

STATE OF LOUISIANA

NO. 18-KH-352

VERSUS

FIFTH CIRCUIT

SHAWANDA NEVERS-HAWKINS

COURT OF APPEAL

STATE OF LOUISIANA

August 30, 2018

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Susan Buchholz

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First Deputy Clerk

IN RE SHAWANDA NEVERS-HAWKINS

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**APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT, PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE J. STERLING SNOWDY, DIVISION "C", NUMBER 14,307**

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Panel composed of Judges Fredericka Homberg Wicker,  
Stephen J. Windhorst, and Marion F. Edwards, Judge Pro Tempore

### **WRIT GRANTED**

Defendant, Shawanda Nevers-Hawkins, seeks supervisory review of the trial court's June 8, 2018 ruling granting the State's Motion for Reconsideration of Order Regarding Defendant's Notice of Appeal. For the following reasons, this writ application is granted.

In February of 2016, defendant was convicted of theft of assets of an aged person in violation of La. R.S. 14:67.21 and was later sentenced as a third felony offender to twelve years imprisonment. She was also ordered to pay \$20,000 to the victim. On October 25, 2017, this Court affirmed defendant's conviction and sentence. *State v. Nevers-Hawkins*, 17-193 (La. App. 5 Cir. 10/25/17), 229 So.3d 1021. On March 9, 2018 the Louisiana Supreme Court dismissed defendant's writ application as untimely. *State ex rel. Nevers-Hawkins v. State*, 18-42 (La. 3/9/18), 238 So.3d 449.

On April 2, 2018, defendant filed an Application for Post-Conviction Relief (APCR) with the trial court that was denied on April 20, 2018. The order denying the APCR was filed on April 23, 2018. A copy of the envelope attached to the writ application indicates that the date it was postmarked was April 24, 2018. Defendant indicates that she received the ruling on April 26, 2018. On May 29, 2018, defendant's Notice of Appeal was stamped as filed with the trial court. In that notice, defendant sought review of the "April 23, 2018" denial of the APCR.

On May 30, 2018, the trial court set a return date of July 13, 2018. However, on June 6, 2018, the State filed State's Motion for Reconsideration of Order Regarding Defendant's Notice of Appeal. On June 8, 2018, the trial court

granted the State's motion, vacated the previous order, and denied defendant's request for an appeal, stating that the request was untimely whether it was considered a notice of appeal or a notice of intent to apply for supervisory writ.

Defendant attached an unstamped copy of a Motion for an Out-of-Time Appeal to her writ application. In that motion, defendant indicated that her Notice of Appeal was timely placed in the correctional facility mail and postmarked on May 23, 2018, but that it did not reach the trial court's clerk of court until May 29, 2018. Defendant also attached to her writ application an unstamped copy of a June 11, 2018 letter to the trial court requesting a copy of the envelope which contained her Notice of Appeal to prove that her notice was mailed on May 23, 2018.

In this writ application, defendant asserts that she did not have any control over the mail system at the correctional facility, and therefore, she asks this Court to grant her an extension of time to file a "writ of review" of her APCR.

A review of the writ application reflects that defendant filed a pro se Notice of Appeal seeking review of the denial of her APCR. However, because there is no right of appeal from a judgment denying post-conviction relief, we shall treat the Notice of Appeal as an application for writ of review. *See* La. C.Cr.P. art. 930.6(A); *State v. Walker*, 94-340 (La. App. 5 Cir. 10/25/94), 645 So.2d 766, 768.

For the purpose of determining timeliness, the actual date of filing for pleadings filed by inmates is the date the pleading is delivered to the prison authorities. *See Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988); *State ex rel. Johnson v. Whitley*, 92-2689 (La. 1/6/95), 648 So.2d 909; *Shelton v. Louisiana Department of Corrections*, 96-0348 (La. App. 1 Cir. 2/14/97), 691 So.2d 159.

It is unclear when defendant gave her pleading to the prison authorities, but she alleges that it was on May 23, 2018. Nevertheless, we find that due to defendant's incarceration and reliance upon the prison mail system, any delay in filing was not due to the applicant's fault.

Based on the foregoing, we grant the writ application, vacate the June 8, 2018 ruling, remand the matter to the trial court, and order it to set a new return date for defendant to file a writ application seeking review of the denial of her APCR.

Gretna, Louisiana, this 30th day of August, 2018.

**FHW**  
**MFE**

**WINDHORST, J., DISSENTS WITH REASONS**

I would deny the writ. This writ application is not only untimely, but it also requests that we exercise our supervisory authority to direct the trial court to grant

an appeal of a judgment which by law is clearly not appealable. Specifically, La. C.Cr.P. art. 930.6 states that no appeal lies from a judgment dismissing an application or otherwise denying post-conviction relief. Thus, I do not find any legal error in the trial court's ruling.

**SJW**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT

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CHERYL Q. LANDRIEU  
CLERK OF COURT

MARY E. LEGNON  
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ  
FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **08/30/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU  
CLERK OF COURT

**18-KH-352**

**E-NOTIFIED**

Justin B. LaCour (Respondent)

Bridget A. Dinvaut (Respondent)

**MAILED**

Shawanda Nevers-Hawkins #391783 (Relator)  
or)  
Louisiana Correctional Institute for Women  
P. O. Box 26  
St. Gabriel, LA 70776