

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 26-KH-213

STATE OF LOUISIANA

versus

DELCOME EVANS

IN RE DELCOME EVANS

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
J. STERLING SNOWDY, DIVISION "C", No. 15,144

TRUE COPY

June 25, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Timothy S. Marcel

WRIT DENIED

Relator, Delcome Evans, seeks this Court's supervisory review of the trial court's March 24, 2026 ruling which denied his application for post conviction relief. For the following reasons, we find no error in the ruling and therefore deny the writ application.

On April 12, 2018, a jury found relator guilty of forcible rape in violation of La. R.S. 14:42.1. After adjudication as a second-felony offender, the trial court sentenced relator to fifty-five years imprisonment at hard labor. On June 3, 2020, this Court affirmed the conviction but vacated relator's sentence and remanded for resentencing in accordance with La. R.S. 15:529.1(G) and La. R.S. 14:42.1(B).¹

¹ On appeal, the record reflected that while the trial court sentenced defendant to fifty-five years under the habitual offender statute, the trial court did not restrict any benefits. The habitual offender statute, La. R.S. 15:529.1(G), provides that any sentence imposed under its provisions "shall be at hard labor without benefit of probation or suspension of sentence." On appeal, we also found that the underlying offense in the referenced statute, La. R.S. 14:42.1, imposed a parole restriction which requires that "[a]t least two years of the sentence imposed shall be without the benefit of probation, parole, or suspension of sentence." *See* La. R.S. 14:42.1(B). Accordingly, we vacated defendant's enhanced sentence and remanded for resentencing in

State v. Evans, 19-237 (La. App. 5 Cir. 6/3/20), 298 So.3d 394. On November 9, 2020, on remand, the trial court resentenced relator as a second-felony offender to fifty-five years imprisonment at hard labor without benefit of probation or suspension of sentence and without benefit of parole for two years. Relator did not file a writ application with the Louisiana Supreme Court.

On May 29, 2025, relator filed a post conviction application under La. C.Cr.P. art. 930.8(A)(1).² In it, relator claimed that the State elicited false testimony in violation of *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) predicated on newly discovered evidence. The district court denied relief on March 24, 2026 “in accordance with La. C.Cr.P. art. 930.8.”³

Relevant Background

At trial, the State introduced other-crimes evidence, including testimony from Sergeant Bradley Glaudi of the New Orleans Police Department and the victim, M.K., regarding a 1999 aggravated rape allegation that was ultimately nolle prossed. The following relevant facts are provided from this Court’s opinion in *Evans*, 298 So.3d at 398-400 (internal footnotes omitted):

Sergeant Glaudi testified that in 1999, he led an investigation into an aggravated rape involving defendant and his fifteen-year-old cousin for which he was ultimately arrested; however, the case was eventually nolle prossed. According to Sergeant Glaudi, the fifteen-year-old was asleep in her bedroom when defendant, who was approximately twenty-one years old at the time, came into the room, put his hand over her mouth, bent her over the footboard of the bed, and had intercourse with her against her will.

M.K., the victim of the 1999 reported rape, testified that in 1999, when she was fifteen years old, defendant came into the bedroom where she was sleeping and told her that her brothers needed to see her. When she got out of bed, defendant grabbed her, turned her around, and bent her over the bed. She recalled that defendant told her to “shut up” when she stated “please, no” and proceeded to hold her down and penetrate her. After defendant was arrested, she had no further contact with him. M.K. testified that she wanted to pursue charges and was never informed by the State that charges against defendant had been nolle prossed.

accordance with La. R.S. 15:529.1(G) and La.R.S. 14:42.1(B). *See State v. Evans*, 19-237 (La. App. 5 Cir. 6/3/20), 298 So.3d 394, 408.

² La. C.Cr.P. art. 930.8(A)(1) allows a defendant to file an application for post conviction relief more than two years after his conviction and sentence has become final where “[t]he application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys.”

³ On April 23, 2026, relator filed a notice of intent, signed and dated April 20, 2026, with the district court. On April 23, 2026, the district court also set a return date for May 22, 2026. On May 14, 2026, relator’s writ application requesting review was stamped as filed with this Court.

Post Conviction Claim

Relator now contends that the newly discovered evidence reveals that the State elicited or failed to correct false testimony from Sergeant Glaudi and M.K. regarding the 1999 aggravated rape allegation admitted at trial as other-crimes evidence under La.C.E. art. 412.2. In support, relator cites to a newly obtained document from the Orleans Parish District Attorney's Office which indicates that the Orleans Parish prosecutor recommended *nolle prosequing* the 1999 aggravated rape charge for "lack of cooperation, concern, and willingness" on the part of M.K. and her brother, who was a potential witness in the case.⁴ Relator also relies on a document titled, Request and Authorization to Dismiss Criminal Case against Delcome Evans by the Office of the District Attorney, Parish of Orleans, dated January 8, 2001, in which the prosecutor related that M.K.'s brother was "consistently unavailable for trial" and that M.K.'s mother "stated that they did not wish to proceed with prosecution." Relator points out that at trial, Sergeant Glaudi testified that he could not recall the reason the 1999 charge was dismissed. In addition, M.K. testified she was never informed by the Orleans Parish District Attorney's Office that the charge would be *nolle prosequed* or dismissed. Thus, in relator's view, the State allowed the witnesses to testify falsely and without correction regarding the dismissal of the aggravated rape charge.

Law and Discussion

Timeliness under La. C.Cr.P. art. 930.8(A)(1)

La. C.Cr.P. art. 930.8(A)(1) provides in pertinent part:

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 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 shall 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

⁴ Relator also included a letter from the Orleans Parish District Attorney's Office advising M.K.'s brother that the trial was set for January 10, 2001, and if he did not "respond immediately, the case against Delcome Evans would be dismissed." M.K.'s brother did not testify at relator's trial. The Orleans Parish District Attorney's Office also sent a letter, dated December 22, 1999, advising M.K. that her case had been assigned and that she might receive a subpoena, along with other general information.

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 instant case, relator's conviction and sentence became final in 2020.⁵ As discussed above, the district court denied relator's post conviction application as untimely under La. C.Cr.P. art. 930.8, without providing reasons for its ruling. La. C.Cr.P. art. 930.8 permits consideration of an otherwise untimely application if it is based on facts that were previously unknown to the petitioner (and prior counsel), the petitioner shows diligence in discovering them, and the claim is filed within two years of when those facts were discovered. Relator, in support of his claim of diligence, pointed out that he has an eighth-grade education with limited access to inmate counsel, made a public-records request on December 4, 2024, received the documents on April 21, 2025, and then filed his post conviction application with the district court on May 29, 2025, within the two-year time period for submitting new facts under the exception set out in La. C.Cr.P. art. 930.8(A)(1).

For review purposes, we find relator satisfied the diligence requirement set forth in La. C.Cr.P. art. 930.8(A)(1); however, the asserted facts and evidence upon which he relies is not newly discovered within the meaning of La. C.Cr.P. art. 930.8(A)(1). The record shows that at trial, defense counsel asked M.K. on cross-examination, the following questions: (1) "Were you aware that this case was set for trial five times?" and (2) "So you're not aware that the case was dismissed, because no one appeared at trial?" M.K. did not answer the questions because the State's objections were sustained. Regardless, the line of questioning demonstrates that the defense was aware of the reason behind the dismissal of the 1999 aggravated rape charge.⁶ Furthermore, M.K. explained that because she was fifteen years old at the time, her mother was the contact person for the case. We also note the new documents make no reference to Sergeant Glaudi. Based on this record, relator's claim rests on facts either known or reasonably known to the defense at the time of trial. Accordingly, the district court did not err in denying relator's application as untimely under La.C.Cr.P. art. 930.8.

Relator asserts his post conviction filing alleging *Napue* violations overcomes the procedural bar under La. C.Cr.P. art. 930.8(A)(1).⁷ To prove a

⁵ *State v. Evans*, 19-237 (La. App. 5 Cir. 6/3/20), 298 So.3d 394.

⁶ According to this Court's opinion on direct appeal, the State attached the New Orleans Police Department reports concerning the 1999 incident to its notice under La. C.E. art. 412.2. *Evans*, 298 So.3d at 401.

⁷ Although relator's post conviction application and the instant application also cite to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (State's suppression of evidence favorable to the accused after it receives a request for such evidence violates a defendant's due process rights where the evidence is material to either guilt or punishment, without regard to the good or bad faith of the prosecutors), aside from the citation to the case, relator does not appear to claim that the State failed to disclose evidence to the defense regarding the aggravated rape charge.

Napue claim, the defendant must show that the prosecutor acted in collusion with the witness to facilitate false testimony. *State v. Broadway*, 96-2659 (La. 10/19/99), 753 So.2d 801, 814, *cert. denied*, 529 U.S. 1056, 120 S.Ct. 1562, 146 L.Ed.2d 466 (2000). Furthermore, fundamental fairness, *i.e.*, due process, is offended “when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177. The State denies a defendant due process when it knowingly uses perjured testimony at trial or allows untrue testimony to go uncorrected. *See Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); *Napue*. The defendant must show that: (1) the testimony was false, (2) the State knew it was false, and (3) the testimony was material. *See Kirkpatrick v. Whitley*, 992 F.2d 491, 497 (5th Cir. 1993).

Even assuming, *arguendo*, the timeliness bar is overcome, relator’s *Napue* claim fails on the merits. Relator contends the State elicited or failed to correct false testimony from Sergeant Glaudi and M.K. concerning the reasons for the 1999 dismissal, relying on Orleans Parish District Attorney documents to support his claim and excerpts from the testimony of the two witnesses. On this showing, relator has not demonstrated that either witness testified falsely, or that the State knowingly presented or failed to correct false testimony.

Materiality warranting a new trial is also not shown in this instance. Perjury is material, and a new trial is required, “if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.” *See Kirkpatrick v. Whitley*, 992 F.2d at 497 (citing *Agurs*, 427 U.S. at 103, 96 S.Ct. at 2397 (footnote omitted)); *Giglio*, 405 U.S. at 154, 92 S.Ct. at 766. Our holding on direct appeal that the admission of the 1999 incident was proper and, in any event, subject to harmless-error analysis, undermines any reasonable likelihood that the testimony could have affected the jury’s judgment. *See Evans*, 298 So.3d at 403. Given this backdrop, relator’s *Napue* claim fails on the merits.

Conclusion

Because relator’s application relies on facts known or reasonably knowable at trial, the district court properly denied relief as untimely under La. C.Cr.P. art. 930.8. Independently, relator failed to meet his burden of proof under La. C.Cr.P. art. 930.2 to establish a *Napue* violation.

For the foregoing reasons, the writ application is denied.

Gretna, Louisiana, this 25th day of June, 2026.

TSM
SMC
FHW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/25/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-KH-213

E-NOTIFIED

40th District Court (Clerk)
Honorable J. Sterling Snowdy (DISTRICT JUDGE)
Bridget A. Dinvaut (Respondent)

MAILED

Delcome Evans #429893 (Relator)
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