

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0688

DERRICK PIERRE

VERSUS

EAST BATON ROUGE PARISH CLERK OF COURT

Judgment Rendered: NOV 01 2017

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On Appeal from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Trial Court No. 606,783

Honorable R. Michael Caldwell, Judge Presiding

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Derrick Pierre  
Angie, LA

Plaintiff-Appellant,  
In Proper Person

Benjamin D. Beychok  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
East Baton Rouge Parish Clerk of  
Court

\* \* \* \* \*

BEFORE: HIGGINBOTHAM, HOLDRIDGE, AND PENZATO, JJ.

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## HIGGINBOTHAM, J.

This appeal challenges the dismissal of an inmate's petition for writ of mandamus directing the East Baton Rouge Parish Clerk of Court to provide a public records request.

### BACKGROUND

Derrick Pierre is an inmate who has been confined in the custody of the Louisiana Department of Public Safety and Corrections at Rayburn Correction Center in Angie, Louisiana since 1997. On November 10, 2011, Mr. Pierre filed a *pro se* petition for writ of mandamus in the Nineteenth Judicial District Court. In his petition, Mr. Pierre alleged that he had previously mailed a public records request to the East Baton Rouge Parish Clerk of Court on May 19, 2010, but the Clerk of Court failed to respond. In his request, Mr. Pierre sought the following documents: (1) a reproduction of the entire District Attorney file for Docket No. 6-97-846; (2) a reproduction of the entire District Attorney file for Docket No. 6-98-961; and (3) a reproduction of all adjudicated and settled criminal litigation involving the victim of Mr. Pierre's 1997 conviction for attempted aggravated rape.

The Clerk of Court answered Mr. Pierre's petition, averring that the requests were overly broad and that, according to the District Attorney, all of Mr. Pierre's remedies were finalized for over three years, and the District Attorney no longer maintained the files that Mr. Pierre sought to have reproduced. In other words, the Clerk of Court simply did not have access to the requested records since they had been destroyed. Moreover, the Clerk of Court maintained that, pursuant to an exception under the Public Records Law at La. R.S. 44:31.1,<sup>1</sup> Mr. Pierre was not entitled to public records unless they are related to grounds for which he could have filed for post conviction relief under La. Code Crim. P. art. 930.3.

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<sup>1</sup> Louisiana Revised Statute 44:31.1 provides, in pertinent part, that a "person" entitled to public records "does not include an individual in custody after sentence following a felony conviction who has exhausted his appellate remedies when the request for public records is not limited to grounds upon which the individual could file for post conviction relief under Code of Criminal Procedure Article 930.3."

Two hearings were held regarding Mr. Pierre's mandamus action. The Commissioner<sup>2</sup> for the district court recommended that the mandamus petition be dismissed, because the evidence was clear that the records request was made fourteen years after Mr. Pierre's criminal conviction was final and the District Attorney's office had authority to destroy the criminal records in accord with La. R.S. 44:36(E).<sup>3</sup> Since Mr. Pierre offered no evidence to the contrary, the Commissioner reasoned that the mandamus petition should be dismissed as there were no available records that could be provided to Mr. Pierre. Mr. Pierre filed a traversal of the Commissioner's recommendation; however, by judgment dated November 17, 2016, the district court adopted the Commissioner's recommendation and dismissed Mr. Pierre's mandamus action with prejudice and at his cost. Mr. Pierre appealed, arguing that the District Attorney's office did not have authority to destroy his criminal records.

### DISCUSSION

Generally, the right of access to public records is a fundamental right guaranteed by La. Const. art. XII, § 3. **Johnson v. Stalder**, 97-0584 (La. App. 1st Cir. 12/22/98), 754 So.2d 246, 248. An inmate in custody following a felony conviction, however, is only permitted access to public records if he has exhausted his appellate remedies and the request is limited to grounds upon which the inmate could file for post conviction relief. See La. R.S. 44:31.1. If an inmate has identified specific constitutional errors in the proceedings leading to his conviction and sentence, and he specifies with reasonable particularity the factual basis for such

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<sup>2</sup> Louisiana Revised Statute 13:713 authorizes the Commissioners of the Nineteenth Judicial District Court to perform such duties as are assigned to them by the chief judge of the court, including hearing petitions for writs of mandamus relative to prisoners. See **Wiggins v. District Attorney East Baton Rouge Parish**, 2007-2398 (La. App. 1st Cir. 5/2/08), 2008 WL 2064979, \*1 n.2 (unpublished), writ not considered, 2008-1208 (La. 9/19/08), 992 So.2d 960.

<sup>3</sup> Louisiana Revised Statute 44:36(E)(1) provides, in pertinent part: "The public records of a prosecuting agency, pertaining to a criminal prosecution that results in a conviction . . . shall be retained for a period of three years from the date on which a court of appeal affirms the conviction, the Louisiana Supreme Court denies writs, or the Louisiana Supreme Court makes its final ruling on the appeal, whichever occurs last."

relief, he thereby meets the initial requirements set for invoking post conviction relief. See State ex rel. Bernard v. Criminal Dist. Court Section "J", 94-2247 (La. 4/28/95), 653 So.2d 1174, 1175 (per curiam). See also La. Code Crim. P. art. 930.3.<sup>4</sup> If an inmate does not properly file an application for post conviction relief, then he cannot make a showing of a particularized need for the documents request. **Bernard**, 653 So.2d at 1175.

The record in this case is void of any evidence that Mr. Pierre ever filed any application for post conviction relief, much less identified specific constitutional errors in the proceedings leading to his conviction and sentence, including his habitual offender status. Further, the enforcement provisions of the Public Records Law, found at La. R.S. 44:35, presuppose the existence of the records in the office of the custodian. **Wallace v. Ware**, 94-2204 (La. App. 1st Cir. 6/23/95), 657 So.2d 734, 737. Since Mr. Pierre has not provided evidence that he is actually entitled to the requested documentation, we conclude that it is of no moment that the requested records no longer exist due to the destruction of the files by the District Attorney's office. We recognize that ordering the Clerk of Court to provide records that no longer exist would be a vain and useless act. See Id. Accordingly, mandamus relief is simply not available in this case.

### CONCLUSION

After a careful review of the record and for the stated reasons, we affirm the district court's dismissal of this mandamus action with prejudice. All costs of this appeal are assessed to plaintiff-appellant, Derrick Pierre.

**AFFIRMED.**

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<sup>4</sup> Louisiana Code Crim. P. art. 930.3 provides the grounds for which post conviction relief may be granted: (1) the conviction was unconstitutional; (2) the court exceeded its jurisdiction; (3) double jeopardy was involved; (4) prosecution of the offense was instituted after the limits had expired; (5) the statute creating the offense is unconstitutional; (6) a finding of an ex post facto application of law violation; and (7) the results of DNA testing proves by clear and convincing evidence that the petitioner is innocent of the crime for which he was convicted.