

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2314

JONATHAN JOHNSON

VERSUS

RICHARD STALDER, SECRETARY, LOUISIANA DEPARTMENT
OF PUBLIC SAFETY & CORRECTIONS

Judgment Rendered: September 19, 2007

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On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No.535,521

Honorable Kay Bates, Judge Presiding

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Jonathan Johnson
Louisiana State Penitentiary
Angola, LA

Plaintiff/Appellant
In Proper Person

William Kline
Louisiana Department
Baton Rouge, LA

Counsel for Appellee
Richard Stalder, Secretary, Louisiana
Department of Public Safety and
Corrections

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BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Jonathan Johnson, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department), appeals the dismissal of his application for mandamus relief. We affirm.

On August 16, 2005, Johnson filed a “Petition for Writ of Mandamus” seeking to have the trial court order the defendant, Richard Stalder, Secretary of the Department, to provide him, under the Louisiana public records laws, copies of the educational records of another inmate, Robert Chambliss, Johnson’s co-defendant in his criminal conviction for armed robbery.¹ In his petition, Johnson asserted that the educational records of Chambliss were necessary for the filing of his application for post-conviction relief. Particularly, Johnson sought the educational level test scores that Chambliss received on his English reading, spelling and reading comprehension tests, which Johnson asserted were administered for academic evaluation when Chambliss was placed in the custody of the Department. On November 23, 2005, the trial court granted a peremptory exception of no right of action raised *ex proprio motu* and dismissed the petition, without prejudice, without service on the defendant, and at Johnson’s cost. Johnson appealed.

As part of the Public Records Act, LSA-R.S. 44:1, *et seq.*, LSA-R.S. 44:31.1 provides, in pertinent part:

For the purposes of this Chapter, person does not include an individual in custody after sentence following a felony conviction who has exhausted his appellate remedies when the request for public records is not limited to grounds upon which the individual could file for post conviction relief under Code of Criminal Procedure Article 930.3.

¹ The particulars of Johnson’s conviction and sentence for armed robbery, a violation of LSA-R.S. 14:64, can be found in **State v. Johnson**, 03-620 (La.App. 5 Cir. 10/28/03), 860 So.2d 180, writ denied, 03-3171 (La. 3/18/04), 869 So.2d 849.

In this matter, Johnson is “in custody after sentencing following a felony conviction.” Thus, having exhausted his appellate remedies, Johnson is not a “person” for purposes of the public records act if his request for public records is not limited to grounds upon which he could file for post-conviction relief under LSA-C.Cr.P. art. 930.3.² **Lay v. City of Slidell Through Caruso**, 96-2335, p. 2 (La.App. 1 Cir. 1/8/98), 704 So.2d 282, 283.

The Commissioner’s Screening Report recommended dismissal of Johnson’s petition, finding that although Johnson contended the records were necessary to file an application for post-conviction relief, Johnson made no allegation that the records were necessary to pursue any specific post-conviction claim. The Commissioner determined that Johnson was not a “person” under LSA-R.S. 44:33.1 and therefore did not have the right to obtain the requested relief.

In response to the Commissioner’s report, Johnson filed a pleading entitled “Petitioner’s Traverse to Commissioner’s Screening Report” in

² Louisiana Code of Criminal Procedure Article 930.3 provides:

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

- (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana;
- (2) The court exceeded its jurisdiction;
- (3) The conviction or sentence subjected him to double jeopardy;
- (4) The limitations on the institution of prosecution had expired;
- (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional; or
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
- (7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

which Johnson attempted to demonstrate the specific reasons why the educational records of Chambliss were needed by him. Johnson asserted that while Chambliss entered into a plea agreement on his armed robbery charge, Johnson proceeded to a jury trial, wherein Chambliss testified against him. Johnson argued that prior to trial Chambliss had agreed to sign an affidavit stating that Johnson was not involved in any armed robbery and that such an affidavit was signed by Chambliss exonerating Johnson. At trial, however, Chambliss testified that while the affidavit contained his signature, he could not read and did not understand the affidavit's contents. Johnson contended that Chambliss' testimony was false and perjured and that the results of Chambliss' educational test scores were necessary to prove that Chambliss did understand the contents of the affidavit when he signed it. Johnson additionally asserted that the State's failure to produce Chambliss' school records and the names of the school Chambliss attended was a failure to disclose exculpatory material in violation of **Brady v. Maryland**, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963). Johnson contended that Chambliss' perjury misled the jury, affected the jury verdict, and denied him a full and fair trial. The trial court, after considering the record, adopted the recommendation of the Commissioner and dismissed Johnson's suit.

A claim that a prosecution witness perjured himself at trial is not a ground for post-conviction relief under article 930.3. **Lay**, 96-2335 at p. 3, 704 So.2d at 283. Further, while a claim that specific **Brady** material was suppressed might constitute a ground for post-conviction relief under LSA-Cr.P. art. 930.3(1), such is not the case here, as we do not believe that the school records qualify as **Brady** material under these circumstances. Therefore, even considering Johnson's response to the screening report,

Johnson's request for public records is not limited to grounds for post-conviction relief under LSA-C.Cr.P. art. 930.3, and he is not a "person" entitled to public records.

Accordingly, the judgment of the trial court is affirmed. All costs of this appeal are assessed to Jonathan Johnson.

AFFIRMED.