

No. _____

**In The
Supreme Court of the United States**

—◆—
AMY LEIGHANNE THOMAS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The Louisiana Supreme Court**

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
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QUESTIONS PRESENTED

The claims raised in Petitioner's application involve critical issues to a petitioner's Constitutional rights of due process and Sixth Amendment guarantee of effective assistance of counsel. The Petitioner in this matter, Ms. Amy Leighanne Thomas, entered a guilty plea on the erroneous advice of trial counsel, rendering her plea constitutionally infirm. Trial counsel failed to adequately investigate the case against Ms. Thomas, including evidence that undermined the State's case. Therefore, the issue before the lower courts was whether trial counsel's advice to plead guilty was reasonable under *Strickland*. Contrary to *Strickland*, the lower courts denied relief, despite evidence to support Petitioner's Sixth Amendment claims and ignoring any inquiry into trial counsel's actions. Under a strict application of *Strickland*, trial counsel's performance was objectively unreasonable.

This case presents two issues of national importance:

1. Whether Louisiana courts correctly applied *Strickland* in denying Petitioner's Sixth Amendment effective assistance of counsel claims, in light of trial counsel's failure to independently investigate critical medical evidence supporting claims of actual innocence, including trial counsel's failure to retain any expert to challenge the State's evidence and theory of culpability which Petitioner identified to be inconsistent.

QUESTIONS PRESENTED – Continued

2. Whether *Strickland* stands for the proposition that a court can reasonably infer the effective assistance of trial counsel in advising his client to accept a guilty plea, where 1) the record indicates no strategic reasons for such advice, 2) the Petitioner is specifically challenging the basis for counsel's advice to plead guilty, and 3) the record is contrary to the trial court's ruling.

LIST OF PARTIES

1. Amy Leighanne Thomas, Petitioner
2. State of Louisiana, Respondent

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Amy Leighanne Thomas, petitions for a writ of certiorari to review the judgment of the Louisiana Supreme Court.

**OPINIONS BELOW**

The Louisiana Supreme Court's order denying Petitioner's writ of certiorari is reported at *State v. Thomas*, 2014 La. LEXIS 1580, 148 So.3d 182, 2013-1944 (La. 06/30/14). The Louisiana Supreme Court's order denying Petitioner's timely motion for reconsideration is reported at *State v. Thomas*, 2014 La. LEXIS 2889, 2013-1944 (La. 11/14/14). The appellate court's order denying writ of supervisory review from the district court's order denying post-conviction relief is reported at *State v. Thomas*, 2013 La. App. LEXIS 1452, 2013 0866 (La.App. 1st Cir. 07/15/13).

**JURISDICTION**

Petitioner seeks review of the final decision of the Louisiana Supreme Court entered on June 30, 2014. A timely motion for reconsideration was denied on November 14, 2014. This Court's jurisdiction rests on 28 U.S.C. §1257(a).



CONSTITUTIONAL PROVISIONS INVOLVED

“In all criminal prosecutions the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. Amend. VI.

No State “shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV.



STATEMENT OF THE CASE

Ms. Thomas was indicted on one count of capital murder for the death of D.D., a six-week-old infant. The State alleged that D.D. died as a result of injuries sustained while in the care and custody of Ms. Thomas, more than seven (7) hours before death. Trial counsel was death-penalty qualified and, therefore, sought for her defense anticipating a capital murder trial. Medical evidence was central to the State’s theory of the case. However, trial counsel did not conduct any independent examination of the State’s medical findings. Instead, trial counsel induced Ms. Thomas to accept a plea offer on the erroneous advice that if she went to trial, she would probably lose and “be on death row.”

In post-conviction filings, Ms. Thomas presented a well-defined claim for ineffective assistance of trial counsel with supporting evidence demonstrating that trial counsel did not perform competently in her

proceedings. Notwithstanding the factual issues in dispute, Ms. Thomas' request for an evidentiary hearing was denied and her claims summarily dismissed on grounds that the record sufficiently showed her representation to have been competent. Whereas the presumption of effectiveness may initially attach when a Petitioner raises a Sixth Amendment claim of ineffective assistance of counsel, that presumption can be overcome where the Petitioner provides evidence to support her claim. Petitioner overcame that presumption, but was still denied an evidentiary hearing and relief.



REASONS FOR GRANTING THE WRIT

- 1. This Court should grant certiorari to determine whether the Louisiana state courts correctly applied *Strickland* to deny post-conviction relief, where the record is silent concerning trial counsel's reasons for advising Petitioner to accept a guilty plea and where counsel failed to investigate critical inconsistencies in the State's medical evidence.**

Under *Strickland v. Washington*, claims of ineffective assistance are analyzed under a two-prong standard. 466 U.S. 668 (1984). Under the first prong, the court must determine whether trial counsel's performance fell below an objective standard of reasonableness. "In any case presenting an ineffectiveness

claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." *Strickland*, 466 U.S. at 688. After determining trial counsel's quality of performance, the court then turns to the second prong, and considers whether there was a reasonable probability that the result of the criminal proceedings would have been different absent the deficient act or omission by trial counsel. *Strickland*, 466 U.S. at 687-88, 694. *Strickland* recognized that the Sixth Amendment's guarantee of assistance of counsel "entails that defendants are entitled to be represented by an attorney who meets at least a minimal standard of competence." *Hinton v. Alabama*, ___ U.S. ___, 134 S.Ct. 1081, 1088 (2014) (citing *Strickland*, 466 U.S. at 685-87).

Before deciding whether to plead guilty, a defendant is entitled to "the effective assistance of competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *Strickland*, 466 U.S. at 686. In the context of guilty pleas, trial counsel,

must actually and substantially assist his client in deciding whether to plead guilty. ***It is his job to provide the accused an "understanding of the law in relation to the facts."*** The advice he gives need not be perfect, but it must be reasonably competent. His advice should permit the accused to make an informed and conscious choice. In other words, if the quality of counsel's service falls below a certain minimum level, the client's guilty plea cannot be knowing and

voluntary because it will not represent an informed choice. And a lawyer who is not familiar with the facts and law relevant to his client's case cannot meet that required minimal level.

Herring v. Estelle, 491 F.2d 125, 128 (5th Cir. 1974) (citations omitted) (emphasis added). In Louisiana, once a defendant has been sentenced, only those guilty pleas which are constitutionally infirm may be withdrawn and only by appeal or post-conviction relief. *State v. McCoil*, 924 So.2d 1120, 1124 (La.App. 5th Cir. 02/27/06). A guilty plea is constitutionally infirm when it is not entered freely and voluntarily, if the *Boykin v. Alabama*, 395 U.S. 238 (1969) colloquy was inadequate, or when a defendant is induced to enter the plea by a plea bargain and that bargain is not kept. *Id.* A guilty plea "lacks the required voluntariness and understanding if entered on advice of counsel that fails to meet the minimum standards of effectiveness derived from the sixth and fourteenth amendments." *Trahan v. Estelle*, 544 F.2d 1305, 1309 (5th Cir. 1977). Although a defendant may not have filed a motion to withdraw his guilty plea, this does not prohibit a constitutionally infirm guilty plea from being set aside either by means of appeal or post-conviction relief. *State v. McCoil, supra*.

In this matter, Ms. Thomas demonstrated that counsel's advice to plead guilty was neither reasonably informed nor reasoned in strategy. At the very least, trial counsel's evaluation of the charged capital case would have reasonably involved assessing the

State's theory of the case and investigating the evidence purportedly establishing guilt. Ms. Thomas was facing first degree murder charges for the death of a six-week-old infant, who had been in Ms. Thomas' care approximately seven (7) hours *before* the death occurred. She was subject to the death penalty.

In Louisiana, first degree murder is defined as the killing of a human being, "[w]hen the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of . . . second degree cruelty to juveniles." La.R.S. 14:30(1). It was the State's burden to prove that Ms. Thomas not only had the requisite *mens rea* to commit first degree murder, but that she directly caused the victim's death. *State v. Small*, 100 So.3d 797, 809 (La. 10/16/12) (recognizing long-standing rule that the State bears the burden of proving direct causation in murder prosecutions). In either regard, the State's evidence did not support a finding of guilt.

Under *Strickland*, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Hinton*, 134 U.S. at 1088 (quoting *Strickland*, 466 U.S. at 690-91). In *Hinton*, this Honorable Court considered whether counsel's actions were unreasonable when he failed to retain an expert for trial based on a misunderstanding of law. This Court found deficient performance where counsel's decision was not strategic, but was based instead on his failure to investigate whether he could secure additional funding.

In finding trial counsel's performance deficient in *Hinton*, this Honorable Court reasoned:

Under *Strickland*, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.

Hinton, 134 S.Ct. at 1088 (citing *Strickland*, 466 U.S. at 690-91). Similarly, in this matter, counsel's decision to forfeit an investigation of the medical findings cannot be excused as a **strategic choice**; it was not based on a thorough investigation of the law or the facts. Ms. Thomas demonstrated that the inconsistencies in her case demanded pretrial investigation. Counsel's ability to retain a forensic pathologist in this matter was not restricted. Therefore, what sort of professional judgment forfeits an investigation necessary to undermine the State's case when the investigation **can** and should be conducted?

Trial counsel's evaluation of the strength of the State's case was unreasonable. Competing theories on the victim's cause of death were never resolved. And the victim's medical condition was inconsistent with the State's theory on causation. According to the State's autopsy, the infant died of blunt force trauma. However, medical findings known to Ms. Thomas' trial counsel revealed **three competing theories** on cause of death: blunt force trauma **or** ingestion of

narcotics *or* “shaking.” Trial counsel was aware of comments by the State’s forensic examiner that the timeline of events leading to the infant’s death would be critical in determining what, and who, actually caused the infant’s death. **No such investigation occurred, however.**

The State’s theory of the case. By all medical accounts, the victim would have immediately bruised after suffering blunt-force trauma.¹ The infant presented with a fractured skull, severe hemorrhaging and bruising. According to autopsy results, the victim’s cause of death included “[h]ead trauma with multiple skull fractures” and severe hemorrhaging to the brain and eye. This finding is consistent with the immediate observations of EMS, dispatched by 9-1-1. EMS arrived after 1:30 a.m. On arrival, they noted bruising to D.D.’s eyes and mouth.

Later that day, a medical examination was performed, which revealed multiple skull fractures, probable burns, retinal hemorrhaging and “petechiae eyes,” or broken capillary blood vessels. The State’s forensic pediatrician reported that these injuries would have been caused by blunt-force trauma. The pediatrician further reported that the “petechiae eyes,” which were visible on the victim’s face, would have occurred *immediately* after she suffered the trauma. The forensic pediatrician stated that “[the

¹ All supporting documentation for the following medical accounts was provided in Ms. Thomas’ post-conviction filings.

infant] would not have eaten after the incident.” In other words, signs of trauma would have been visible immediately after trauma and the infant would not have fed after being injured. If Ms. Thomas had caused D.D.’s death as the State alleged, signs of trauma would have been immediately visible on the infant’s face and body. Contrary to E.M.S. and the autopsy reports, no family members observed the infant to have been bruised.

Witness accounts contradict the autopsy report and medical findings. Ms. Thomas brought D.D. to the infant’s mother and grandmother at approximately 6:00 p.m. The infant remained in the care and custody of various family members from 6:00 p.m. until E.M.S. responded after 1:28 a.m.

D.D.’s mother and grandmother took care of her from 6:00 p.m. until 8:30/9:00 p.m. At that time, a “sitter” arrived to take her to an uncle’s house, where she would spend the night. While at the uncle’s house, the infant was exposed to narcotics as her uncle and his friends smoked marijuana and other substances. At approximately 1:28 a.m., the sitter awoke and observed the infant to be “cold” and unresponsive. She reported that she did not see any bruising on the six-week-old infant’s face. When EMS arrived, she stated that the infant was alive at 11:30 p.m.

The infant’s mother and other family members were present when the “sitter” took the infant for the night. According to the infant’s aunt, there was no

redness on the infant's face, but there was a "burn mark." According to the sitter, the infant's mother had already fed the infant before leaving her in the sitter's care. The sitter then took the six-week-old infant to a house where three (3) other people were staying for the night – where all present were smoking marijuana. While in the sitter's care – approximately five (5) hours – the infant remained asleep in her *infant baby carrier*. In other words, this "sitter" supposedly cared for a six-week-old infant by *smoking marijuana* with three (3) other adults, *including the infant's own uncle*, and partying into the early hours of the next morning. Yet, the effect of these and other drugs was not investigated or inquired into by trial counsel.

To any reasonable attorney, these witness accounts were red flags. In police interviews, no witness observed any bruising on the infant. In the five (5) hours preceding her death, no one present with the six-week-old infant had bothered to check her diapers, much less change them, and no one attempted to feed her. No one even bothered to move the infant out of her infant carrier. Instead, all family witnesses agreed that this six-week-old infant was sound asleep.

Ms. Thomas was one (1) of no less than *eight (8) individuals* who had handled the infant in the seven (7) hours before the child's death. Trial counsel was aware that **witness statements contradicted the State's theory of the case**. Trial counsel was aware that Petitioner had given a false confession. The

medical evidence and witness statements further support that Petitioner's alleged confession was, as she consistently maintained to her trial counsel, actually false. How is it reasonable to advise a defendant to plead guilty in light of so many contradictions and inconsistencies?

A. Trial counsel's failure to investigate the medical evidence cannot be characterized as a strategic choice.

Reasonable trial counsel would have consulted with an expert in forensic pathology to rebut the State's case. Indeed, "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence." *Hinton v. Alabama*, 134 S.Ct. at 1088 (quoting *Harrington v. Richter*, ___ U.S. ___, 131 S.Ct. 770, 788 (2011)). The "core" of the prosecution's case was the State's conclusion that the infant died of blunt force trauma. However, the ME also stated that the timeline of events leading to the infant's death was critical in determining who and what caused the fatal injuries. Reasonable counsel would have investigated the victim's medical condition and submitted the State's cause-of-death theory to independent examination and testing. Then, reasonable counsel would have developed a timeline of medical events.

Other theories of death included administration of narcotics and even "shaking." Did the victim die of

narcotics ingested at the party she was subjected to after her mother handed her over to her own brother and his girlfriend (i.e., the “sitter”)? Was the tiny infant shaken to death because someone at that same party thought her cries were killing their chance for a “buzz”? Or did someone at the party drop the six-week-old infant while so drugged-up they couldn’t see straight? Ms. Thomas’ trial counsel did not conduct any such investigation. In light of the scientific evidence, the facts and circumstances of this case, trial counsel’s failure to investigate was anything BUT a strategic choice.

Defendants MUST necessarily depend on their attorneys to help discern whether a plea should be accepted. The record establishes that trial counsel’s failure to investigate resulted in a complete misunderstanding of the facts on which he evaluated whether the guilty plea should be accepted.

In this matter, Ms. Thomas could not make an “informed and conscious choice.” *Herring v. Estelle*, *supra*. Trial counsel’s misunderstanding formed the basis on which Ms. Thomas believed she should plead guilty. Based on this misunderstanding, trial counsel rendered the unreasonable opinion to Ms. Thomas that she would lose if she went to trial. Trial counsel failed to investigate the medical findings, instead relying on Petitioner’s false confession to induce her to plead guilty. The evidence contradicted the statements in the false confession. Reasonable counsel would not have advised or induced Ms. Thomas to plead guilty based on the evidence. Under *Strickland*,

trial counsel's actions were unreasonable. See *Burt v. Titlow*, *infra*. The lower court's rulings cannot be squared with *Strickland* or this Honorable Court's rulings in *Hinton v. Alabama* or *Burt v. Titlow*.

2. This Court should grant certiorari to determine whether *Strickland* stands for the proposition that a court can reasonably infer that trial counsel's professional judgment was reasonable in advising his client to accept a guilty plea, where: 1) the record indicates no strategic reasons for such advice, 2) the Petitioner is specifically challenging the basis for counsel's advice to plead guilty, and 3) the record is contrary to the trial court's ruling.

The lower courts erred in assuming the first prong of *Strickland* had been met, as the record is silent concerning the efforts taken by trial counsel to ensure competent performance in advising his client to plead guilty. Ms. Thomas has rebutted *Strickland's* presumption of effective assistance by supporting her claims with specific instances of evidence. Based on the evidence presented, an evidentiary hearing should have been ordered to resolve the disputed issues she demonstrated.

Instead, the trial court precluded the taking of evidence as to trial counsel's reasons for advising Ms. Thomas to plead guilty when the evidence against her was inconsistent, convoluted and the charges unsupported. In denying Ms. Thomas' Sixth Amendment

claims, the trial court reasoned that Ms. Thomas had made statements to police that were supported by the State's medical findings. In fact, the "statements" made by Ms. Thomas were false confessions. The medical findings were inconsistent. And those medical findings were contradicted by the State's own eyewitnesses.

The lower courts' rulings demonstrate the substitution of a trial counsel's *actual* advice with that of the courts' *assumption* that counsel actually advised his client based on a reasonable evaluation of her case – clearly NOT a provision this Honorable Court or the United States Constitution would endorse. Ms. Thomas relied on her trial counsel's advice to plead guilty because she trusted that he undertook the investigations necessary to gain a reasonably competent understanding of the strengths, weaknesses and risks inherent for trial: and that his advice was based on such a preparation. The issue before the lower courts was whether that advice was reasonable under a strict application of *Strickland* and the circumstances of this case. Had trial counsel adequately investigated the facts – most importantly, the medical findings in this matter, by consulting an expert in forensic pathology – he would have understood the weaknesses in the State's case. Reasonable trial counsel would not have advised Ms. Thomas to plead guilty to charges based on unresolved and inconsistent findings. Under strict application of *Strickland*, her trial counsel's performance, and, therefore his advice, was patently unreasonable.

In this case, Ms. Thomas asserted throughout proceedings that she was innocent and that her interrogation statements were coerced. Even if counsel questioned Ms. Thomas' confession, the medical evidence alone demonstrated that her statements were, indeed, false. Her so-called "confession" was contradicted by the autopsy and forensic examiner's statements. Had counsel independently examined the infant's medical condition, he would have understood that the State's theory of causation against Ms. Thomas was wholly unsupported. Instead, he conducted no such examination. On this issue, Justice Sotomayor has written:

Regardless of whether a defendant asserts her innocence (or admits her guilt), her counsel must "make an independent examination of the facts, circumstances, pleadings and laws involved and then . . . offer his informed opinion as to what plea should be entered." *Von Moltke v. Gillies*, 332 U.S. 708, 721, 68 S. Ct. 316, 92 L. Ed. 309 (1948) (plurality opinion). A defendant possesses "the ultimate authority" to determine her plea. *Florida v. Nixon*, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004). But a lawyer must abide by his client's decision in this respect ***only after having provided the client with competent and fully informed advice, including an analysis of the risks that the client would face in proceeding to trial.***

Burt v. Titlow, ___ U.S. ___, 134 S.Ct. 10, 19 (2013) (J. Sotomayor, conc.) (emphasis added). Ms. Thomas was

not provided with competent and fully informed advice. Indeed, she was deprived of such an analysis, as required above. Instead, trial counsel relied on Petitioner's false confession as leverage to induce acceptance of a plea deal. According to police, the infant died of blunt force trauma. Police repeatedly accused Ms. Thomas of using an object to injure the infant. However, trial counsel knew that his client's confession was false. Trial counsel also knew that the State's theory was inconsistent with witness statements. Most importantly, trial counsel knew that the medical findings contradicted the State's theory that Ms. Thomas caused D.D.'s death. Despite these facts and circumstances, and myriad contradictions, trial counsel advised the Petitioner that if she took her case to trial, she would probably lose and "be on death row." She was further advised, "if you want the rest of your life, take the plea." This advice was not reasonably contemplated; the advice was incompetent.

The State's case was weak. Additionally, Ms. Thomas consistently maintained her innocence to trial counsel. Had Ms. Thomas been fully apprised of the quality of her case, she would not have pled guilty. And had this capital prosecution been tried, as threatened by the District Attorney and her own trial counsel, she would not have been sent to death row. Considering the case in a light favorable to the prosecution, a rational jury could have and would have reasonably doubted the State's theory that Ms. Thomas could have caused any of the injuries killing the six-week-old infant. A rational jury would have found greater probability that the infant's injuries

and death resulted while in the custody of the marijuana-“tripping” sitter and infant’s uncle.

In denying Ms. Thomas’ post-conviction application, the lower courts found that trial counsel’s performance met *some* standard of competence and that Ms. Thomas suffered no prejudice due to her counsel’s representation – all based on a record devoid of evidence supporting those conclusions. In the trial court’s analysis, it concluded *de facto*, that because Ms. Thomas was *Boykinized* and pled to a “reduced charge” of second degree murder, receiving life in prison, she must have received effective assistance of counsel. Such reasoning is misplaced and unsupported by *Strickland’s* analysis. The fact that a defendant is *Boykinized* does not mean that the advice she received to plead guilty was reasonable.

In accordance with *Strickland*, Ms. Thomas clearly showed that her trial counsel’s performance fell below an objective standard of reasonableness. She provided evidence demonstrating that counsel’s advice to plead guilty was unfounded, based on medical findings which trial counsel failed to investigate. These findings not only rebutted the presumption that counsel provided effective assistance or the reasonability of his advice, but they undermined the State’s theory of the case.

The lower courts misapplied *Strickland* in denying Ms. Thomas’ request for post-conviction relief. Ms. Thomas demonstrated to the lower courts that her trial counsel actually did not educate himself about

the case before advising her to plead guilty. Reasonable counsel would not have advised Petitioner to accept the plea. Petitioner did not cause the victim's death.

◆

CONCLUSION

For all of these reasons, and to remedy the continuing miscarriage of justice thus far imposed on the Petitioner, this Honorable Court should grant the petition for a writ of certiorari.

Respectfully submitted,
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The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS.

NO. 2013-KP-1944

AMY LEIGHANNE THOMAS

IN RE: Thomas, Amy Leighanne; – Defendant; Applying For Supervisory and/or Remedial Writs, Parish of Washington, 22nd Judicial District Court Div. A, No. 08-CR-398197; to the Court of Appeal, First Circuit, No. 2013 KW 0866;

June 30, 2014

Denied.

JTK

BJJ

JPV

JLW

GGG

MRC

JDH

Supreme Court of Louisiana
June 30, 2014

/s/ Carmen B. Young
Clerk of Court
Deputy For the Court

**STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT**

STATE OF LOUISIANA NO. 2013 KW 0866

VERSUS

AMY LEIGHANNE THOMAS JUL 15 2013

In Re: Amy Leighanne Thomas, applying for supervisory writs, 22nd Judicial District Court, Parish of Washington, No. 08-CR-398197.

**BEFORE: MCDONALD, WELCH, AND CRAIN,
JJ.**

WRIT DENIED.

JMM
JEW
WJC

AMY LEIGHANNE THOMAS
V.
JIM ROGERS, WARDEN
LOUISIANA
CORRECTIONAL
INSTITUTE FOR
WOMEN
STATE OF LOUISIANA
FILED: _____

DOCKET NO. 571852 98197
DIVISION 'A'
22nd JUDICIAL
DISTRICT COURT
PARISH OF
WASHINGTON
STATE OF LOUISIANA
DEPUTY CLERK: _____

**ORDER DISMISSING APPLICATION
FOR POST-CONVICTION RELIEF**

(Filed Apr. 22, 2013)

The defendant, Amy Leighanne Thomas, pled guilty to second degree murder on July 20, 2010 in violation of La. R. S. 14:co.1. She was sentenced to serve life in prison at hard labor in the custody of the Louisiana Department of Public Safety and Corrections without benefit of probation, parole, or suspension of sentence. On September 16, 2011, defendant filed her application for Post Conviction Relief alleging ineffective assistance of counsel. The District Attorney filed an Answer to the petition on April 6, 2012. Simultaneously, petitioner filed a Motion to Supplement the Application with Exhibits "Under SEAL."

After considering the application filed on September 16, 2011, by petitioner, Amy Leighanne Thomas, the Answer filed by the District Attorney, the Motion

to Supplement filed by the petition, and the entire record of this matter,

IT IS ORDERED that the Application for Post Conviction Relief shall be denied pursuant to La. Code of Crim. P. Art. 929 for the following reasons.

Petitioner raises two claims in the Application for Post Conviction Relief. Claim One alleges that the guilty plea was infirm as a result of trial counsels' advice to plead guilty. Claim Two alleges ineffective assistance of counsel based on failure to investigate the case.

Amy Leighanne Thomas pled guilty to the reduced charge of second degree murder. She had been indicted for First Degree murder subject to the death penalty because of the age of the victim, who was a six week old infant. Representing Ms. Thomas were Marion Farmer, Fred Daigle, and Jim Burke. Prior to the plea, defense counsel filed a motion to suppress recorded statements of the defendant. The taped interviews were reviewed by the court at the evidentiary hearing, and the Motion to Suppress was denied. The court found that the statement was freely and voluntarily given, and that she was fully advised of her rights. The confession was supported by the medical findings. Thereafter, the charge was reduced from First degree murder to Second degree murder, and the defendant plead guilty to the reduced charge. The court conducted a Boykin examination, found there was a free, intelligent voluntary waiver of

constitutional rights and that there was a factual basis for the plea.

In the second claim, petitioner has alleged ineffective assistance of counsel as grounds for post conviction relief. Under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), defendant must show that her counsel's performance was deficient, and that the deficiency was such that it deprived the defendant of a fair trial. Defendant does not identify any basis for an appeal, nor does she make a showing that her appeal would in any way be successful. Petitioner has not met her burden of proof, and this allegation must also be dismissed as failing to state a claim pursuant to La. Code of Crim. P. Art. 930.4.

IT IS FURTHER ORDERED that the Clerk of Court of the Parish of Washington give notice of this Order to the District Attorney for the Parish of Washington, to the Petitioner's custodian, and the Petitioner by mail.

Franklinton, Louisiana, this 22 Day of April 2013.

/s/ Raymond S. Childress
RAYMOND S.
CHILDRESS
JUDGE, DIVISION "A"

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS.

NO. 2013-KP-1944

AMY LEIGHANNE THOMAS

IN RE: Thomas, Amy Leighanne; – Defendant; Applying For Applying for Reconsideration of this courts' action dated June 30, 2014, Parish of Washington, 22nd Judicial District Court Div. A, No. 08-CR-398197; to the Court of Appeal, First Circuit, No. 2013 KW 0866;

November 14, 2014

Reconsideration denied.

JDH

BJJ

JPV

JTK

JLW

GGG

MRC

App. 8

Supreme Court of Louisiana
November 14, 2014

/s/ Carmen B. Young
Clerk of Court
Deputy For the Court
