

STATE OF LOUISIANA

*

NO. 2017-K-0658

VERSUS

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COURT OF APPEAL

RANDY FINCH

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

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ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-180, SECTION "K"
Honorable Arthur Hunter, Judge

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Judge Marion F. Edwards, Pro Tempore

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(Court composed of Judge Joy Cossich Lobrano, Judge Paula A. Brown, Judge
Marion F. Edwards, Pro Tempore)

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WRIT GRANTED

SEPTEMBER 20, 2017

Relator, the State of Louisiana, seeks review of the district court's ruling denying the State's procedural objections to defendant's Petition for Post-Conviction Relief and Motion for Evidentiary Hearing. For the reasons that follow, we grant the writ and reverse the ruling of the district court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 16, 2001, Tamika Moses, who was twenty-three years old at the time, died following an altercation with Randy Finch. At the bench trial conducted in 2002, Ms. Moses' mother testified that Mr. Finch had a seven-year relationship with her daughter and that Ms. Moses was the mother of Mr. Finch's three children.¹ Dr. James Traylor, the forensic pathologist who performed the autopsy on Ms. Moses, testified that she "died from internal bleeding and injuries caused by repeated blows to her abdominal area. Ms. Moses' liver was lacerated or torn from front to back, the vein supplying blood to her intestines was completely severed, and her right kidney had two lacerations or tears. Ms. Moses also suffered a spiral fracture in her upper right arm, abrasions to her left shoulder and on the left

¹ See *State v. Finch*, 02-2481, p. 1 (La. App. 4 Cir. 7/23/03), 853 So.2d 680, 681.

side of her neck, and a bruise on her right breast.”² “Winnie Peter, the victim’s co-worker, testified that the defendant called her several times after he left Ms. Moses’ apartment to inquire about the victim’s condition. Ms. Peters further testified that he admitted he repeatedly kicked Ms. Moses until she was unconscious.”³

Furthermore, Detective Danny Wharton of the New Orleans Police Department testified at trial that on the day of the crime, Mr. Finch indicated that he had an altercation with Ms. Moses on the day she died.

At the conclusion of trial, Mr. Finch was found guilty of the second degree murder of Tamika Moses and sentenced to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. On appeal, this court affirmed Mr. Finch’s conviction and sentence.⁴ On February 6, 2004, the Louisiana Supreme Court denied Mr. Finch’s writ application.⁵

On January 28, 2005, Mr. Finch filed his first application for post-conviction relief, which the district court denied. On February 28, 2005, Mr. Finch filed a motion to reconsider the district court’s ruling denying relief and the district court set the matter for an evidentiary hearing. Following multiple continuances, the district court conducted an evidentiary hearing on June 27, 2007. At the conclusion of the hearing, the district court denied Mr. Finch’s request for relief.

On February 10, 2017, Mr. Finch filed a second application for post-conviction relief and a motion for an evidentiary hearing. In his second application, Mr. Finch claimed that, given newly discovered evidence, he received ineffective

² *Finch*, 02-2481 at p. 2, 853 So.2d at 682.

³ *Id.*

⁴ *Finch*, 02-2481, p. 6, 853 So.2d at 684.

assistance of counsel because trial counsel failed to: (1) investigate and interview an exculpatory witness; (2) effectively cross-examine the State's expert pathologist or call an expert or their own on rebuttal; and (3) investigate Mr. Finch's mental capacity in support of his defense. On May 19, 2017, the district court granted an evidentiary hearing on Mr. Finch's claim regarding defense counsel's failure to investigate Mr. Finch's mental capacity. The district court, however, denied relief as to Mr. Finch's remaining claims.⁶ Thereafter, the State filed an unopposed motion seeking to vacate the district court's ruling pending consideration of its procedural objections to defendant's filing, which the district court granted.

On June 9, 2017, the State filed its procedural objections to Mr. Finch's most recent application for post-conviction relief arguing that it was untimely and repetitive. On July 10, 2017, Mr. Finch filed his opposition to the State's objections claiming the application should be considered on the merits because his claims are based on newly discovered evidence. The minute entry on June 13, 2017 indicates that the district court denied the State's objections on that date.

Thereafter, the State filed this application for supervisory writ.

DISCUSSION

The State contends that the district court erred in failing to find Mr. Finch's second post-conviction relief application barred as untimely and repetitive pursuant to La. C.Cr.P. arts. 930.4 and 930.8, respectively. Mr. Finch counters that his application for post-conviction relief should be considered given that his claims are based on newly discovered evidence, which is an exception to arts. 930.8 and

⁵ *State v. Finch*, 03-2379 (La. 2/6/04), 865 So.2d 738.

⁶ Mr. Finch did seek writ on the denial of his ineffective assistance of counsel claims regarding trial counsel failure to investigate and interview an exculpatory witness and effectively cross-

930.4. He further argues that, notwithstanding the exercise of the requisite due diligence, he could not have raised the issues earlier.

At the outset, we note that the only issue before this court is whether the district court erred in denying the State's procedural objections only as to Mr. Finch's claim of ineffective assistance of counsel for failure to investigate his mental capacity at the time of trial. In its judgment granting an evidentiary hearing regarding this claim, the district court noted as follows:

In his fourth claim, Petitioner asserts that his trial counsel was ineffective in that he failed to investigate Petitioner's own mental capacity. Petitioner provides the Court with an expert report from Dr. Janet Johnson,⁷ conducted January 2017, which demonstrates that at the time of the incident, Mr. Finch suffered from multiple mental illnesses. This newly discovered evidence undermines the veracity of Mr. Finch's conviction of second degree murder. The lack of investigation into Mr. Finch's mental health greatly prejudiced Mr. Finch, resulting in deprivation of essential mitigation evidence needed in determining his culpability. Had a mental health evaluation been completed by Petitioner's trial counsel, there is a strong indication that but for trial counsel's errors, the result of the proceedings would have been different. This court finds compelling evidence to support Petitioner's claim. Given the new evidence presented regarding Mr. Finch's initial conviction, this court is granting an evidentiary hearing to the defendant.

Applications for post-conviction relief are governed by La. C.Cr.P. arts. 924 *et seq.* La. C.Cr.P. art. 930.8(A)(1) provides as follows:

A. No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were

examine the State's expert pathologist or call an expert or their own on rebuttal.

⁷ Dr. Johnson is an Associate Professor in the Department of Psychiatry and Behavioral Sciences at Tulane University School of Medicine.

not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. “Diligence” for the purposes of this Article is a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

In the present matter, approximately sixteen years after Ms. Moses’ murder, Mr. Finch raises for the first time that he suffered mental health issues at the time of the crime. An allegation that a defendant suffered from mental health issues at the time of the murder, which occurred sixteen years ago, is not the type of evidence the legislature contemplated when it authorized substantive consideration of otherwise time-barred post-conviction applications based on “facts upon which the claim is predicated were not known to the petitioner or his prior attorneys.” Given the law and the record before us, we find that the district court erred in denying the State’s procedural objections. Accordingly, we grant the State’s writ and reverse the district court’s ruling denying the State’s procedural objections.

WRIT GRANTED