

04/12/02 "See News Release 030 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-KP-2808

STATE OF LOUISIANA

v.

CHARLES CONWAY

On Writ of Certiorari to the  
Fourth Circuit Court of Appeal

PER CURIAM:

Writ granted; conviction and sentence reinstated. The district court could not and did not grant a motion for a new trial, since Conway did not file one and if he had he would have filed it untimely. La.C.Cr.P. art. 853. Properly viewing Conway's second filing at the district court as a supplement to his application for post-conviction relief, and assuming that a claim of "actual innocence" not based on DNA evidence under La.C.Cr.P. art. 926.1 is cognizable on collateral review under La.C.Cr.P. art. 930.3, see Ex parte Elizondo, 947 S.W.2d 202, 205 (Tex. Cr. App. 1996); Summerville v. Warden, 229 Conn. 397, 641 A.2d 1356, 1369 (1994); People v. Washington, 171 Ill. 475, 665 N.E.2d 1330, 1336-37 (1996); but see Herrera v. Collins, 506 U.S. 390, 416-17, 113 S.Ct. 853, 869, 122 L.Ed.2d 203 (1993); Johnson v. State, 321 Ark. 117, 900 S.W.2d 940, 950 (1995); State v. Watson, 126 Ohio App.3d 316, 710 N.E.2d 340, 344-45 (1998), the district court erred in granting relief because Conway did not make a bona fide claim of actual

innocence. Such a claim must involve "new, material, noncumulative," and "conclusive" evidence, Washington, 665 N.E.2d at 1337, which meets an "extraordinarily high" standard, Summerville, 641 A.2d at 1372-75, and which "undermine[s] the prosecution's entire case," In re Clark, 5 Cal 4th 750, 21 Cal. Rptr. 2d 509, 855 P.3d 729, 739 (1993), while Conway on collateral review merely advanced an "alternative and inconsistent" theory of defense to the one he offered at trial, a tactic our jurisprudence prohibits. See generally State v. Juluke, 98-0341, p. 4-5 (La. 1/8/99), 725 So.2d 1291, 1293.