

SUPREME COURT OF LOUISIANA

No. 15-KH-1386

STATE EX REL. DELWART BROWN

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-FOURTH
JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

PER CURIAM:

Denied. Relator's sentencing claim is not cognizable on collateral review. See La.C.Cr.P. art. 930.3; State ex rel. Melinie v. State, 93-1380 (La. 1/12/96), 665 So.2d 1172; see also State v. Cotton, 09-2397 (La. 10/15/10), 45 So.3d 1030. We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The District Court is ordered to record a minute entry consistent with this per curiam.

CONCORDIA
SERVE
29544

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 14-1994

DIVISION "P"

STATE OF LOUISIANA

VERSUS

DELWERT BROWN

(1)

FILED: 4-23-15

DeW
DEPUTY CLERK

ORDER

This matter comes before the Court on defendant's MOTION FOR DOWNWARD DEPARTURE, STAMPED AS FILED APRIL 10, 2015.

In case # 14-1994, on May 8, 2014, the defendant pled guilty to LSA-R.S. 40:1023, possession of drug paraphernalia. The court sentenced him to 6 months in Parish Prison, to run concurrently with case # 14-1680.

In case # 14-1680, on May 8, 2014, the defendant pled guilty to LSA-R.S. 40:966A, relative to possession with intent to distribute marijuana. He also pled guilty to the multiple bill. The court sentenced him as a second felony offender to 15 years imprisonment at hard labor, to run concurrently with case # 14-1994 and #04-643. On February 26, 2015, the court granted defendant's Motion to Correct Illegal Sentence, vacated the previous sentence under the multiple bill, and re-sentenced him to as a second felony offender to 15 years imprisonment at hard labor to run concurrently with case # 14:1994 and # 04-643.

The defendant now requests downward departure as to the multiple offender sentencing. A procedural bar to relief is LSA.-C.Cr.P. art. 881, which provides that a sentence cannot be amended once the defendant has begun serving that sentence. Under the provisions of LSA-C.Cr.P. art. 881, the trial court can only amend a felony sentence which is ordered without hard labor. As a matter of law, the defendant is not entitled to relief.

Accordingly,

IT IS ORDERED BY THE COURT that defendant's motions are hereby DENIED.

Gretna, Louisiana, this 23rd day of April, 2015.

[Signature]
JUDGE

PLEASE SERVE:

DEFENDANT: Delwert Brown, # 2014050092, Concordia Parish Correctional Facility, 26356 Hwy. 15, Ferriday, LA 71334

DeW
4-23-15

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

DeW
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON