NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2398

LORENZA WIGGINS

VERSUS

DISTRICT ATTORNEY
EAST BATON ROUGE PARISH

DATE OF JUDGMENT: May 2, 2008

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 547,386 N (27)), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON, JUDGE

* * * * * *

Lorenza Wiggins Angola, Louisiana	Plaintiff/Appellee In Proper Person
Doug Moreau Dale R. Lee Baton Rouge, Louisiana	Counsel for Defendant/Appellant East Baton Rouge Parish District Attorney

* * * * * *

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: AFFIRMED.

Kuhn, J.

In this mandamus action filed by petitioner, Lorenza Wiggins, a prisoner seeking to obtain public records relating to his conviction, we affirm the trial court's judgment that ordered the respondent, Doug Moreau, District Attorney for the Parish of East Baton Rouge (hereinafter "Respondent"), to provide Wiggins with a "cost estimate for the record[s] he seeks and upon payment of costs due, provide the records to [him]."

Wiggins filed an application for a writ of mandamus, seeking to have the trial court direct Respondent to: 1) provide him with a cost estimate for obtaining copies of various public records, which relate to a prior conviction and are in Respondent's custody or control; and 2) provide the requested public records upon Respondent's receipt of the estimated payment.[1]

The Commissioner for the trial court ordered Respondent to show cause "in writing" on or before December 6, 2006, why the court should not grant the relief prayed for by Wiggins. On that date, Respondent filed an exception raising the objection of no right of action, urging that Wiggins "fail[ed] to base his public records request upon a ground upon which he could file for post-conviction relief under La. C.Cr.P. art. 930.3." Thus, Respondent urged that Wiggins is not a "person" pursuant to the Public Records Act, La. R.S. 44:1 *et seq.*, and is specifically excluded as a person pursuant to La. R.S. 44:31.1. The trial court overruled the Respondent's exception and granted Wiggins' requested relief.

[1] Wiggins also requested that the court sanction Respondent, by ordering him to provide the cost estimate at a rate of not more than twenty-five cents per page or per photo, which request was implicitly denied by the trial court's dismissal of Wiggins' claim for sanctions.

On appeal, Respondent urges the trial court erred: 1) when it rendered a final judgment in Wiggins' mandamus action before Respondent filed his answer; and 2) by denying his exception since the party seeking access to the public records is an inmate.

Initially, Respondent contends that the trial court erred in rendering a final judgment prior to allowing him to file an answer on the merits and prior to having a show cause hearing on the merits of Wiggins' claims.

The transcript of the June 7, 2007 hearing indicates that the Commissioner called both Wiggins' petition for mandamus and Respondent's exception as matters to be addressed during the hearing. At the end of the hearing, the Commissioner took the matter under advisement.[2] On June 12, 2007, the Commissioner recommended to the trial court that the "[Respondent's] Exception should be overruled and [the] mandamus ... granted." The trial court's judgment in accordance with that recommendation was signed on August 15, 2007.

Summary proceedings are conducted with rapidity, within the delays allowed by the court, and without citation and the observance of all the formalities required in ordinary proceedings. La. C.C.P. art. 2591. Summary proceedings may be used for trial or disposition of a mandamus proceeding. La. C.C.P. art. 2592(6). A summary proceeding may be commenced by a rule to show cause, except as otherwise provided by law. La. C.C.P. art. 2593. Exceptions to a rule to show cause or a petition in a summary proceeding shall be filed prior to the time

[2] See La. R.S. 13:713, authorizing the Commissioners of the Nineteenth Judicial District Court to perform such duties as are assigned to them by the chief judge of the district, including hearing petitions for writs of mandamus relative to prisoners. La. Dist. Ct. R. 3.2, App. 3 – Nineteenth J.D.C., Duty Judge – Jurisdiction.

assigned for, and shall be disposed of on, the trial. ***Id.*** An answer is not required, except as otherwise provided by law. ***Id.***

A writ of mandamus may be ordered by the court only on petition, and the proceedings may be tried summarily. La. C.C.P. art. 3781. A written answer to a petition for a writ shall be filed not later than the time fixed for the hearing. La. C.C.P. art. 3783.

The record establishes that the summary proceeding was properly commenced by a rule to show cause, and when the matter was heard, the merits of both Respondent's exception and Wiggins' petition were addressed. If Respondent sought to file an answer, he should have filed one prior to the time fixed for the hearing. See La. C.C.P. art. 3783. We find no merit in Respondent's first assignment of error.

Next, Respondent argues that the trial court erred by denying his exception that raised the objection of no right of action.

The right of access to public records is a fundamental right guaranteed by La. Const. art. XII, §3. ***Johnson v. Stalder***, 97-0584, p. 3 (La. App. 1st Cir. 12/22/98), 754 So.2d 246, 248. Because this right is fundamental, access to public records may be denied only when the law specifically and unequivocally denies access. See La. Const. art. XII, §3; ***Johnson v. Stalder***, 97-0584 at p. 3, 754 So.2d at 248. Any request for a public record must be analyzed liberally in favor of free and unrestricted access to the record. ***Title Research Corp. v. Rausch***, 450 So.2d 933, 937 (La. 1984). The burden is on the party seeking to prevent disclosure to prove that withholding of a public record is justified. La. R.S. 44:31B(3), ***Johnson v. Stalder***, 97-0584 at pp. 3-4; 754 So.2d at 248.

The purpose of the Public Records Act, La. R.S. 44:1 *et seq.*, is to keep the public reasonably informed, while at the same time balancing the public's right of access against the public interest of protecting and preserving the public records from unreasonable dangers of loss or damage, or acts detrimental to the integrity of the public records. ***Johnson v. Stalder***, 97-0584 at p. 4, 754 So.2d at 248. This act sets forth the means by which a person may obtain access to public records. La. R.S. 44:31 grants to each person of the age of majority the right to inspect, copy, or reproduce, or to obtain a reproduction of, any public record, except as otherwise provided by law. La. R.S. 44:32A states in part that the "custodian shall present any public record to any person of the age of majority who so requests."

Any person who has been denied the right to inspect or copy a record may institute proceedings for the issuance of a writ of mandamus. La. R.S. 44:35A. In a suit for enforcement, the court has jurisdiction to issue a writ of mandamus and determines the matter *de novo*. La. R.S. 44:35B. The burden is on the custodian to sustain his action. ***Id.***

In the instant case, the Respondent contends that Johnson is not a "person" within the meaning of La. Const. art. XII, §3 and the Public Records Act, based on the exception set forth in La. R.S. 44:31.1, which provides:

> 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**. ... [T]he custodian may make an inquiry of any individual who applies for a public record to determine if such individual is in custody after sentence following a felony conviction who has exhausted his appellate remedies and the custodian may make any inquiry necessary to determine if the request of any such

> individual in custody for a felony conviction is limited to grounds upon which such individual may file for post conviction relief under Code of Criminal Procedure Article 930.3.

Wiggins' April 21, 2006 letter to Respondent stated, in pertinent part, "My conviction, sentence and all appeals are final or otherwise, settled [in State v. Wiggins, 04-2039 (La. App. 1st Cir. 6/10/05) (unpublished decision)]. I am seeking these documents only on grounds that would support a claim for post conviction relief." (Underlining added.) Wiggins further demanded to inspect and copy all documents pertaining to his investigation, arrest, and prosecution, including "any records, documents, reports, analysis, notes, memoranda, audio and visual tapes, photographs, charts, and all collected evidence although it may not have been used in any proceedings." Wiggins asked that he be notified within a reasonable time regarding the total cost for copying, postage, and handling. Wiggins' petition for mandamus asserted that Respondent had failed to respond to his request.

Although Wiggins' letter of request did not specify how the records sought would support any ground for post conviction relief pursuant to La. C.Cr.P. art. 930.3, Wiggins generally stated that he was seeking the documents only on grounds that would support a claim for post conviction relief. After reviewing the applicable statutory and jurisprudential authorities, the Commissioner reasoned that Respondent failed to make any inquiries to determine the specific purpose for which Wiggins sought the records, and thus failed to meet his burden under La. R.S. 44:35B. See Commissioner's Report attached as Appendix A. Because the records sought by Wiggins might support an application for post conviction relief under La. C.Cr.P. art. 930.3, we conclude the trial court properly followed the

Commissioner's recommendation to grant the mandamus. See ***Revere v. Canulette***, 98-1493 (La. 1/29/99), 730 So.2d 870. Only a specific and unequivocal law can limit the fundamental right of access to public records. ***Id.*** In this instance, Respondent failed to establish that the exception set forth in La. R.S. 44:31.1 is applicable to Wiggins, and therefore, did not meet his burden of proving that Wiggins is not a "person" entitled to relief under the Public Records Act.

For these reasons, the trial court's judgment is affirmed. Appeal costs in the amount of $400.00 are assessed against Doug Moreau, District Attorney for the Parish of East Baton Rouge.

AFFIRMED.

...200890000

LORENZO WIGGINS

VERSUS

EAST BATON ROUGE
DISTRICT ATTORNEY'S OFFICE

NUMBER: 547,386 SECTION 27

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COMMISSIONER'S REPORT

In this case, the Petitioner filed this suit as an application for mandamus, seeking to have the District Attorney provide him with a cost estimate for records and evidence that lead to his conviction, including police reports, witness statements, if any, and copies of photographs introduced as evidence in his criminal trial. He seeks relief pursuant to authority of the Public Records Act, R.S. 44:1 et seq. The State filed an Exception of No Right of Action alleging that the Petitioner does not meet the definition of a "person" as set forth in the restrictive language of R.S. 44:31.1. A hearing was held on the Exception and alternatively on the Petitioner's request for a cost estimate and records on June 7, 2007. The Petitioner was present pro se and the District Attorney's Office was represented by Dale Lee, Assistant District Attorney. This report is issued of on the record, which includes the transcript of the hearing, for the Court's de novo consideration and final adjudication on the Exception and mandamus request.

ANALYSIS OF THE FACTS AND THE LAW

Every person has a constitutional right to view and copy at their own expense public records, except in cases established by law.[1] The right is subject to liberal interpretation.[2] However, the key word in that right is *person*, which has a restricted definition *established by law* in R.S. 44:31.1.

As stated, the Petitioner seeks the DA's file records including initial police reports, witness statements, and photographs of the crime scene. He offered no particular reason for the request for initial reports or photographs other than to state that he has a PCR application still pending final order following a Commissioner's Report that has been issued therein. As to the witnesses' statements, the Petitioner claims that they are necessary to support his prior claim that counsel was ineffective for failing to obtain them in order to impeach witness testimony. However, there is no allegation as to what the contradictions might be or have been. More importantly, the Assistant District Attorney stated at the mandamus hearing that there are no witness statements in their files and that the files are available for the Court's in camera inspection upon request. Further, the ADA stated he is unaware that any actual witness statements exist, with the exception of the paraphrased version in police reports that the

[1] Art. 12 Section 3 of the Louisiana Constitution.
[2] See *Revere v. Canulette* 730 So.2d 870 La., 1999.

APPENDIX A

25

19th JUDICIAL DISTRICT COURT

Petitioner acknowledged he already has possession of. Thus, without additional proof in the record, there appears no relief available on this mandamus as to witness statements.

Further, it does not appear that the Petitioner is seeking the photos or initial report to support any particular claim in the pending PCR or a traversal of the Commissioner's report, and he does not argue such. He simply argues that he is entitled to them because he does have a PCR request that is not final and because he is willing to pay for the records under the public records law of this state. In its Exception, the State argues that the Petitioner is limited in obtaining records by the restrictive language in R.S. 44:31.1. That statute indicates that in order to have standing or a right of action to seek the records--to actually obtain them—they must be relevant to grounds that would support a claim for post conviction relief.[3]

R.S. 44:31.1:

> 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 C.Cr.P. Art. 930.3.** (emp. mine)

How specific one must be before he can overcome the restriction appears unclear. The Petitioner has not stated how the police reports and pictures he seeks, some of which he acknowledges he has, would support any of his current PCR grounds—trial court error and ineffective assistance of counsel—or how they would be relevant in any prospective PCR application.

In fact, the language of R.S. 44:31.1 appears clear that it does not afford a prisoner the right to seek copies of public records unless his request is limited to support of statutory grounds upon which he has or *could* file for post conviction relief.[4] The cases cited in support of this application do not appear to hold otherwise, and in fact, at least one of them is simply a writ grant without elaboration of the facts at all. Nevertheless, under the law, as judicially interpreted, a prisoner is not required to have actually filed a post conviction complaint when seeking public records, although Mr. Wiggins does appear to presently have one due for definitive ruling in the Trial Court. Further, I note for this Court that the Petitioner did not seek additional records during the pendency of the PCR application while it was before this Commissioner for review, so the Court can only presume that the records he now seeks are irrelevant to the current PCR, which the Petitioner did not address during argument other than to say that unidentified witnesses' statements could have been used by his counsel to impeach

[3] See *State v. Leonard* 695 So2d 1235 (La. 1997).
[4] Id.

the testimony of unnamed witnesses.

In this case, the Petitioner has not listed any particular documents that would support a new post conviction complaint or upon which he could support his currently filed post conviction complaint, and for which the initial report or photos are necessary. When questioned, the Petitioner vaguely indicated that there might be a *Brady* claim if he could review the records. In his actual mandamus complaint, he has not in fact, even mentioned post conviction relief in his pleadings at all. Nonetheless, the burden is not on the Petitioner to show that he is a "person" pursuant to the Public Records Act, but upon the custodian—the District Attorney—to show that he is not.[5]

Nevertheless, despite the seemingly clear restriction in the statute, the appellate Courts have not definitively and consistently stated under what circumstances the restriction on prisoners actually applies. In general, the Courts have interpreted the public records law liberally, considering the fundamental right to access to public records.[6] Even in cases concerning criminal records, when interpreting the public records law, the Courts have consistently favored the petitioner, without mention of the restriction on those who have previously been convicted and are serving final sentences. Many courts in dicta and as a general rule agree that the "legislature, by the public records statutes, sought to guarantee, in the most expansive and unrestricted way possible, the right of the public to inspect and reproduce those records which the laws deem public."[7] The burden is on the custodian to show that the petitioner is not entitled to the records.[8] The Supreme Court has stated in dicta that "custodians of records must supply inmates with costs of records estimates for reproduction at the inmate's cost without regard to the rule of *Bernard*"[9]. *Bernard* held in part that custodians were not required to provide records to inmates to "comb" them for any possible errors unless there was a post conviction application filed. However, the Court later apparently reconsidered a less restrictive interpretation when concluding in the case of *Landis v. Moreau, infra,* that an inmate *could* "comb the record for errors, provided he can pay for the privilege."[10] I note, however, that the issue in *Landis* was not whether the Petitioner was a "person" under 44:31.1, but rather whether the DA's audiotapes of interviews were subject to disclosure under the public records act. The Court found that they were. But it does not appear that the issue of the restrictive language of R.S. 44:31.1 was even raised in that case.

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[5] See *Johnson v. Stalder*, 97-0584, p. 3 (1st Cir. 12/22/98), 754 So2d 246, 248, *citing* La. Const. Art. XII § 3, and *State v. Mart*, 96-1584, p. 6 (1st Cir.6/20/97), 697 So2d 1055, 1059.
[6] See id. also *Hilliard v. Litchfield* 822 So2d 743, 746 (1 Cir., 2002).
[7] See *Landis v. Moreau* 779 So2d 691, 695 (La. 2001).
[8] See *Hilliard v. Litchfield* 822 So2d 743 (1 Cir.2002.)
[9] Id. See *Bernard v. Criminal District Court* 653 So2d 1174 (La. 1995).
[10] Id.

However, while the First Circuit has addressed the restriction in 44:31.1 in depth and found the language to be constitutional on its face; it stated that custodians must give cost estimates and allow purchase of the records if they can possible support any claim for post conviction relief:

> "We believe that La. R.S. 44:31.1 gives an inmate the right to examine any public record (and to copy or receive a copy thereof in a reasonable manner) relevant to any post-conviction relief he is entitled to seek. At the same time, the statute strikes a reasonable balance between the inmate's right of access to the public records and the custodian's obligation to effectively and efficiently preserve the integrity of the public records.
>
> With respect to the United States Constitution, plaintiff first argues that the denial of access to the radio logs under La. R.S. 44:31.1 was a violation of his right of access to the courts. It is true that prisoners have a constitutional right of adequate, effective, and meaningful access to the courts to petition the government for redress of grievances. *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72 (1977). This right, however, apparently does not extend to all legal filings, but applies only to presentation of constitutional claims, such as civil rights complaints and state and federal habeas petitions. ...
>
> We conclude that the statute does not deny plaintiff the necessary access. The very language of the statute excludes from its application any felony inmate except those seeking copies of public records upon grounds for which the inmate could file for post conviction relief. ... Furthermore, nothing prevents plaintiff from having a representative make a personal appearance at the office of the public records custodian to inspect and copy the records he seeks.
>
> Plaintiff also argues that La. R.S. 44:31.1 is a violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution....
>
> Because no suspect classification, federally recognized fundamental right, or federal constitutional provision is involved, we review La. R.S. 44:31.1 under the rational basis standard. We believe the statute rests on a rational predicate. This provision furthers the state's interest in maintaining the integrity of the public records and facilitating the efficient and effective preservation of the public records. By limiting the number of requests to which the custodian of the public records must respond, particularly in those situations when the information requested is not needed by the inmate for purposes of seeking post-conviction relief, the statute seeks to ensure that an inmate receives all the information necessary to facilitate his right of access to the courts for redress of grievances, while at the same time reducing the volume of repetitive and unnecessary requests. Thus, we conclude that the denial of plaintiff's claims ... under La. R.S. 44:31.1 is not a violation of either the equal protection clause or due process clause of the Fourteenth Amendment to the United States Constitution.

The finding above notwithstanding, upon review by the Supreme Court, granting writs in part and denying in part, the Court appeared to suggest that *if the records sought could possibly support a claim for post conviction relief, then the inmate is entitled to a copy of any records*

that he is willing to pay for." [11] The Supreme Court remanded stating:

> "...it appears that the court of appeal has assumed that police photographs and radio logs could not support an application for post-conviction relief properly setting out claims cognizable under La.C.Cr.P. art. 930.3. However, because such documents *might support* such an application, *cf. State ex rel. Leonard v. State*, 96-1889 (La.6/13/97), 695 So.2d 1325, the case is remanded to the district court to consider whether, given that only a specific and unequivocal law can limit the fundamental right of access to public records, ...Relator still has the right of access to the records sought under the new statute. If the district court finds Relator is entitled to access, it shall order Relator supplied with copies or cost estimates in accord with the principles set out in *State ex rel. Bernard v. Criminal D.C.*, (La. 4/28/95), 653 So.2d 1174, 1175 and *Range v. Moreau*, 96-1607 (La.9/3/96), 678 So.2d 537."[12] (emphasis mine).

Finally, the First Circuit made plain that not only is the burden of proof on the custodian to show why records should not be provided, but in the case of prisoners seeking records, this burden includes an affirmative duty to inquire of the Movant his intent in seeking the records, removing that burden from the prisoner as well. Without that inquiry, the Court might overstep its bounds by speculating as to whether the Petitioner actually had a purpose for the records sought.

> "Because this right of access to public records is fundamental, access to public records may be denied only when the law specifically and unequivocally denies access. [citations omitted] The burden is on the party seeking to prevent disclosure to prove that withholding of a public record is justified. In this case, *there was no evidence introduced to show that the sheriff made the inquiries necessary for denying access*. Therefore, *the trial court committed legal error because it improperly assigned Hilliard the burden of proof and absolved the custodian of the duty to make the necessary inquiries for denying access to a public record. [citations omitted]."*[13] (emphasis mine).

In this case, there is no evidence in the record to show that the District Attorney ever made any separate inquiry of the Petitioner at the hearing or prior thereto as to the purpose of his seeking the records. Therefore, it appears that this Court, based on the judicial interpretation of R.S. 44:31.1 in reported opinions, is constrained to order the District Attorney to provide the Petitioner with the cost of copying the records sought by the Petitioner, including the initial police report(s), the photos made in connection with the crime, and any witness statements, if any exist in his file.

As to the issue of the cost for copying such records, there is no requirement that such records be provided free or at a reduced rate, and although the jurisprudence might seem

[11] *Revere v. Canulette* 715 So2d 47, 53-55 (1st. Cir. 1998)
[12] **Revere v. Canulette**
730 So2d 870
La., 1999.
[13] See *Hilliard v. Litchfield* 822 So2d 743, 746 (1 Cir.2002.)

equivocal on this issue as well, there is some jurisprudence to indicate that the Court does not even have the authority to order a custodian to provide free records or reduce their charges for copying records.[14] Since the Petitioner has not shown a particularized need, nor has he even articulated a basis for which the records are necessary in the pending or any contemplated post conviction application, I would not recommend such an order in any event.

If the Court agrees, my recommendation follows.

COMMISSIONER'S RECOMMENDATION

Having considered the facts stated in the application for mandamus, the law applicable and cases cited, I find that the State's Exception should be overruled and mandamus be granted ordering the District Attorney to provide the Petitioner with a cost estimate of the records he seeks, along with the records upon payment of the costs due.

This suit should be dismissed without prejudice at the Respondent's costs.

Respectfully recommended this 12th day of June 2007 in Baton Rouge, Louisiana.

RACHEL P. MORGAN
COMMISSIONER, SECTION A
NINETEENTH JUDICIAL DISTRICT COURT

FILED
JUN 12 2007
DY. CLERK OF COURT
COMMISSIONER CT. SEC. A

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS/JUDGMENT/ORDER/ COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO: ALL PARTIES.
DONE AND SIGNED THIS 19 DAY OF June 2007.
DEPUTY CLERK OF COURT

[14] *Diggs v. Pennington* 849 So2d 756 (4 Cir. 2003).