

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

ANDRE DEMERY (#126262),
Petitioner

CIVIL ACTION NO. 5:17-CV-524-P

VERSUS

JUDGE ELIZABETH E. FOOTE

DARREL VANNOY,
Respondent

MAGISTRATE JUDGE PEREZ-MONTES

MEMORANDUM ORDER

Before the Court is a petition for writ of habeas corpus (28 U.S.C. § 2254) filed by pro se Petitioner Andre Demery (“Demery”) (#126262). Demery is an inmate in the custody of the Louisiana Department of Corrections, incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. Demery challenges the sufficiency of the evidence for his aggravated rape conviction in the First Judicial District Court, Caddo Parish.

I. Background

Demery was convicted of aggravated rape and sentenced to the mandatory term of life imprisonment. See State v. Demery, 49,732 (La. App. 2 Cir. 5/20/15), 165 So. 3d 1175, 1176, writ denied, 2015-1072 (La. 10/17/16), 207 So. 3d 1067.

On appeal, Demery argued that the evidence was insufficient to convict him. Id. On May 20, 2015, the appellate court concluded that sufficient evidence was presented at trial to sustain Demery’s conviction. See Demery, 165 So. 3d at 1179 (citing Jackson v. Virginia, 443 U.S. 307 (1979); State v. Hearold, 603 So.2d 731 (La.

1992); State v. Smith, 47,983 (La.App. 2d Cir. 5/15/13), 116 So.3d 884; La. C. Cr. P. art. 821.).

On May 28, 2015, Demery's attorney mailed a motion for extension of time in which to file Demery's writ application. (Doc. 1-3, pp. 1-3). Demery's writ application and brief were submitted by counsel on June 30, 2015. The Louisiana Supreme Court denied Demery's writ application in a one-word opinion. See State v. Demery, 2015-1072 (La. 10/17/16), 207 So. 3d 1067.

II. Instructions to Amend

Demery had 30 days from the mailing of the notice of the original judgment of the court of appeal, or until June 19, 2015, within which to seek writs in the Louisiana Supreme Court. See La. Sup. Ct. R. X § 5(a). Rule X provides that no extension of time will be granted. See id. It is unclear whether Demery's motion for extension of time was granted, denied, or construed as a writ application.

In order to determine whether Demery's writ application in the Louisiana Supreme Court was timely filed, Demery should provide a copy of that court's order granting or denying his attorney's motion for extension of time, and any other communications from the Louisiana Supreme Court confirming the date of filing of the writ application. (Doc. 1-3, p. 4).

III. Conclusion

IT IS ORDERED that Demery amend his complaint within thirty (30) days of the filing of this Order to provide the information outlined above. Should Demery

need additional time to obtain documents from his appellate counsel, Demery may file a motion for extension of time within which to comply with this Order.

THUS DONE AND SIGNED in chambers in Alexandria, Louisiana, this 30th day of May, 2017.

A handwritten signature in black ink, appearing to read 'J.H.L. P-M', written over a horizontal line.

Joseph H.L. Perez-Montes
United States Magistrate Judge