

**STATE OF LOUISIANA** \* **NO. 2017-K-0481**  
**VERSUS** \* **COURT OF APPEAL**  
**GEORGE CRAWFORD** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

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APPEAL ON APPLICATION FOR WRITS DIRECTED TO  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 376-596, SECTION "G"  
Honorable Byron C. Williams, Judge

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**JUDGE SANDRA CABRINA JENKINS**

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(Court composed of Judge Edwin A. Lombard,  
Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins)

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**WRIT GRANTED**

**SEPTEMBER 20, 2017**

Relator/petitioner seeks review of the district court's March 31, 2017 judgment summarily denying his application for post-conviction relief. For the following reasons, we grant petitioner's writ application and remand to the district court for an evidentiary hearing on the merits of the claims in his application for post-conviction relief.

On January 7, 1997, petitioner and a co-defendant were convicted of the first-degree murder of Sherri Bailes and were sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On appeal, this Court affirmed both convictions and sentences. *State v. Lindsey*, unpub., 97-1098 (La. App. 4 Cir. 3/10/99), 737 So.2d 978, writ denied, 48 So.2d 463 (La. 10/15/99).

On October 12, 2000, petitioner filed an application for post-conviction relief asserting four claims: 1) the evidence was insufficient to support his conviction; 2) the State failed to produce *Brady* material; 3) ineffective trial counsel; and 4) ineffective appellate counsel. The State filed procedural objections to the application. After denying the State's procedural objections, the district court held an evidentiary hearing on the merits of the application and, subsequently, denied petitioner's application. Petitioner then sought review from

this Court, which granted writs to review his claims for post-conviction relief but, ultimately, denied relief. *State v. Crawford*, 02-2048 (La. App. 4 Cir. 2/12/03), 848 So.2d 615, *writ denied*, 03-1085 (La. 3/12/04), 869 So.2d 815.<sup>1</sup>

On July 29, 2016, through counsel, petitioner filed his second application for post-conviction relief asserting two claims: 1) prosecutorial misconduct; and 2) actual innocence. In support of his claims, petitioner submitted an affidavit from Shirley Davis, one of the two eyewitnesses who testified at trial, dated and signed on June 8, 2016.<sup>2</sup> In the affidavit, Ms. Smith recants her trial testimony that she saw George Crawford on the night of Sherri Bailes' murder, and she attests that she felt pressured to identify him as the second shooter days after a NOPD detective showed her one photograph of a man named George Crawford as being a person who was with Larry Lindsey, whom she did know and identify as a shooter, during the murder.

On February 7, 2017, the State filed procedural objections to petitioner's successive application based on La. C.Cr.P. arts. 930.4 and 930.8, arguing that petitioner failed to exercise due diligence in pursuing his claim involving the recantation of testimony or he inexcusably omitted his claim from his prior application for post-conviction relief. In response, petitioner filed a traverse and reply to the State's procedural objections.

On March 31, 2017, the district court heard arguments on the State's procedural objections to petitioner's application for post-conviction relief. Petitioner's counsel argued that the recantation within Ms. Smith's affidavit is new evidence, sufficient to establish a new claim for relief and to be considered after an

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<sup>1</sup> Petitioner then pursued federal habeas relief to no avail.

<sup>2</sup> On or about August 8, 2016, petitioner's counsel filed a motion to amend and supplement the application for post-conviction relief with Ms. Smith's affidavit, which counsel stated had been demarcated as Exhibit 1 throughout the application but, due to the inadvertence of counsel, not properly attached.

evidentiary hearing on the merits of the application. After hearing arguments from both parties, the district court summarily denied petitioner's application for post-conviction relief, stating that he failed to raise a new or different claim that can meet the standard articulated by La. C.Cr.P. art. 930.4, and that his claim of actual innocence is not sufficiently supported by the affidavit of Ms. Smith.

Petitioner now seeks review of the district court's March 31, 2017 ruling denying his application for post-conviction relief following the hearing on the State's procedural objections to the application.

First, in the district court's ruling in open court, we note that the district court incorrectly remarked that petitioner "filed two previous applications for post-conviction relief and his most recent application was denied on July of 2016." The record before us reflects that the instant application for post-conviction relief that the district court ruled upon is the second application filed by petitioner on July 29, 2016. Moreover, this is the first time that petitioner has raised these two claims for relief and submitted Ms. Smith's affidavit in support. Thus, we find the district court erred in granting the State's procedural objections to petitioner's application or summarily denying the application on the basis that it is impermissibly repetitive pursuant to La. C.Cr.P. art. 930.4.

Petitioner also argues that the district court erred in summarily finding and ruling that petitioner's claims based on the recanted testimony of a trial witness are inherently suspect and incapable of supporting an application for post-conviction relief. For the following reasons, we find merit in this argument and remand for an evidentiary hearing on the merits of petitioner's application.

Louisiana jurisprudence holds that "recantations are highly suspicious and, except in rare circumstances, a motion for new trial should not be granted on the basis of a recantation." *State v. Prudholm*, 446 So.2d 729, 736 (La. 1984).

Nonetheless, Louisiana jurisprudence has not adopted a bright line rule that the testimony of a recanting witness can never be used to undermine a conviction. Moreover, in our review of cases concerning recanted testimony, other factors have contributed to the denial of the motion for new trial or application for post-conviction relief or an evidentiary hearing has been held prior to such ruling. *See Prudholm, supra* (finding no error in denial of new trial after evidentiary hearing presenting testimony of recanting witness); *State v. Richardson*, 16-143 (La. App. 3 Cir. 11/2/16), 206 So.3d 1179 (finding evidentiary hearing on new trial motion revealed suspect circumstances surrounding affidavit of recanting witness); *State v. Quang T. Do*, 13-290 (La. App. 5 Cir. 11/19/13), 130 So.3d 377 (finding that trial court conscientiously observed and weighed testimony of recanting witness at hearing on motion for new trial prior to denying relief).

In *State v. Hurst*, 15-455 (La. 9/18/15), 209 So.3d 701, the Louisiana Supreme Court granted writs on petitioner's application for post-conviction relief in which he asserted claims of newly discovered evidence based on the recantation of witness testimony and alleged police and prosecutorial conduct. The Court found that the district court erred in denying the application as procedurally barred and the court of appeal erred in denying writs based on petitioner's failure to allege that the claim was predicated on facts not known to the trial attorney. The Court remanded the matter to the district court for an evidentiary hearing on the merits of petitioner's claims, reasoning as follows:

The affiant stated that he had not previously revealed the information to any investigator or attorney representing relator. Under the circumstances, it is reasonable to infer that trial counsel was unaware of the facts upon which the instant claim is based, although relator did not explicitly allege that trial counsel lacked the knowledge. Relator's application and supporting materials sufficiently demonstrate that the facts upon which his claims are predicated were not known to relator or his prior attorney and

therefore the exception to the post-conviction limitations period applies.

*Hurst*, 15-455, pp. 1-2, 209 So.3d at 702.

In the instant application for post-conviction relief, as in *Hurst*, a key eyewitness has recanted her trial testimony against petitioner and has alleged police misconduct. Moreover, we find that petitioner argued persuasively that the nature of this new evidence is not such that should have been discovered by the exercise of due diligence and, thus, it is not untimely pursuant to La. C.Cr.P. art. 930.8(A)(1). As in *Hurst*, the application sufficiently demonstrates that the facts upon which petitioner's claims are predicated were not known to him or his prior counsel, even though petitioner has not explicitly alleged that prior counsel lacked knowledge; also, the affiant states that she did not previously reveal any of the contained statements to anyone prior to submitting the affidavit.

For all the reasons stated above, we granted petitioner's writ and remand this matter to the district court for an evidentiary hearing on the merits of the claims asserted in his application for post-conviction relief.

**WRIT GRANTED**