

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * NO. 2011-K-1618
VERSUS *
LARRY LEGANIA * COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA

ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 404-717, SECTION "I"
Honorable Karen K. Herman, Judge

Judge Rosemary Ledet

(Court composed of Judge James F. McKay, III, Judge Terri F. Love, Judge
Rosemary Ledet)

(ON APPLICATION FOR REHEARING)

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**CLARIFIED, AFFIRMED, AND
REMANDED ON REHEARING
APRIL 25, 2012**

In his rehearing application, Mr. Legania requests that we reconsider our decision granting the State's writ application and reversing the trial court's ruling granting his application for post-conviction relief. He also requests that we address his alibi witnesses claim, which he raised in his supplemental application for post-conviction relief. Although we decline both of his requests, we grant his rehearing application for the limited purpose of clarifying our original decision and remanding for a hearing on his alibi witnesses claim.

In our prior decision, we noted the trial court failed to address the claims that Mr. Legania raised in his supplemental application for post-conviction relief. One of those claims was that "trial counsel did not call alibi witnesses whose names Mr. Legania gave her." *State v. Legania*, 11-1618, p. 4, n. 2 (La. App. 4 Cir. 3/16/12). Because the trial court failed to reach the alibi witnesses claim, this claim was not before us.

Our prior decision was limited to Mr. Legania's claim on which the trial court based its decision: that "trial counsel should have investigated further and

found [two impeachment witnesses:] Ms. Steadman and Officer Butler.” The relevance of these witnesses was that if they had testified at trial they would have provided a basis for Mr. Legania’s defense that the victim had a motive to frame him because he was a threat to the victim’s drug sales. The trial court found merit to Mr. Legania’s claim of ineffective assistance of counsel based on the failure to investigate and find these two impeachment witnesses. On this basis, the trial court granted his application for post-conviction relief. Reversing, we reasoned that even assuming trial counsel should have investigated and found these two witnesses, Mr. Legania failed to show prejudice from this failure. We further reasoned that “[e]ven if Mr. Legania was able to show that he and the victim had a dispute over the victim’s drug dealings, this fact would not have proven that he did not rob the victim.” As noted at the outset, we affirm our decision reversing the trial court’s ruling granting Mr. Legania’s application for post-conviction relief on this basis.

Nonetheless, we find it appropriate to remand this case to the trial court for a hearing on Mr. Legania’s alibi witnesses claim, which has not been addressed. On remand, the trial court is instructed to consider Mr. Legania’s claim that trial counsel’s failure to call alibi witnesses—especially his grandmother, Marcia Mitchell—constituted ineffective assistance of counsel.

CLARIFIED, AFFIRMED, AND REMANDED ON REHEARING