

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KH-443

STATE OF LOUISIANA

versus

MARVIN CHEST

IN RE MARVIN CHEST
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
MICHAEL P. MENTZ, DIVISION "F", NUMBER 21-3462

TRUE COPY

October 05, 2026



SUSAN BUCHHOLZ
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Scott U. Schlegel, and Timothy S. Marcel

WRIT DENIED

Relator, Marvin Chest, seeks review of the district court's August 3, 2026 Order, which denied his application for post-conviction relief (APCR). For the reasons stated below, we deny relator's writ application.

On August 16, 2023, a jury found relator guilty as charged of sexual battery of a juvenile under thirteen in violation of La. R.S. 14:43.1 (count one), and indecent behavior with a juvenile under thirteen in violation of La. R.S. 14:81 (count two). The jury also found relator guilty of the lesser included offense of attempted indecent behavior with a juvenile in violation of La. R.S. 14:27 and 14:81 on count four.¹ On August 25, 2023, the district court sentenced relator to

¹ The State dismissed count three prior to trial.

thirty-five years imprisonment at hard labor with twenty-five years to be served without the benefit of parole, probation, or suspension of sentence on count one; twenty-five years imprisonment at hard labor with two years to be served without the benefit of parole, probation, or suspension of sentence on count two; and three years and six months imprisonment at hard labor on count four. The district court ordered the sentences on all counts to run concurrently.

On February 26, 2025, this Court affirmed all of relator's convictions and his sentence on count four, vacated the sentences on counts one and two, and remanded for resentencing. *State v. Chest*, 24-199 (La. App. 5 Cir. 2/26/25), 406 So.3d 684.² On May 20, 2025, the Louisiana Supreme Court denied relator's writ application. *State v. Chest*, 25-387 (La. 5/20/25), 409 So.3d 222.

Relator filed his APCR with the district court on July 24, 2026. In it, relator made claims of ineffective assistance of trial and appellate counsel. On August 3, 2026, the district court denied relief, stating, "The petitioner had a fair trial with reliable results. His convictions and sentences were affirmed on appellate review. In this proceeding, he fails to meet his heavy burden of proof required by La. C.Cr.P. art. 930.2."³

On September 18, 2026, relator filed a writ application with this Court seeking review of the district court's August 3, 2026 Order. Relator failed to provide a copy of a notice of intent to file a writ application and order setting a return date within 30 days of the ruling as required by Uniform Rules–Courts of Appeal, Rules 4-2 and 4-3. Accordingly, relator's writ application filed with this

² Specifically, on appeal, this Court vacated relator's sentences on counts one and two after finding a patent error because the district court ruled on relator's post-trial motion and sentenced him on the same day without obtaining a waiver of the delay required pursuant to La. C.Cr.P. art. 873. *Id.* at 700-01. On March 27, 2025, the district court resentenced relator to thirty-five years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for count one and twenty-five years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for count two. The district court also ordered the sentences to run concurrently.

³ La. C.Cr.P. art. 930.2 states, "The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted."

Court is deficient and untimely.⁴ Regardless, even if relator filed a timely writ application, we agree with the district court that relator failed to meet his burden of proof.

Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. Casimer*, 12-678 (La. App. 5 Cir. 3/13/13), 113 So.3d 1129, 1141. To prove ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Id.* Under the *Strickland* test, the defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Id.* An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or a trial whose result is reliable. *Id.* To prove prejudice, the defendant must demonstrate that, but for counsel's unprofessional conduct, the outcome of the trial would have been different. *Id.*

Effective assistance of counsel does not mean errorless counsel, or counsel who may be judged ineffective on mere hindsight. *State v. Hollins*, 99-278 (La. App. 5 Cir. 8/31/99), 742 So.2d 671, 681, *writ denied*, 99-2853 (La. 1/5/01), 778 So.2d 587. An alleged error that is within the ambit of trial strategy does not establish ineffective assistance of counsel because "opinions may differ on the advisability of such a tactic." *State v. Singleton*, 05-634 (La. App. 5 Cir. 2/14/06), 923 So.2d 803, 811, *writs denied*, 06-1208 (La. 11/17/06), 942 So.2d 532 and 08-2386 (La. 1/30/09), 999 So.2d 753.

⁴ Rule 4-3 provides that an "application not filed in the Court of Appeal within the time so fixed or extended shall not be considered, in the absence of a showing that the delay in filing was not due to the applicant's fault." Relator does not provide any explanation for his failure to file a notice of intent and to obtain a return date from the district court, or for his failure to file a timely writ application.

Trial Counsel

Relator first contends that the district court did not address his ineffective assistance claim arising out of his trial counsel's failure to file a motion to quash the charges for indecent behavior with a juvenile in violation of La. R.S. 14:81. Relator argued in his APCR that the bill of information was defective and failed to adequately inform him of the nature of these charges because it included alternative language that defendant committed a lewd and lascivious act "upon, or in the presence" of a known juvenile.⁵ Relator asserted that Louisiana courts have found similar charging language to be defective.

As a general matter, the filing of motions is squarely within the ambit of trial strategy. *State v. Pendelton*, 96-367 (La. App. 5 Cir. 5/28/97), 696 So.2d 144, 156, writ denied, 97-1714 (La. 12/19/97), 706 So.2d 450. Further, a defendant may not complain of a technical insufficiency in an indictment or bill of information for the first time after conviction, when the defendant was otherwise fairly informed of the charges against him and no prejudice is caused by the alleged defect. *State v. Ellis*, 38,740 (La. App. 2 Cir. 8/18/04), 880 So.2d 214, 218.

Relator does not claim that the State never informed him of the facts and basis for the indecent behavior with a juvenile charges prior to trial. And more importantly, he does not allege that he suffered any prejudice as a result of the alleged defects in the charging language. Thus, we agree that relator failed to meet his burden of proof as to this claim.

Next, relator contends that his trial counsel failed to impeach the victim regarding her memory of when the offenses occurred. Counsel's choices of which questions to ask on cross-examination fall well within the ambit of trial strategy. *State v. Reeves*, 18-270 (La. 10/15/18), 254 So.3d 665, 671.

⁵ La. R.S. 14:81(A)(1) provides that a charge for indecent behavior with a juvenile includes, "[a]ny lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons."

At trial, the victim testified on direct examination that she did not remember precisely when the first incidents occurred, but she testified that they “definitely happened before” her thirteenth birthday. Though relator’s counsel did not confront the victim regarding her prior statements on cross-examination, the trial excerpts provided by relator indicate that the investigating officer, Detective Kristen Hollis, and the forensic interviewer at the Jefferson Parish Children’s Advocacy Center, Aubrey Zigler, both agreed on cross-examination that the victim could not provide the specific date in March when the assault occurred. Relator’s trial counsel also impeached Detective Hollis with her preliminary hearing testimony where she agreed that the victim was not sure if the sexual battery occurred before or after her birthday. Finally, trial counsel also obtained an admission from the victim that she did not get along with relator in an attempt to suggest that she fabricated the allegations against relator because she did not like him. Thus, we agree that relator did not “overcome the presumption that, under the circumstances [counsel’s decisions] ‘might be considered sound trial strategy.’” *Strickland*, 466 U.S. at 689.

Appellate Counsel

Relator also argues that the district court erred by denying his claim that his appellate counsel provided ineffective assistance. Relator contends that his appellate counsel’s failure to brief an assignment of error regarding the district court’s ruling denying his motion for new trial resulted in this Court finding that the issue was abandoned on appeal. According to relator, this Court would have found that he was entitled to a new trial because “the verdict [was] contrary to the evidence,” as counsel had asserted in the new trial motion. Relator further maintains that in the new trial motion, counsel argued two additional grounds: (1) the jury was unable to hear the victim’s statement in the CAC video where she

admits wanting to “get rid” of relator; and (2) the State failed to turn over the complete surveillance video.

First, appellate counsel raised and briefed an assignment of error in which counsel argued that “the verdict [was] contrary to the law and evidence,” as well as an assignment of error claiming that the district court erred in denying the motion for post-verdict judgment of acquittal. In response, this Court found that the State’s evidence was sufficient to support each of the verdicts returned by the jury. *Chest*, 406 So.3d at 692-94. Thus, the issue of whether “the verdict was contrary to the evidence” was briefed and reviewed by this Court. As for the remaining claims raised in the new trial motion, we agree with the district court that relator failed to provide adequate support to meet his post-conviction burden of proof under La. C.Cr.P. art. 930.2.

Accordingly, relator’s writ application is denied.

Gretna, Louisiana, this 5th day of October, 2026.

SUS
SMC
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
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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 **10/05/2026** 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:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

26-KH-443

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Michael P. Mentz (DISTRICT JUDGE)
Darren A. Allemand (Respondent)

MAILED

Marvin Chest #782220 (Relator)
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