

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2024-KP-01175

VS.

ANDRE JOHNSON

IN RE: Andre Johnson - Applicant Defendant; Applying For Supervisory Writ,
Parish of Ouachita, 4th Judicial District Court Number(s) 95-F-1265, Court of
Appeal, Second Circuit, Number(s) 56,016-KW;

March 18, 2025

Writ application granted. See per curiam.

PDG
JLW
JDH
JMG

Crain, J., concurs and assigns reasons.
McCallum, J., dissents.
Cole, J., concurs and assigns reasons.

Supreme Court of Louisiana
March 18, 2025

Katja Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 24-KP-1175

STATE OF LOUISIANA

v.

ANDRE JOHNSON

**ON SUPERVISORY WRITS TO THE FOURTH
JUDICIAL DISTRICT COURT, PARISH OF OUACHITA**

PER CURIAM:

Writ granted. In 1997, an Ouachita Parish jury found applicant guilty of second degree murder. The court sentenced him to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The court of appeal affirmed. *State v. Johnson*, 97-30290 (La. App. 2 Cir. 1/21/98), 709 So.2d 1102 (table), writ denied, 98-0481 (La. 6/26/98), 719 So.2d 1056. In February 2024, applicant filed a counselled application for post-conviction relief into the district court, alleging ineffective assistance of counsel at sentencing.

Applicant has adequately demonstrated that his application for post-conviction relief overcomes the post-conviction procedural bars, as the state filed a written notice into the district court on February 26, 2024, waiving any and all procedural bars which may limit his application pursuant to La.C.Cr.P. arts. 930.4(G) (eff. until 8/1/24) and 930.8(D) (eff. until 8/1/24). The waiver was express, in writing, and filed by the state into the district court record, as required by those provisions.

While the legislature has since added a provision to those articles making the procedural bars mandatory, see La.C.Cr.P. arts. 930.4(G) & 930.8(E), at the time

applicant filed his post-conviction application and the state filed its waiver, the district court was free to consider the application on the merits. If a district court was mandated to decline to consider every application for post-conviction relief that was filed outside of the two-year time period mandated in La.C.Cr.P. art. 930.8, absent the exceptions listed in La.C.Cr.P. art. 930.8(A)(1)–(6), the legislature would have had no reason or purpose to enact the provision that allowed the state to waive the procedural bars. To say otherwise would mean the addition of the provision to allow the state to affirmatively waive procedural bars was effectively meaningless, and the legislature added an unnecessary provision to La.C.Cr.P. art. 930.8. *See generally* R.S. 14:3; *State v. Palermo*, 00-2488, p. 5 (La. 5/31/02), 818 So.2d 745, 749 (“In construing statutes, courts must endeavor to give an interpretation that will give them effectiveness and purpose, rather than one which makes them meaningless.”); *Boudreaux v. La. DPSC*, 12-0239, p. 5 (La. 10/16/12), 101 So.3d 22, 26 (“Every word, sentence, or provision in a law is presumed to be intended to serve some useful purpose, that some effect is given to each such provision, and that no unnecessary words or provisions were employed.”).

As we have previously observed, if a defendant seeks post-conviction relief based on the finding of a legal defect pursuant to La.C.Cr.P. art. 930.3, a district attorney is not required by this decision to oppose the application. “For example, if a defendant claims his conviction was obtained in violation of the constitution, pursuant to La.C.Cr.P. art. 930.3(1), because he was denied effective assistance of counsel [...], the district attorney may choose not to raise procedural objections even when they apply.” *State v. Lee*, 22-1827, p. 10 (La. 9/1/23), 370 So.3d 408, 416.

Furthermore, after reviewing the application, we find the district court erred in not conducting an evidentiary hearing. *See generally* La.C.Cr.P. art. 929(A)(“ If the court determines that the factual and legal issues can be resolved based upon the application and answer, and supporting documents, including relevant transcripts, depositions, and other reliable documents submitted by either party or available to the court, the court may grant or deny relief without further proceedings.”); *see also State ex rel. Tassin v. Whitley*, 602 So.2d 721, 722 (La. 1992). Here, the factual and legal issues cannot be resolved based solely on the available documents. Accordingly, we reverse the district court ruling that summarily denied relief, and we remand with instructions to conduct an evidentiary hearing on applicant’s ineffective assistance of counsel at sentencing claim.