to review post-conviction applications, the Court reviews all legal errors de novo—including the applicability of any statutory procedural bars and the failure to state a claim. *See, e.g.*, *State v. Link*, 2024-00595 (La. 5/30/24), 386 So. 3d 277, 278; *State v. Theophile*, 2024-00285 (La. 9/4/24), 391 So. 3d 1042.

ARGUMENT

This Court's intervention is necessary to put an end to this textbook abusive successive post-conviction relief application. To do so, it need look no further than the application's untimeliness and repetition of a previous claim. But should the Court be inclined to reach the merits, black-letter law forbids Mills's post-guilty-plea *Brady* claim based on impeachment evidence. Either way, the Court should arrive at summary dismissal along with an admonishment that Mills exhausted his right to state collateral review a decade ago. *See State ex rel. Mills v. State*, 2015-KH-0423 (La. Dec. 7, 2015).

I. MILLS'S SECOND PCR APPLICATION IS PROCEDURALLY BARRED.

Mills's application is procedurally barred twice over. As the Court has explained time and again, "Louisiana postconviction 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." *State v. Campbell*, 2024-00885 (La. 4/15/25). Mills satisfies neither.

First, Mills's application is repetitive because "it fails to raise a new or different claim." La. C. Cr. P. art. 930.4(D). That is so both legally and factually. As a legal matter, Mills's second application poses a *Brady* claim, App.047–050—just as his first application had, App.028–030. As a factual matter, Mills's second application complains that he believes K.O. "had stopped being a willing and active participant in the charges and cases" early on, App.049—just as his first application had, App.026. Indeed, in his first application, Mills faulted Williams for his supposed "[f]ailure to verify the availability" of K.O. "for testimony at the time [he] entered his

plea" in light of "some problems early in the case with obtaining the presence of the complaining witness [K.O.] in open court." App.026. The claims are on all fours.

Second, Mills's application is untimely. Mills pleaded guilty to forcible rape in April 2009—18 years ago. App.120. The accompanying judgment and sentence became final "fourteen days" after the Fourth Circuit acted on his writ application—on May 25, 2010. *See* La. C. Cr. P. art. 922; *see State v. Mills*, 2010-K-0262 (La. App. 4 Cir. May 11, 2010). This new application comes far after the permissible application period of "two years after judgment of conviction and sentence has become final." La. C. Cr. P. art. 930.8. Yet Mills's application does not so much as mention that untimeliness problem. *See* App.036–054. He thus forfeited any argument that a statutory exception applies. Nor could Mills carry his burden for any exception, as his only plausible pathway is Article 930.8(A)(1)'s exception for previously unknown, undiscoverable facts. But that cannot be for at least two reasons. For one, as Mills's first application makes clear, he was keenly aware by 2011 of the fact that the State had "some problems early in the case with obtaining the presence of the complaining witness in open court." App.026. For another, Mills does not even engage with his burden to show "diligence in attempting to discover" more relevant facts related to that lead in the intervening 14 years. *See* La. C.Cr.P. art. 930.8(A)(1).

II. In All Events, Mills's *Brady* Claim Fails As a Matter of Law.

Even if this Court were to entertain Mills's procedurally barred claim, it fails for an even more basic reason: *Brady* cannot apply here. *See* La. C.Cr.P. art. 928. That is principally because neither the Supreme Court nor this Court has extended *Brady* to guilty pleas. "While *Brady* and its progeny necessitate that prosecutors disclose exculpatory evidence during trial," "*Brady* focuses on the integrity of trials and does not reach pre-trial guilty pleas." *Mansfield v. Williamson Cnty.*, 30 F.4th 276, 280 (5th Cir. 2022); *accord Alvarez v. City of Brownsville*, 904 F.3d 382, 394 (5th Cir. 2018) (en banc) ("abstain[ing] from expanding the *Brady* right to the pretrial plea bargaining context"). More, the Supreme Court has affirmatively foreclosed any *Brady* claim premised on impeachment evidence alone. *Ruiz*, 536 U.S. at 633 ("the

Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant"). Yet Mills's claim hinges on precisely that—evidence that, he says, "could [have] be[en] used to impeach a prosecution witness." App.049; *see* App.137 ("the letters are, at most, impeachment evidence"). But *Ruiz* plainly forbids such a *Brady* claim.

In all events, Mills could not prove any prejudice for at least two reasons. *First*, Mills supposes the State's prosecution would have crumbled absent K.O.'s testimony because it only had "one piece of physical evidence." App.050. But that "single piece of physical evidence" was "that *both parties tested positive for the STI chlamydia*." App.051 (emphasis added). As Mills's own lawyer advised him, that damning physical evidence was insurmountable "conclusive proof that Mr. Mills had had intercourse with" the 11-year-old K.O. App.051. So Mills's musings—that "had [K.O.] not taken the stand to testify," the State would have "dismiss the charge against Mr. Mills"—are belied by the record. *Second*, Mills admitted that he pleaded guilty principally because Williams advised that "he w[ould] be eligible for parole in two years" if he did so, App.028—on which the letters have zero bearing.

CONCLUSION

The State respectfully prays that this Court grant the State's supervisory writ, summarily dismiss Mills's second post-conviction relief application, and admonish him that his rights to state collateral review were exhausted 10 years ago. *See State ex rel. Mills v. State*, 2015-KH-0423 (La. Dec. 7, 2015).

Dated: April 24, 2025

Respectfully submitted,

ELIZABETH B. MURRILL
Attorney General

/s/ Zachary Faircloth
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has this date been served upon all parties to this proceeding by email or by mailing same to each by First Class United States mail, properly addressed and postage paid, on this 24th day of April, 2025.

/s/ Zachary Faircloth
Zachary Faircloth (LSBA #39875)

Docket No.: 2025-KP-00512

STATE OF LOUISIANA V. ERNEST MILLS

ON APPLICATION FOR SUPERVISORY WRITS OF CERTIORI FROM JUDGMENT
OF COURT OF APPEAL FOURTH CIRCUIT, DOCKET. NO. 2025-K-0106
HONORABLE JUDGES JOHNSON, LOBRANO, AND CHASE,
FROM ORLEANS CRIMINAL DISTRICT COURT,
PARISH OF ORLEANS, CASE NO. 472-876 SECTION J
THE HONORABLE DARRYL DERBIGNY PRESIDING

RESPONSE IN OPPOSITION OF THE STATE OF LOUISIANA'S APPLICATION FOR SUPERVISORY WRITS
FILED ON BEHALF OF ERNEST MILLS

RESPECTFULLY SUBMITTED,

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Article 5, Section 10(a) of the Louisiana Constitution, which provides that a court of appeal "has supervisory jurisdiction over cases which arise within its circuit." La. Const. art. V. §10(a).

STATEMENT OF THE CASE

In 2007, Ernest Mills Jr. was in a relationship with Crystal Estes.[1] Ms. Estes lived with Rayshika Overstreet, Rayshika's husband Byron Overstreet, and their daughter K.O..[2]

On July 18, 2007, Detective Corey Lymous of the Child Abuse Unit of the New Orleans Police Department was dispatched to Kabel Drive.[3] Detective Lymous conducted an initial interview with Kinnesha Overstreet, who stated that on multiple occasions in May 2007 Mr. Mills had engaged in the sexual conduct with her at her home while her parents were not present. Because of this conversation, Detective Lymous believed a sexual assault may have occurred.[4]

On July 20, 2007, Detective Lymous posted notice of warrant for arrest for Ernest Mills to Headquarters Crime Bulletin.[5] On the same day, the Children's Advocacy Center conducted a forensic interview with Kinnesha.[6] A urine test was also administered, which would return positive for Chlamydia.[7]

Ernest Mills was arrested at 310 9th Street on July 26, 2007.[8]

Mr. Mills was indicted by true bill filed in the Criminal District Court for the Parish of Orleans on September 13, 2007.[9] He with two counts of violating La. R.S. 14:42 (Aggravated Rape) and one count of violating La. R.S. 14:43.1 (Sexual Battery).[10] Mr. Mills was arraigned on September 19, 2007. He pled not guilty.[11]

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[1] See *State's Fourth Circuit Writ*, Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit F: NOPD Supplemental Report RE: Item No. G-21666-07 - Reporting Officer: Det. Corey Lymous
[2] *Id.*
[3] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit G: NOPD Report RE: G-21666-07, Rape - attached narrative by Lymous
[4] *Id.*
[5] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit H: Arrest Warrant, Rap Sheet of Ernest Mills
[6] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit G
[7] *Id.*
[8] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit I: NOPD Police Report - Item No. G-21666-07 - Narrative attached of Det. Lymous
[9] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit A: Indictment of Ernest Mills for two counts of Aggravated Rape 14:42
[10] *Id.*
[11] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B

After several hearings without counsel, Jason Williams enrolled as Mr. Mills's defense counsel on October 23, 2007.[12]

On October 26, 2007, Assistant District Attorney Isaka Williams sent Rayshika Overstreet a letter informing her that she had tried unsuccessfully to reach K.O. by telephone, and requested that Ms. Overstreet meet with A.D.A. Williams to set up an interview with K.O..[13] The letter also stated that "without [her] testimony and cooperation, this case *may* be dismissed and the defendant will be released from jail." (emphasis original). The letter ended, "If you fail to contact me, I will assume that you do not want to prosecute."[14] On November 27, 2007, the State filed Discovery.[15] This October 26th correspondence was not included in the delivery of Discovery to Ernest Mills and his defense counsel.

On November 27, 2007, Assistant District Attorney sent Rayshika Overstreet by certified mail a formal notification of failure to appear for interviews scheduled November 20, 2007, and November 26, 2007, and stressed the necessity of her and K.O.'s testimony to the ability to prosecute and prove their case.[16] A.D.A. Williams additionally stated, "if I do not hear from you before 5:00 p.m. on December 3, 2007, I will assume you do not want to proceed and this case **may be dismissed**." (emphasis original).[17]

On November 27, 2007, the State tendered its Answer to Discovery.[18]

The State filed its witness list on February 7, 2008.[19]

On February 21, 2008, a hearing was held on motions, and the State was ordered to turn over outstanding discovery.[20] Again, neither the original October 26th communication, nor the subsequent November 27th communication, were given to Ernest Mills in delivery of discovery.

On April 8, 2009, Mr. Mills's trial was set to begin. On the advice of his counsel Jason Williams, entered a guilty plea as to one count of violation of La. R.S. 14:42.1 (Forcible Rape).[21]

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[12] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B
[13] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit J: Letter from ADA Isaka Williams to unknown RE: failing to appear for your scheduled interviews
[14] *Id.*
[15] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B
[16] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit K: Letter from ADA Isaka Williams RE: scheduled interviews
[17] *Id.*
[18] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B: Orleans Parish Criminal District Court Docket Sheet
[19] *Id.*
[20] *Id.*
[21] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit L: Felony - Waiver of Constitutional Rights - Plea of Guilty Form filled out by Ernest Mills, Jr. on 4/8/09

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The State abandoned prosecution of one count of La. R.S. 14:42 (Aggravated Rape) and one count of La. R.S. 14:43.1 (Sexual Battery).[22] Mr. Mills was subsequently sentenced to serve 30 years at Department of Correction at hard labor.[23]

On April 26, 2011, Mills filed an initial *Application for Post-Conviction Relief Combined with Motion to Withdraw Guilty Plea*, represented by counsel Raleigh Ohlmeyer.[24] A hearing was held on the State's procedural default objection to Mr. Mills request for post-conviction relief on June 11, 2014.[25]

On July 1, 2014, the court denied Mr. Mills application for post-conviction relief.[26] He then filed for supervisory review, which would be denied by the Fourth Circuit on December 10, 2015.[27]

On December 10, 2015, Mr. Mills writ to the Supreme Court of Louisiana was denied as untimely filed pursuant to LA.S.CT. Rule X S5.[28]

In November 2021, Mr. Mills hired undersigned counsel to investigate his post-conviction relief options.[29] Undersigned counsel contacted and scheduled a meeting with Mr. Mills's former defense counsel, Jason Williams, and additionally requested the Orleans Parish District Attorney's case file on Mr. Mills.[30]

On November 10, 2021, Mr. Mills' prior counsel, District Attorney Jason Williams, filed a notice of recusal and ordered the Clerk of Court's office to notify the Attorney General of the State of Louisiana.[31]

On November 16, 2021, undersigned counsel enrolled in the matter.[32]

On August 10, 2022, undersigned counsel met with Jason Williams to discuss Mr. Mill's post-conviction claims. Undersigned counsel also showed Mr. Williams the October and November 2007 letters from the District Attorney's case file sent by then Assistant District Attorney Isaka Williams to K.O.'s mother informing her that she was not reporting to the District

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[22] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B
[23] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit C: Waiver of Constitutional Rights and Plea of Guilty Form filled out by Ernest Mills
[24] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit D: Docket No. 472-876 - Defendant's Original Application for Post-Conviction Relief C/W Defendant's Motion to Withdraw his Guilty Plea
[25] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit E: Motion to Enroll as Counsel of Record
[30] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit M: Letter to Orleans Parish District Attorney's Office, Re: Motion to Enroll
[31] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit B
[32] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit E: Motion to Enroll as Counsel

Attorney or participating in the case, and that charges would be dropped if she remained uncooperative. Mr. Williams stated that at no point during his handling of Mr. Mills's case had he seen the two letters.[33]

When Jason Williams was made aware of the letters, he stated that had he known K.O. was not cooperating, he would have advised Mr. Mills against accepting a plea would have instead advised him to take the case to trial.[34] His opinion was that these letters, and Mr. Overstreet's lack of attendance to scheduled meetings, indicated that she did not wish to take part in the ongoing prosecution.[35] Mr. Williams believed that under these circumstances, Mr. Mills would have taken his advice to forego a plea agreement and instead would have taken his case to trial.[36]

Based on this newly discovered evidence, Mr. Mills filed a *Second or Subsequent Uniform Application for Post-Conviction Relief* on February 15, 2023.[37] The district court ordered the Attorney General to file an answer or procedural objections by July 25, 2023.

The Attorney General filed *Procedural Objections to Second Application for Post-Conviction Relief* on July 25, 2023.[38] Mr. Mills filed a *Response to State's Procedural Objections* on November 2, 2023.[39]

On January 15, 2025, the district court overruled the Attorney General's procedural objection and granted Mr. Mills an evidentiary hearing.[40] The Attorney General gave oral notice of its intent to seek supervisory writs and moved for a stay of proceedings, which was granted.[41] The district court set a return date of February 13, 2025.[42]

The Attorney General filed *Application for Writ of Supervisory Review* on February 13, 2025.[43] Undersigned counsel filed its *Response in Opposition of the Louisiana Attorney General's*

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[33] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*, incorporated Exhibit N: Affidavit of Jason Williams
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] See *State's Fourth Circuit Writ* Exhibit 5: *Second Application for Post-Conviction Relief*
[38] See *State's Fourth Circuit Writ* Exhibit 6: *Procedural Objections to Second Application for Post-Conviction Relief*
[39] See *State's Fourth Circuit Writ* Exhibit 7: *Response to State's Procedural Objections*
[40] See *State's Fourth Circuit Writ* Exhibit 8, Minute Entry, January 15, 2025
[41] See *State's Fourth Circuit* Exhibit 9.1, State's Notice of Intent to File Writ Application and Motion for Stay of Proceedings
[42] *Id.*
[43] See Exhibit 1: *Original Writ Application of the Louisiana Attorney General submitted to the Fourth Circuit Court of Appeal*, with original exhibits 1-11

Application for Supervisory Writs on February 25, 2025, which the State did not include in its application before This Court.[44] The Fourth Circuit denied the State's writ on March 25, 2025.[45]

The State filed writs to this Honorable Court April 24, 2025.[46]

ISSUES PRESENTED

1. Whether a second application for post-conviction relief is procedurally barred under Louisiana Code of Criminal Procedure articles 930.4 and 930.8, despite raising a new, particularized *Brady* claim and presenting new evidence.
2. Whether a Brady claim following a guilty plea is a legally cognizable where the suppressed evidence was the cause without which the defendant would not have entered into a guilty plea.

SUMMARY OF THE ARGUMENT

The district court did not err in granting Mr. Mills an evidentiary hearing on his instant *Application for Post Conviction Relief*. Mr. Mills's instant application is based on the discovery of new evidence, letters from the District Attorney's Office to the complaining victim and her mother after she failed to show up to multiple scheduled meetings and an affidavit by former counsel, Jason Williams. When shown these letters, Williams attested that he had never seen them, and they indicated to him the complaining victim was no longer cooperating with the State. Mr. Mills's Williams further stated had he known this information he would not have advised Mr. Mills to except a plea and believed Mr. Mills would have elected to go to trial pursuant to that advice.

The lower court made the factual determination that these letters were new evidence, and therefore legally meet the exception to the two-year time bar under Louisiana Code of Criminal Procedure Article 930.8(A)(1). The lower court likewise found that Mr. Mills's application presented a new *Brady* claim, met the exception to the bar on repetitive applications under Louisiana Code of Criminal Procedure Article 930.4(D), and ordered an evidentiary hearing.

The State continues to argue that Mr. Mills's application has not overcome the procedural bars of articles 930.4 and 930.8, though both the district and appellate courts have made and upheld

[44] See Exhibit 2. (Note: by Rule X S2(6)(c) requires applicants include "An appendix, separately bound from the writ application, containing: ... Copies of briefs of all parties filed in the court of appeal relevant to the issues raised by the application").
[45] See State's Appx. 3- Judgment dated March 25, 2025.
[46] See States's *Application for Supervisory Writ*.

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the factual determination that the evidence and claim presented do. These are factual determinations, subject to review of abuse of discretion. The lower court did not abuse its discretion in finding that Mr. Mills application is not procedurally barred or by ordering an evidentiary hearing on the matter.

The State also asserts a new objection before this Court which was not advanced in the lower courts—that Mr. Mills is not entitled to assert a *Brady* claim in order to attack his plea. The State relies solely on federal case law, and more particularly, the dissenting opinion from the Fourth Circuit's judgment. However, state case law indicates that where a defendant makes a showing that where the suppressed evidence was the cause without which the defendant would not have entered into a guilty plea, and if having received the suppressed material, he would have otherwise gone to trial had the defendant, a plea may be withdrawn. Such is the case here.

LAW AND ARGUMENT

I. Ernest Mills's Second PCR Application is not procedurally barred, as it meets the exceptions to overcome the bars laid out in both La. C.Cr. P. article 930.4 and article 930.8.

The State urged that, "Louisiana postconviction 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. *State v. Campbell*, 2024-00885 (La. 4/15/25)" to argue that Mr. Mills is "twice over" procedurally barred.[47] However, suppressed *Brady* evidence discovered years after trial proceedings is exactly the type of "narrow circumstances" that warrant such successive applications.

A. Ernest Mills's instant application raises a new, particularized *Brady* claim, meaning it is not a repetitive claim at all.

The State argues that Mr. Mills's instant *Brady* claim is procedurally barred because his initial application posed a Brady claim. The State however fails to be forthcoming with the fact that Mr. Mills's initial post-conviction application did not raise a particularized *Brady* claim and the claim he now raises is both new and unique. In his initial application, Mr. Mills essentially shelled a *Brady* claim and advised the court that he had not yet received the District Attorney's file and therefore could not establish his claim. He wrote

[47] See States's *Application for Supervisory Wri, p. 10*

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> Here, because Mr. Mills is still waiting on a return of his public records request, his Brady claim is not yet ripe. Mr. Mills expressly reserves the right to supplement his filing should evidence of the claim present itself.[48]

In an effort to prevent default of his post-conviction claims, Mr. Mills raised the possibility of a *Brady* claim in his initial application, but he had not yet received his file from the District Attorney's office. The documents disclosed pursuant to that request contained no *Brady* evidence—and did not include the letters proffered in the instant *Application*—and Mr. Mills did not supplement to particularize and substantiate that claim. Importantly, Mr. Mills's initial application did not specify the *Brady* information that had been withheld by the State, or even hint at what information he suspected may have possibly been withheld. Therefore, his particularized claim now cannot be deemed as repetitive. Under such logic a defendant who raised a *Brady* claim based on withheld exculpatory witness statements could not later bring a *Brady* claim if he or she discovered withheld exculpatory forensic reports. Mr. Mills's current *Brady* claim is based on new and newly discovered evidence, which makes it a new and unique claim. Both the district and appellate courts acknowledged this and determined that Mr. Mills's instant *Brady* claim was not procedurally barred by article 930.4. Their determination was sound.

B. Mr. Mill's instant application presents new evidence, through both the discovery of the suppressed letters to the victim and through the affidavit of Mr. Mill's trial attorney, Jason Williams.

Louisiana Code of Criminal Procedure article 930.8(A)(1) allows for an *Application for Post Conviction Relief* more than two years after the date of final conviction in scenarios where, "the application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys.", La. C.Cr.P. art 930.8(A)(1).

Mr. Mills instant *Application* arises out of two letters sent by the District Attorney's Office to the mother of the complaining witness prior to trial indicating that if she continued to be uncooperative, the claims against Mr. Mills might ultimately be dropped. It was not until undersigned counsel requested Mr. Mills's District Attorney file in 2021 that it became aware of the letters to Rayshika Overstreet and showed them to Jason Williams, Mr. Mills's trial counsel, who attested to the fact that he had not seen them at any point while representing Mr. Mills pretrial.[49] Jason Williams also attested that had he seen the letters during his representation of Mr.

[48] See State's Appendix 1, p. 030
[49] See State's Appendix 1, Exhibit T: Mill's Second Application Ex. N- Affidavit of Jason Williams, p. 30

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Mills, he would not have advised Mr. Mills to plead guilty, but instead go to trial.[50] He believed that Mr. Mills would have heeded this advice.[51]

The State, as it already argued before the lower courts, again argues that Mr. Mills did not meet the due diligence requirements of La. C.Cr. P. art 930.8(A)(1). As it has already urged before the Fourth Circuit, the State avers that Mr. "Mills does not even engage with his burden to show 'diligence in attempting to discover'" the evidence to support his suspicion that K.O. was not cooperating with the State prior to trial.[52] In its brief before this Honorable Court, the State does not, as it did in its writ to the Fourth Circuit, go so far as to accuse Mr. Mills of having had the letters since his initial records request of his D.A. file in 2011, and Mr. Mills is grateful.[53]

This therefore means that the State acknowledges, as Mr. Mills pointed out to the Fourth Circuit, that Mr. Mills did not receive the letters in the 2011 response to his public records request. Yet, the State has not yet acknowledged that Mr. Mills could not have exercised more diligence than requesting his DA file less than two years after his conviction became final in order to attempt to develop his claims. Apparently, the State would require that in order to meet the diligence requirement Mr. Mills should have continually requested the DA file until the State chose to disclose the letters.

It appears that the State did not supply the letters in response to a public records request until it was submitted on Mr. Mills's behalf by counsel. The State now suggests that Mr. Mills's inability to procure counsel until 2022 was a lack of diligence. The Fourth Circuit has already accepted Mr. Mills's show of diligence and rejected the State's argument. The district court has already accepted the letters withheld, and the supporting affidavit of Mr. Williams, as new evidence sufficient to meet the exception to the two-year time bar and ordered an evidentiary hearing on Mr. Mills's claim. The lower courts did not abuse their discretion in making the factual determination that Mr. Mills presented new evidence and exercised the requisite diligence in discovering that evidence to meet his burden.

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[50] *Id.*
[51] *Id.*
[52] See *States's Application for Supervisory Writ*, p. 11.
[53] See State's Appendix 1, p. 7

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II. Ernest Mills's Brady claim does not fail as a matter of law under Louisiana jurisprudence, as *State v. Waguespack* and *State v. McGuire* leave open the possibility of post plea *Brady* claims.

In its last argument, the State raises a new argument that it did not urge before the lower courts. The State relies on *United States v. Ruiz* to assert that the State is not required to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant, and Mr. Mills therefore cannot bring a *Brady* claim as a basis to withdraw his plea. 536 U.S. 622, 633 (2002).

Ruiz is correct in that it acknowledges the severity of a defendant's decision to plead guilty and forgo certain constitutional rights, stating, "Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is "voluntary" and that the defendant must make related waivers "knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences." *United States v. Ruiz*, 536 U.S. 622, 29 (2002)(citing *Brady v. United States,* 397 U.S. 742, 748 (1970); see also *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). In Mr. Mills case, the fact that the alleged victim was not cooperating with the State and there was likelihood that she would not show up to trial, is a circumstance incredibly relevant to whether Mr. Mills knowingly entered a plea, and one that goes directly to whether Mr. Mills knowingly entered a guilty plea.

There are several distinctions between *Ruiz* and Mr. Mills's case which must be pointed out. In *Ruiz*, prosecutors offered the defendant a "fast track plea" where *Ruiz* waived indictment, trial, and an appeal. *Id.* at 625. As support for its ruling, the Court noted that requiring pre-plea disclosure of impeachment evidence imposed a burden "upon the Government by requiring its provision well in advance of trial (often before trial preparation begins) [which] can be serious, thereby significantly interfering with the administration of the plea-bargaining process." *Id.* at 633. (See also, "It could require the Government to devote substantially more resources to trial preparation prior to plea bargaining, thereby depriving the plea-bargaining process of its main resource-saving advantages. *Id.* at 632.)

This is not the case here. Mr. Mills did not change his plea to guilty until the morning his trial was set to begin.[54] Not only would the disclosure of impeachment evidence not have created any additional burden on the State, but, in fact, the State was already in violation of *Brady* for not

[54] See State's Appendix 1, Exhibit H: Mills's Second Application Ex. B- Docket through Nov. 16, 2021, p. 61

having disclosed the letters prior to trial. Given the posture of Mr. Mills's case at the time of his plea, the State was already required by La. C.Cr.P. arts 723 and 729.3, and Louisiana Rule of Professional Conduct 3.8(d), to have turned over the letters in question to the defense as part of its pre-trial discovery obligations. The State, in its application for writ, stated that once Jason Williams assumed representation of Mr. Mills in October of 2007, "the State regularly turned over discovery to Mills."[55] The State has all but admitted to its violation of ongoing discovery obligations leading up to Mr. Mills's trial. The State also acknowledged that it was not until the morning of trial that Mr. Mills entered a guilty plea.[56]

The *Ruiz* Court also opined, "It is particularly difficult to characterize impeachment information as critical information of which the defendant must always be aware prior to pleading guilty given the random way in which such information may, or may not, help a particular defendant. The degree of help that impeachment information can provide will depend upon the defendant's own independent knowledge of the prosecution's potential case." 536 U.S. at 630. While this may be true for many cases, in Mr. Mills's case it was clear to all parties that the case would hinge on the testimony of the alleged victim. The only physical evidence the State had to present at trial was the circumstantial evidence that both K.O. and Mr. Mills tested positive for chlamydia. However, there is no existing medical or forensic way to prove that one individual contracted an STI from another individual. Also, given the fact that the defense would not have been able to question K.O. about or present evidence of prior sexual conduct, they could also not test K.O.'s previous sexual partners for chlamydia. The fact that both had it is merely circumstantial.

While the State relies predominantly on United States Supreme Court and United States federal Fifth Circuit case law, Louisiana courts have indicated there are scenarios in which a *Brady* violation may vitiate the voluntariness of a plea. The Second Circuit, in *State v. McGuire*, acknowledged that discovery violations involving the State's failure to disclose exculpatory evidence do not require reversal unless they have actually prejudiced the defendant. 50,074 (La.App. 2 Cir. 9/30/15, 18–20); 179 So.3d 632, 644; see also *State v. Carter,* 2010–0614 (La.1/24/12), 84 So.3d 499, *cert. denied, Carter v. Louisiana,* 133 S.Ct. 209 (2012). The court went on to state that only when the defendant is lulled into a misapprehension of the strength of

[55] See *State's Application for Supervisory Writ*, p. 5
[56] *Id.*

the State's case through the prosecution's failure to disclose timely or fully, and the defendant suffers prejudice when the undisclosed evidence is used against him, that basic unfairness results which constitutes reversible error. *Id.* (citing *State v. Johnson*, 48,325, p. 21 (La.App. 2 Cir. 9/18/13); 135 So.3d 705, 717, *writ denied,* 2013-2451 (La. 4/11/14); 137 So.3d 12130.

Relying the First Circuit's decision in *State v. Waguespack*, the McGuire court held "the State's failure to supplement discovery responses prior to a defendant's guilty plea does not vitiate the defendant's consent to the plea agreement where there is no showing that the evidence was not the cause without which defendant would not have entered into a guilty plea and there was no indication that, had the evidence been disclosed to the defense, the result of the guilty plea proceeding would have been any different." *Id.* (citing *Waguespack,* 589 So.2d 1079 (La.App. 1 Cir.1991) *writ denied,* 596 So.2d 209 (La.1992)). The court ultimately denied relief, determining that the relevant evidence was timely disclosed—though not timely delivered to the defense—and more importantly, there was no indication that the defendant was misled about the strength of the State's case. *Id.* at 644. The court concluded "there [was] no evidence whatsoever that would suggest that McGuire would have otherwise gone to trial on the seven drug trafficking charges or that the result here would have been any different had the defendant received the surveillance recording prior to his guilty plea." *McGuire* at 645. In *Waguespack*, on which the *McGuire* court relied, the First Circuit court denied relief after determining that the strength of the suppressed evidence—statements made by a witness—"was not the cause without which defendant would not have entered into the guilty plea; and there is no indication that, had the evidence been disclosed to the defense, the result of the guilty plea proceeding would have been different." *State v. Waguespack*, 589 So.2d 1079, 1084 (La. Ct. App.1991), *writ denied*, 596 So.2d 209 (La.1992). The court also reasoned that none of the defendant's eight indictments were based on the statements at issue. *Id.* at 1803.

The same is not true for Mr. Mills. Ernest Mills indictment stemmed solely from the statements of K.O. The strength of the State's case rested on her testimony at trial. The only other evidence of the alleged crime were chlamydia results that, again, there was no way to prove were connected without K.O.'s testimony. The State in brief mischaracterized a portion of Mr. Mills's instant application, which undersigned counsel would like to take the opportunity to clarify. The State asserts that

> All that notwithstanding that Williams actually advised Mills that the evidence "that both parties tested positive for the STI chlamydia," once shown to a jury, "would be taken as conclusive proof" that Mills "had intercourse with" K.O. and that "there was no way for him to prove that he had not given it to her." [57]

This advice given by Jason Williams was predicated on the impression that K.O. would testify that she got chlamydia from Mr. Mills having intercourse with her. Jason Williams knew, as has been repeated, that because there is no scientific way to trace the source of an STI like chlamydia from the recipient to the person who infected them, if K.O. testified that she had received chlamydia from Ernest Mills, the defense would have no way to disprove that. This reality made the "misapprehension of the strength of the State's case through the prosecution's failure to disclose timely or fully" that the victim was not being cooperative and perhaps no longer wished to press charges against Mr. Mills the "cause without which defendant would not have entered into the guilty plea cause without which defendant would not have entered into the guilty plea" and the result of the guilty plea proceeding would have been different." See *Johnson*, 135 So.3d at 717; *Waguespack*, 589 So.2d at 1084.

Jason Williams advised Mr. Mills to plead guilty because he knew that there was no way to overcome circumstantial STI test results if the alleged victim got on the stand and told a jury that Mr. Mills had given it to her. He did not know that the State had difficulty getting both K.O. and her mother to come in for meetings and had to send them multiple notices that their lack of cooperation could jeopardize prosecution. Mr. Williams likewise did not know of additional attempts to contact K.O. in December 2008 and January of 2009, which the State included in its Fourth Circuit writ, but has left out of its writ to This Court.[58] The note is a copy of some type of phone messaging log which shows that in December of 2008, someone from the DA's office contacted a "Jenna" in order to try to get K.O.'s mother to call their office.[59] No documentation that these meetings actually occurred or that the victim became a cooperative witness were submitted by the District Attorney. The State provides no evidence which actually memorialized a meeting such as attorney's notes or a memo regarding the call. Again, on January 20, 2009, the log shows that the District Attorney's office called the victim's mother, but evidences only the possibility of a meeting to be set and not that a meeting happened. In fact, this documentation shows that the District Attorney was attempting to set up a meeting with the victim's mother the

[57] See *State's Application for Supervisory Writ*, p. 8
[58] See *State's Fourth Circuit Writ* Exhibit 6: *State's Procedural Objections to Defendant's Second PCR Application*, incorporated Exhibits 1 and 2
[59] *Id.*

next day but did not know their own schedule to set a proper time for the meeting.[60] Much in the same way that the victim and her mother failed to show up to two meetings scheduled in October and November of 2007 without any notice, they very well may have failed to appear on this date as well. The State offered no evidence to the contrary. Importantly, there is no minute entry or transcript in the record showing that either were present the day of the trial when Mr. Mills took his plea. In fact, it is the understanding of undersigned counsel, that neither were present during any of the pre-trial motions or the day of trial.

Jason Williams had no knowledge or inkling that the alleged victim in the case was uncooperative and that her presence at trial was unlikely. Had he known that the State did not have the necessary witness to met its burden, he never would have advised Mr. Mills to enter a plea of guilty. Mr. Mills was induced to plead guilty solely on the misapprehension that the alleged victim would testify that he had given her chlamydia and he would not be able to prove otherwise. Because the State did not timely disclose its multiple, ongoing attempts to contact the alleged victim to no avail, Mr. Mills was "lulled into a misapprehension of the strength of the State's case against him", and had he had adequate knowledge of the relevant circumstances, the "the result of the guilty plea proceeding would have been different." *McGuire*, 179 So.3d at 644.

It is worth reiterating to this Court that by the time Mr. Mills changed his plea from not guilty to guilty, trial was set to begin. The State therefore had long been in violation of its *Brady* obligations to the defense to disclose impeachment evidence. All of the *Brady* evidence on which Mr. Mills now relies should have been in his trial counsel's hands before he pleaded guilty. While *Ruiz* relies on the reasoning that expanding *Brady* claims would burden the administration of the plea-bargaining process well in advance of trial, Mr. Mills was not in advance of his trial. *Ruiz,* 536 U.S. at 633. Until the very last minute when he changed his plea, Mr. Mills and his counsel were kept in the dark as to the reality that the State's witness would not be there to testify against him. This intentionally created misapprehension, based on an ongoing *Brady* violation by the State, let him to unknowingly plead guilty.

Ironically, the State urged in the opening paragraph of its argument that the Court's "intervention is necessary to put an end to this textbook abusive successive post-conviction relief application", while completely ignoring its own repeated abuse of its *Brady* obligations, both

[60] *Id.*

leading up to Mr. Mills's trial and in its failure to disclose the letter pursuant to his 2011 public records request. It would seem that the Court's intervention is necessary now to prevent the State from violating it's *Brady* obligations in pre-trial proceedings and weaponizing those violations to create misapprehensions of the strength of the State's case, thereby inducing innocence defendant to enter guilty pleas in the final moments before their trials. Mr. Mills was one such victim of this tactic and should now be able to withdraw his plea.

CONCLUSION

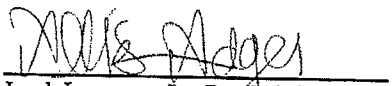
Mr. Mills's instant application is not procedurally barred because it presents new evidence which meets article 930.4(A) and his application raises a new claim that Mr. Mills did not inexcusably fail to raise in his initial *Application.*

The State's objections to Mr. Mills's *Application*, both on procedural grounds and on the merits, have thus far been rooted conjecture and are not substantiated by any reliable evidence. If there is such evidence, particularly as to Mr. Mills's lack of diligence, the State has not presented it. Mr. Mills on the other hand has presented both newly discovered, withheld letters and the sworn to word of his trial counsel that these letters were not known to the defense at the time of trial, and that the outcome of his proceedings would have been different had they rightly been disclosed to him. Given that the State has not provided any evidence to support the factual disputes it has raised, those issues cannot be resolved on the pleadings and require the court to order an evidentiary hearing for the taking of testimony or other evidence.

Finally, as a matter of law, Louisiana courts have not conclusively foreclosed the ability to withdraw a guilty plea based on the discovery of *Brady* evidence. Both *State v. Waguespack,* 589 So.2d 1079 (La.App. 1 Cir.1991) *writ denied,* 596 So.2d 209 (La.1992) and *State v. McGuire*, 50,074 (La.App. 2 Cir. 9/30/15, 18–20); 179 So.3d 632 have acknowledged that in cases where there is a showing that the evidence was the cause without which defendant would not have entered into a guilty plea and there is indication that, had the evidence been disclosed to the defense, the result of the guilty plea proceeding would have been different", then there may be grounds for a defendant to withdraw their plea.

The lower court, within its discretion, has granted Mr. Mills an evidentiary hearing, wherein Mr. Mills will be given the opportunity to meet the burden laid out by *Waguespack* and *McGuire*. The lower court rightly granted Mr. Mills an evidentiary hearing, it did not abuse its discretion in doing so, and this Court should affirm that ruling.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *RESPONSE IN OPPOSITION OF THE LOUISIANA ATTORNEY GENERAL'S APPLICATION FOR SUPERVISORY WRITS* has been filed with the Clerk of Court and has been served on the Fourth Circuit Court of Appeal, Orleans Parish District Court, and the Attorney General's Office on this 27th day of May 2025.

COUNSEL OF ERNEST MILLS, JR.

STATE OF LOUISIANA } SS PARISH OF ORLEANS

ITEM NO.: G-21666-07 CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

FIRST COUNT: THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT, **that, between the 1st day of May, 2007 and the 31st day of May, 2007,** one **ERNEST MILLS,** COMMITTED AGGRAVATED RAPE ON K.O., date of birth 5/20/96, AN INDIVIDUAL UNDER THE AGE OF THIRTEEN YEARS, in the Parish of Orleans, aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

SECOND COUNT: And now the Said GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT **that, between the 1st day of May, 2007 and the 31st day of May, 2007,** one **ERNEST MILLS,** COMMITTED AGGRAVATED RAPE ON K.O., date of birth 5/20/96, AN INDIVIDUAL UNDER THE AGE OF THIRTEEN YEARS, in the Parish of Orleans, aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

District Attorney for the Parish of Orleans

313-20(2-6-04)

EXHIBIT 1

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PARISH OF ORLEANS

STATE OF LOUISIANA } SS

ITEM NO.: G-21666-07

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THIRD COUNT: And now the Said GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT, **that, between the 1st day of May, 2007 and the 31st day of May, 2007,** one **ERNEST MILLS**, COMMITTED SEXUAL BATTERY ON K.O., date of birth 5/20/96, AN INDIVIDUAL UNDER THE AGE OF THIRTEEN YEARS, in the Parish of Orleans, aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

District Attorney for the Parish of Orleans

313-20(2-6-04)

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF Orleans

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in accordance with the law, in and for the above referenced Parish and State, personally came and appeared:

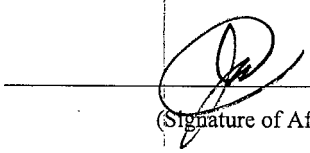
JASON WILLIAMS

who, having first been duly sworn, state under oath that:

On August 10, 2022, I, District Attorney Jason Williams of Orleans Parish, met with attorneys Jacob Longman and Jennifer Cameron, defense counsel for Ernest Mills. Mr. Mills is a prior client of mine from my time as a defense attorney, before I became the District Attorney of Orleans Parish. During the meeting, attorneys Longman and Cameron revealed letters they received as part of the Orleans Parish District Attorney ("DA's Office") file in the case against Mr. Mills. These letters showed attempts by the DA's Office to obtain the presence for trial of the complainant. These occurred after her lack of attendance indicated that she did not wish to take part in the ongoing prosecution.

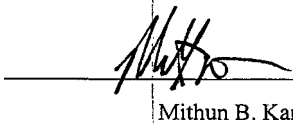
Neither these letters nor this information was revealed to Mr. Mills' defense team. Mr. Mills thus entered a plea without knowing the contents of these letters or their existence. Had I known that the complainant in this case was not compliant with the prosecution of Mr. Mills, I would not have advised my client at the time to take a plea deal, and it is my professional opinion that Mr. Mills would have heeded my legal advice.

Jason R. Williams



(Signature of Affiant)

SWORN TO AND SUBSCRIBED before me this 16th day of December, 2022.



Mithun B. Kamath
Bar Roll #35504
My Commission Expires at Death

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