

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2014 KW 0231

VERSUS

EDWARD NELSON McCRAY

JUN 02 2014

In Re: Edward Nelson McCray, applying for supervisory writs,
22nd Judicial District Court, Parish of St. Tammany,
No. 404879.

BEFORE: PARRO, GUIDRY AND DRAKE, JJ.

WRIT DENIED. The trial court may deny relief if an application for postconviction relief alleges a claim which the petitioner inexcusably failed to raise in the proceedings leading to conviction or inexcusably failed to pursue on appeal. See La. Code Crim. P. art. 930.4(B) & (C). Therefore, the trial court did not abuse its discretion by not considering claims 1, 3, 5 & 7. The trial court did err by not considering the merits of relator's sixth claim that his right to effective assistance of counsel on appeal was violated where appellate counsel failed to raise claims on direct appeal. However, this claim and claims 2, 4, & 8 are without merit. The object that is the subject of a robbery does not have to belong to the person from whom the object was taken. Armed robbery is the taking of anything of value that is in the immediate control of another by use of force or intimidation, while armed with a dangerous weapon. See La. R.S. 14:64(A). Relator's contention that the cellular phone had to belong to the victim is meritless, and his claims that are based upon this contention are also without merit. More importantly, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of second degree murder were proven beyond a reasonable doubt. See **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). Additionally, the court is not required to appoint counsel unless it orders an evidentiary hearing on the merits of the claim. See La. Code Crim. P. art. 930.7(C). Accordingly, the trial court did not err in denying the application for postconviction relief, the motion for evidentiary hearing, or the motion for appointment of counsel.

RHP
JMG
EGD

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