

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
LOUISIANA

Preston Nelson v. Darrel Vannoy, Warden

Nelson v. Vannoy · No. 18-339-JWD-EWD · Decided February 25, 2026

SUMMARY

This Magistrate Judge’s Report and Recommendation addresses Preston Nelson’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. The report analyzes procedural default, exhaustion, sufficiency of the evidence, ineffective assistance of counsel, and related constitutional claims, and recommends that the petition be denied. An evidentiary hearing was conducted only on a claim concerning trial counsel’s failure to object to the prosecution’s opening statement.

CASE DETAILS

COURT	United States District Court for the Middle District of Louisiana
WRITING FOR THE COURT	Erin Wilder-Doomes
JURISDICTION	United States District Court for the Middle District of Louisiana
DECIDED	February 25, 2026
DOCKET	18-339-JWD-EWD
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for a writ of habeas corpus under 28 U.S.C. § 2254 by a person in state custody; magistrate judge's report and recommendation addressing procedural default, deferential AEDPA review, and de novo review of one ineffective-assistance claim.
STANDARD OF REVIEW	Under 28 U.S.C. § 2254(d), relief on claims adjudicated on the merits is available only when the state-court decision was contrary to, or involved an unreasonable application of, clearly established Supreme Court law, or was based on an unreasonable factual determination. State factual findings receive a presumption of correctness under § 2254(e)(1). Claims procedurally defaulted in state court are generally unreviewable absent cause and prejudice or a fundamental miscarriage of justice. The ineffective-assistance claim previously found to rest on an unreasonable factual determination was reviewed de novo.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Preston Nelson v. Darrel Vannoy, Warden

TOPICS

federal habeas corpus

post-conviction relief

ineffective assistance

due process

right to counsel

PRACTICE AREAS

federal habeas corpus

state post-conviction relief

criminal procedure

constitutional law

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether Claims 6(C), 7(B), 8, and 10 were unexhausted and procedurally defaulted.
2. Whether the evidence was constitutionally sufficient to support Nelson's convictions for the Elmgrove murder and attempted murder, including the specific-intent element.
3. Whether appellate counsel was ineffective for failing to raise a sufficiency-of-the-evidence challenge.
4. Whether the trial court violated Nelson's Sixth Amendment right to counsel of choice by denying his mid-trial request to discharge retained counsel and counsel's request to withdraw.
5. Whether appellate counsel was ineffective for failing to raise the alleged counsel-of-choice violation.
6. Whether Nelson knowingly, voluntarily, and intelligently waived his right to testify.
7. Whether trial counsel was constitutionally ineffective under the meaningful-adversarial-testing standard for failing to cross-examine Jarvis more extensively.
8. Whether the prosecutor's opening-statement reference to an alleged confession deprived Nelson of due process.
9. Whether Louisiana Code of Criminal Procedure article 465 rendered the indictment constitutionally defective.
10. Whether trial counsel was ineffective for failing to object to the prosecutor's inaccurate opening-statement reference to an inculpatory statement by Nelson.

HOLDINGS

1. Claims that were not fairly presented to Louisiana's highest court and would now be barred by Louisiana's successive-application or limitations rules are technically exhausted and procedurally defaulted; the federal court may not review them absent cause and prejudice or a fundamental miscarriage of justice.
2. Under *Jackson v. Virginia* and AEDPA, habeas relief was unwarranted because, viewing the evidence in the light most favorable to the prosecution, a rational factfinder could find Nelson guilty as a principal to second-degree murder and attempted second-degree murder, including the required specific intent.
3. Appellate counsel was not ineffective for declining to raise a meritless or comparatively weaker sufficiency-of-the-evidence argument.

4. The trial court did not violate Nelson's qualified right to counsel of choice by denying his mid-trial request to substitute retained counsel and counsel's motion to withdraw.
5. Nelson knowingly, voluntarily, and intelligently waived his constitutional right to testify; dissatisfaction and distrust of counsel did not invalidate the waiver.
6. Counsel's alleged failures to cross-examine Jarvis more forcefully did not constitute a complete failure to subject the prosecution's case to meaningful adversarial testing, so prejudice could not be presumed under *United States v. Cronin*.
7. The prosecutor's isolated and inaccurate opening-statement reference to an alleged confession did not so infect the trial with unfairness as to violate due process.
8. Nelson's challenge to the sufficiency of the state indictment was not cognizable on federal habeas review because the indictment was not shown to be so defective that the state trial court lacked jurisdiction.
9. Trial counsel was not ineffective under *Strickland* for failing to object to the prosecutor's inaccurate opening-statement assertion that Robin Johnson would testify that Nelson and Baker confessed to the Kingfisher murders.

KEY QUOTATIONS

"The opening statement by the prosecutor that Robin Johnson would testify during trial that Petitioner and his brother, G'Quan Baker, told her they committed the Kingfisher murders was not correct." (at 35)

"Trial counsel's strategic choice in this case to not object to the brief remark in the prosecutor's opening statement was not constitutionally ineffective." (at 37)

FACTUAL BACKGROUND

Nelson was convicted after a jury trial arising from two Baton Rouge shooting incidents. In the Elmgrove incident, Angela Jarvis testified that Nelson drove a white SUV that followed her vehicle and that the passenger shot Ashley London and attempted to shoot Jarvis. In the Kingfisher incident, Jessica Parker and Kevin Bowie were found shot in a Ford Explorer, and evidence linked a Ruger 9mm handgun sold by Nelson to shell casings and bullets recovered from the scene. The federal court held an evidentiary hearing concerning trial counsel's failure to object to the prosecutor's inaccurate opening-statement assertion that Robin Johnson would testify that Nelson and G'Quan Baker confessed to the Kingfisher murders.

PROCEDURAL HISTORY

Nelson was convicted in Louisiana state court of three counts of second-degree murder, attempted second-degree murder, and being a felon in possession of a firearm. The Louisiana First Circuit affirmed the convictions and sentences, and the Louisiana Supreme Court denied further review. After state post-conviction proceedings, Nelson filed this federal habeas petition. The district court previously found the state-court decision on Claim 6 factually unreasonable, appointed counsel, and held an evidentiary hearing limited to ineffective assistance for failure to object to the prosecutor's opening statement. The magistrate judge recommended dismissal with prejudice and denial of a certificate of appealability.

DISPOSITION

dismissed

CASES CITED

- State v. Nelson, No. 2013-0722 (La. App. 1 Cir. Dec. 27, 2013), 2013 WL 6858302
- State v. Nelson, 2014-0216 (La. Aug. 25, 2014), 147 So. 3d 700
- State ex rel. Nelson, 2016-1725 (La. Feb. 23, 2018), 236 So. 3d 543
- Rocha v. Thaler, 626 F.3d 815 (5th Cir. 2010)
- Bufalino v. Reno, 613 F.2d 568 (5th Cir. 1980)
- Wilder v. Cockrell, 274 F.3d 255 (5th Cir. 2001)
- Dupuy v. Butler, 837 F.2d 699 (5th Cir. 1988)
- Wilson v. Foti, 832 F.2d 891 (5th Cir. 1987)
- Amos v. Scott, 61 F.3d 333 (5th Cir. 1995), cert. denied, 516 U.S. 1005 (1995)
- Schlup v. Delo, 513 U.S. 298 (1995)
- McCleskey v. Zant, 499 U.S. 467 (1991)
- McGowen v. Thaler, 675 F.3d 482 (5th Cir. 2012)
- Fairman v. Anderson, 188 F.3d 635 (5th Cir. 1999)
- Ward v. Cain, 53 F.3d 106 (5th Cir. 1995)
- Loynachan v. Davis, 766 F. App'x 156 (5th Cir. 2019)
- Castille v. Peoples, 489 U.S. 346 (1989)
- Smith v. Digmon, 434 U.S. 332 (1978)
- Loynachan v. Davis, 766 F. App'x 156 (5th Cir. 2019)
- Busby v. Dretke, 359 F.3d 708 (5th Cir. 2004)
- Glover v. Cain, 128 F.3d 900 (5th Cir. 1997)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- State v. Mitchell, 772 So. 2d 78 (La. 2000)
- State v. Brooks, 505 So. 2d 714 (La. 1987)
- State v. Holmes, 388 So. 2d 722 (La. 1980)
- State v. Graham, 420 So. 2d 1126 (La. 1982)
- State v. Cummings, 771 So. 2d 874 (La. App. 1 Cir. 2000)
- State v. Powell, 671 So. 2d 493 (La. App. 1 Cir. 1995), writ denied, 667 So. 2d 529 (La. 1996)
- State v. Huizar, 414 So. 2d 741 (La. 1982)
- Weeks v. Scott, 55 F.3d 1059 (5th Cir. 1995)
- Smith v. Robbins, 528 U.S. 259 (2000)
- Briseno v. Cockrell, 274 F.3d 204 (5th Cir. 2001)
- Evitts v. Lucey, 469 U.S. 387 (1985)
- Jones v. Barnes, 463 U.S. 745 (1983)

- Moawad v. Anderson, 143 F.3d 942 (5th Cir. 1998)
- Newton v. Dretke, 371 F.3d 250 (5th Cir. 2004)
- United States v. Hughey, 147 F.3d 423 (5th Cir. 1998)
- United States v. Dinitz, 538 F.2d 1214 (5th Cir. 1976)
- United States v. Paternostro, 966 F.2d 907 (5th Cir. 1992)
- Gandy v. Alabama, 569 F.2d 1318 (5th Cir. 1978)
- United States v. Grow, 394 F.2d 182 (4th Cir. 1968), cert. denied, 393 U.S. 840 (1968)
- United States v. Terry, 449 F.2d 727 (5th Cir. 1971)
- Johnson v. Cain, 712 F.3d 227 (5th Cir. 2013)
- Baldwin v. Reese, 541 U.S. 27 (2004)
- Rock v. Arkansas, 483 U.S. 44 (1987)
- Jordan v. Hargett, 34 F.3d 310 (5th Cir. 1994)
- United States v. Cronin, 466 U.S. 648 (1984)
- Bell v. Cone, 535 U.S. 685 (2002)
- Jackson v. Johnson, 150 F.3d 520 (5th Cir. 1998)
- Childress v. Johnson, 103 F.3d 1221 (5th Cir. 1997)
- Darden v. Wainwright, 477 U.S. 168 (1986)
- Donnelly v. DeChristoforo, 416 U.S. 637 (1974)
- United States v. Young, 470 U.S. 1 (1985)
- Geiger v. Cain, 540 F.3d 303 (5th Cir. 2008)
- Jones v. Butler, 864 F.2d 348 (5th Cir. 1988)
- United States v. Rodriguez, 43 F.3d 117 (5th Cir. 1995)
- Ortega v. McCotter, 808 F.2d 406 (5th Cir. 1987)
- Cho v. Cain, No. 05-2725, 2007 WL 4219403 (E.D. La. Nov. 26, 2007)
- Liner v. Phelps, 731 F.2d 1201 (5th Cir. 1984)
- Branch v. Estelle, 631 F.2d 1229 (5th Cir. 1980)
- Johnson v. Estelle, 704 F.2d 232 (5th Cir. 1983)
- McKay v. Collins, 12 F.3d 66 (5th Cir. 1994)
- Millard v. Lynaugh, 810 F.2d 1403 (5th Cir. 1987)
- Davis v. Craig, 66 F.3d 319 (5th Cir. 1995), 1995 WL 534730
- Alexander v. McCotter, 775 F.2d 595 (5th Cir. 1985)
- Landor v. Cain, No. 13-5515, 2014 WL 7342361 (E.D. La. Dec. 23, 2014)
- Murphy v. Beto, 416 F.2d 98 (5th Cir. 1969)
- Cullen v. Pinholster, 563 U.S. 170 (2011)
- Smith v. Cain, 708 F.3d 628 (5th Cir. 2013)
- Deters v. Collins, 985 F.2d 789 (5th Cir. 1993)
- Richardson v. Proctor, 762 F.2d 429 (5th Cir. 1985)

- Carter v. Estelle, 677 F.2d 427 (5th Cir. 1982)
- Knighton v. Maggio, 740 F.2d 1344 (5th Cir. 1984)
- Alexander v. Johnson, 163 F.3d 906 (5th Cir. 1998)
- Rose v. Lundy, 455 U.S. 509 (1982)
- Whitehead v. Johnson, 157 F.3d 384 (5th Cir. 1998)
- Anderson v. Collins, 18 F.3d 1208 (5th Cir. 1994)
- Harrington v. Richter, 562 U.S. 86 (2011)
- Johnson v. Dretke, 394 F.3d 332 (5th Cir. 2004)
- United States v. Jones, 287 F.3d 325 (5th Cir. 2002)
- Lamb v. Johnson, 179 F.3d 352 (5th Cir. 1999)
- Yohey v. Collins, 985 F.2d 222 (5th Cir. 1993)
- Carter v. Banks, No. 18-79, 2021 WL 11525629 (S.D. Miss. Feb. 10, 2021)
- Cunningham v. Wong, 704 F.3d 1143 (9th Cir. 2013)
- Perkins v. McKee, 411 F. App'x 822 (6th Cir. 2011)
- Piscioti v. Washington, 143 F.3d 296 (7th Cir. 1998)
- Seehan v. State of Iowa, 72 F.3d 607 (8th Cir. 1995)
- Cook v. Stephens, No. 12-26, 2015 WL 1058107 (N.D. Tex. Mar. 10, 2015)
- McFadden v. Steele, No. 12-212, 2015 WL 928468 (E.D. Mo. Mar. 4, 2015)
- Alexander v. Johnson, 211 F.3d 895 (5th Cir. 2000)
- Ruiz v. Quarterman, 460 F.3d 638 (5th Cir. 2006)
- Pippin v. Dretke, 434 F.3d 782 (5th Cir. 2005)
- Miller-El v. Cockrell, 537 U.S. 322 (2003)