

**STATE OF LOUISIANA**

\*

**NO. 2001-K-1084**

**VERSUS**

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**COURT OF APPEAL**

**KEVIN JORDAN**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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ON APPLICATION FOR WRITS DIRECTED TO  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 382-898, SECTION "I"

Honorable Raymond C. Bigelow, Judge

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**JOAN BERNARD ARMSTRONG**

**JUDGE**

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(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones  
and Judge Dennis R. Bagneris, Sr.)

**KEVIN JORDAN**

#382254

LOUISIANA STATE PENITENTIARY

CYPRESS 2

ANGOLA, LA 70712

PROSE, DEFENDANT/RELATOR

**WRIT DENIED.**

The defendant-relator, Kevin Jordan, seeks review of the district court's judgment denying his application for post-conviction relief.

On May 2, 1996, relator and two co-defendants, Henry Talley and Gerald Williams, were indicted for first degree murder. The jury found relator guilty as charged on April 4, 1997. Upon completion of the penalty phase of the trial on April 6, 1997, the jury recommended life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. On May 9, 1997, the defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. His conviction and sentence were affirmed on appeal. State v. Kevin Jordan, unpub., 97-1756 (La. App. 4 Cir. 9/16/98) 719 So.2d 556, writ den. 98-2595 (La. 1/15/99), 736 So. 2d 207.

Relator is before this court seeking review of the trial court's denial of his application for post conviction relief. For his first assignment of error, relator contended that the trial court's jury instruction on the law of principals was infirmed. He argued that the jury charge did not clearly point out that the jury had to find specific intent to kill. The testimony at trial identified relator as the shooter, not as a principal. This claim has no merit.

Relator's second claim was that the grand jury indictment was based on perjured testimony. Relator stated that Anthony McGuffey told

investigators investigating the shooting that he could identify the shooter. He picked relator's picture out of a photographic line-up. Relator stated that McGuffey lied to the grand jury when he told them that he saw relator shoot the victim in a drive-by shooting. At some point, McGuffey later recanted his testimony and stated that he was told that relator was the shooter. Relator did not provide any support for his allegation that McGuffey lied to the grand jury or that the indictment was based solely on McGuffey's testimony. As the trial court noted in its judgment: "First, it is not known whether McGuffey lied before the grand jury or later, when he recanted his grand jury testimony. Given that his grand jury testimony was consistent with his initial statement to the police, one could easily conclude that the recantation was perjury. At any rate, because other evidence presented to the grand jury which established Mr. Jordan's participation in the murder of Wendell McGuffey, false testimony by McGuffey would not have been a basis for quashing the indictment." This claim has no merit.

For his third claim, relator asserted that the prosecutor improperly vouched for the credibility of his witnesses and expresses his personal opinion of relator's guilt during opening statements and closing arguments. Relator did not specifically state what the prosecutor said nor did he provide a copy of the transcript for review. This claim has no merit.

Relator next claimed that the plea agreement offered to the prosecution witness Gerald Williams violated the public bribery statute. He argued that an offer of leniency is something of apparent present or prospective value. No appellate court in this state has determined that a plea agreement is something of "apparent present or prospective value" and/or violates the public bribery statute. This claim has no merit.

Finally, relator raised five claims of ineffective assistance of counsel. First, he argued that counsel was ineffective for failing to move to have the grand jury indictment quashed based upon discovery of the perjured testimony by a state witness. Relator has failed to establish that the indictment was based solely on the alleged perjured testimony; therefore, he has not demonstrated prejudice. This claim has no merit.

For his second ineffective assistance of counsel claim, relator contended that counsel was ineffective for failing to object to the charge on the law of principals. Because the trial court did not err in its charge, counsel cannot be deemed ineffective for failing to object. This claim has no merit.

Relator's next two claims involved prosecutorial misconduct. He maintained that counsel was ineffective for failing to object to prosecutorial misconduct during closing arguments and for failing to request a mistrial.

Again, relator has failed to establish that there was misconduct and that the alleged misconduct prejudiced him. These claims have no merit.

Finally, relator contended that counsel was ineffective for failing to challenge the use of Gerald Williams' testimony as violating the public bribery statute. Williams' testimony did not violate the public bribery statute. There is no merit to this claim.

Relator also complains that the trial court denied the application without conducting an evidentiary hearing. La. C.Cr.P. art. 928 provides that an application may be dismissed without an answer if the application fails to allege a claim, which if established, would entitle the petitioner to relief. If the court determines that the factual and legal issues can be resolved based upon the application and supporting documents, the court may grant or deny relief without further proceedings. La. C.Cr.P. art 929. In the instant case, the trial court could determine the issues from relator's application. Thus, there was no error in not conducting a hearing.

Accordingly, we find no error in judgment of the district court denying relator's application for post-conviction relief.

**WRIT DENIED.**