

KEVIN ALEXANDER, JR.

NO. 18-KH-475

VERSUS

FIFTH CIRCUIT

ROBERT TANNER, WARDEN

COURT OF APPEAL

STATE OF LOUISIANA

August 28, 2018

Mary E. Legnon
Chief Deputy Clerk

IN RE KEVIN ALEXANDER, JR.

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 11,265

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Marc E. Johnson

WRIT GRANTED FOR LIMITED PURPOSE

In this writ application, relator, Kevin Alexander, Jr., seeks review of the district court's May 16, 2018 denial of his application for post-conviction relief ("APCR") and the court's June 14, 2018 denial of his motion for reconsideration. After review, we grant this writ application for the limited purpose of vacating the district court's May 16, 2018 and June 14, 2018 orders, and remanding the matter for the district court to construe relator's APCR as a request for an out-of-time appeal.

On March 14, 2016, relator pled guilty to manslaughter and was sentenced to thirty-two years at hard labor. He did not seek an appeal. On March 13, 2018, relator filed a counseled APCR, in which he raised three claims: (1) ineffective assistance of counsel, (2) unconstitutional guilty plea, and (3) unconstitutionally excessive sentence.

On May 16, 2018, the district court denied relief on relator's APCR without reasons. On June 8, 2018, relator filed a motion for reconsideration of this denial, which the district court denied without reasons on June 14, 2018. Relator now seeks review of these two rulings.

Relator did not appeal his conviction and sentence, and his APCR is therefore premature. *See* La. C.C. art. 924.1. ("An application for post-conviction relief shall not be entertained if the petitioner may appeal the conviction and sentence which he seeks to challenge, or if an appeal is pending."). However, at the time relator filed his APCR, he was still eligible to request an out-of-time appeal.

Under these circumstances, and in the interest of justice, we grant this writ application for the limited purpose of vacating the district court's May 16, 2018 and June 14, 2018 orders, and remanding the matter for the court to construe relator's APCR as a request for an out-of-time appeal. *See Quang T. Do v. Vannoy*, 16-157 (La. App. 5 Cir. 5/12/16), 2016 La. App. LEXIS 2314, *11.

Gretna, Louisiana, this 28th day of August, 2018.

SMC
JGG
MEJ

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



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CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

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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 **08/28/2018** 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-475

E-NOTIFIED

Emily Posner (Relator)
Bridget A. Dinvaut (Respondent)

MAILED