

**STATE OF LOUISIANA  
COURT OF APPEAL, SECOND CIRCUIT  
430 Fannin Street  
Shreveport, LA 71101  
(318) 227-3700**

No. 55,503-KW

STATE OF LOUISIANA

VERSUS

JERRY WAYNE TURNER

FILED: 08/18/23

RECEIVED: BY EMAIL 08/18/23

On application of Jerry Wayne Turner for SUPERVISORY WRIT in No. 68,709 on the docket of the Twenty Sixth Judicial District, Parish of BOSSIER, Judge Charles A. Smith.

INNOCENCE PROJECT NEW ORLEANS  
Kirschelle Faith McGowan

Counsel for:  
Jerry Wayne Turner

John Schuyler Marvin  
Richard Russell Ray

Counsel for:  
State of Louisiana

Before COX, THOMPSON, and ELLENDER, JJ.

**WRIT GRANTED; REMANDED WITH INSTRUCTIONS.**

Applicant, Jerry Wayne Turner, seeks supervisory review of the trial court's July 10, 2023, denial of his "Application for Post-Conviction DNA Testing." Turner seeks DNA testing, following armed robbery and aggravated rape convictions at which the State's case rested on identification testimony and Turner presented a defense of misidentification.

La. C. Cr. P. art. 926.1(C) and (D) state:

C. In addition to any other reason established by legislation or jurisprudence, and whether based on the petition and answer or after contradictory hearing, the court shall dismiss any application filed pursuant to this Article unless it finds all of the following:

(1) There is an articulable doubt based on competent evidence, whether or not introduced at trial, as to the guilt of the petitioner and there is a reasonable likelihood that the requested DNA testing will resolve the doubt and establish the innocence of the petitioner. In making this finding the court shall evaluate and consider the evidentiary importance of the DNA sample to be tested.

(2) The application has been timely filed.

(3) The evidence to be tested is available and in a condition that would permit DNA testing.

D. Relief under this Article shall not be granted when the court finds that there is a substantial question as to the integrity of the evidence to be tested.

In this matter, we find that the trial court’s denial of Turner’s “Application for Post-Conviction DNA Testing,” was in error. See, *State v. Debrow*, 13-1814 (La. 5/23/14), 138 So. 3d 1229; *State ex rel. Ford v. State*, 12-1860 (La. 2/8/13), 107 So. 3d 640; *State ex rel. Tran v. State*, 12-1275 (La. 10/8/12), 99 So. 3d 1005; *State ex rel. Jackson v. State*, 11-0394 (La. 5/25/12), 90 So. 3d 384; *State v. Stokes*, 10-1387 (La. 2/11/11), 56 So. 3d 1008 (holding that the trial court erred in denying the application for post-conviction relief solely on the alleged failure to establish articulable doubt and ordering the district court to investigate the availability and integrity of the allegedly untested evidence). In accordance with the clear language of La. C. Cr. P. art. 926.1(D), the trial court is tasked with making a finding “that there is a substantial question as to the integrity of the evidence to be tested.”

Here, the trial court did not make a finding regarding the integrity of the evidence. This writ is hereby granted and the ruling of the trial court is reversed. The district court is directed to hold a hearing to first evaluate the integrity of the physical evidence sought to be tested and to order DNA testing in the event that it finds “there is a reasonable likelihood that the requested DNA testing will resolve the doubt and establish the innocence of the petitioner.” La. C. Cr. P. art. 926.1(C) and (D).

Shreveport, Louisiana, this 19 day of September, 2023.

JRT                      JSC                      DJE

FILED: September 19, 2023

Shandra Jaylor  
DEPUTY CLERK