

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

STATE OF LOUISIANA

NO. 2014 KW 0586

VERSUS

KYM ROBERT DILLWORTH

**JUL 14 2014**

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In Re: Kym Robert Dillworth, applying for supervisory writs,  
22nd Judicial District Court, Parish of St. Tammany,  
No. 525736.

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**BEFORE: KUHN, PETTIGREW AND McCLENDON, JJ.**

**WRIT GRANTED.** The district court's ruling denying relator's application for postconviction relief is reversed, and this matter is remanded to the district court for further proceedings. The record supports relator's claim that he was misinformed with regard to his eligibility for parole. If defense counsel misinforms a defendant concerning penalty provisions, such error might constitute ineffective assistance of counsel. See State ex rel. Brown v. State, 93-1701 (La. 3/8/96), 668 So.2d 1148 (per curiam); State v. Scott, 93-0401 (La. 3/17/95), 651 So.2d 1344 (per curiam). Based on relator's allegations, relator alleges a claim that, if established, would entitle him to relief. Accordingly, on remand the district court shall order the district attorney to file any procedural objections he may have, or an answer on the merits if there are no procedural objections. See La. Code Crim. P. art. 927(A). If the answer by the state reveals there is a factual issue of significance to the outcome that is sharply contested, an evidentiary hearing should be held. See La. Code Crim. P. art. 929, Official Revision Comment; State ex rel. Tassin v. Whitley, 602 So.2d 721, 722-23 (La. 1992). At the hearing the district court shall determine if misinformation with regard to relator's parole eligibility constituted a material inducement for his guilty plea which precluded relator from entering a knowing and voluntary guilty plea "with eyes open," entitling him to withdraw the plea if he persists in that desire. See State ex rel. Miles v. State, 2002-1843 (La. 9/5/03), 855 So.2d 732 (per curiam); State ex rel. Gilliam v. State, 2000-2012 (La. 3/30/01), 788 So.2d 436; State ex rel. Aleman v. State, 99-1180 (La. 10/1/99), 745 So.2d 602 (per curiam). As to relator's claim that his counsel was ineffective for giving erroneous advice, it is relator's burden to prove that he acted on erroneous advice of counsel or that the erroneous advice of

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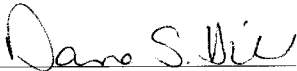
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counsel induced him to plead guilty. La. Code Crim. P. art. 930.2; **State v. Smith**, 2000-1681 (La. 2/2/01), 777 So.2d 1223 (per curiam).

**JTP**  
**PMc**

**Kuhn, J.**, dissents and would deny the writ.

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DEPUTY CLERK OF COURT  
FOR THE COURT