

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2017 KW 0326

VERSUS

DONALD RAY MAGEE, JR.

MAY 25 2017

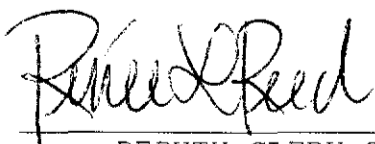
In Re: Donald Ray Magee, Jr., applying for supervisory writs,
22nd Judicial District Court, Parish of Washington,
No. 2011-CR5-114111.

BEFORE: WHIPPLE, C.J., GUIDRY AND McCLENDON, JJ.

WRIT DENIED. In the instant case, the State presented evidence at trial that on the date of the offense the victim was more than three years younger than relator. Based on these facts, the judge was bound by law to sentence relator under the enhanced penalty contained at La. R.S. 14:43.1(C)(2). Thus, even if defense counsel had objected, the result of the proceedings would not have been different. Therefore, relator did not meet his burden of proving he was prejudiced by defense counsel's conduct. See La. Code Crim. P. art. 930.2; **Strickland v. Washington**, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984). If the substantive issue an attorney failed to raise has no merit, then the claim the attorney was ineffective for failing to raise the issue also has no merit. **State ex rel. Roper v. Cain**, 99-2173 (La. App. 1st Cir. 10/26/99), 763 So.2d 1, 5 (*per curiam*), writ denied, 2000-0975 (La. 11/17/00), 773 So.2d 733. Accordingly, the district court did not err by denying the "motion for postconviction relief and in the alternative motion to correct illegal sentence."

PMc
VGW
JMG

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT
FOR THE COURT