

12/16/2016 "See News Release 076 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 15-KH-1425

STATE EX REL. CARLOS MCGREW

v.

STATE OF LOUISIANA

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

PER CURIAM:

Denied. The application was not timely filed in the district court, and relator fails to carry his burden to show that an exception applies. La.C.Cr.P. art. 930.8; *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So.2d 1189. We attach hereto and make a part hereof the District Court's written ruling denying relator's application.

Relator has now fully litigated at least five applications 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.

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Legal Programs Department

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 98-6947

STATE OF LOUISIANA

DIVISION "O"

VERSUS

CARLOS MCGREW

FILED: April 16, 2015

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ORDER

This matter comes before the court on defendant's MOTION TO RE-OPEN ORIGINAL POST-CONVICTION RELIEF APPLICATION W/ ATTACHED ORDER REVERSING PREVIOUS DENIAL OF RELIEF, BASED UPON L.A.C.CR.P. ART. 924, ET SEQ., STAMPED AS FILED APRIL 2, 2015.

On August 14, 1999, the petitioner was convicted of two counts of LSA-R.S.14:30.1, relative to second degree murder. On August 18, 1999, the court sentenced him on each count to life imprisonment at hard labor. Petitioner's conviction was affirmed on direct appeal. *State v. McGrew*, 00-200, (La.App. 5 Cir. 9/26/00), 769 So.2d 782; writ denied, 2000-2852 (La. 10/12/01), 799 So.2d 492.

Petitioner requests to re-open his original application for post-conviction relief, and argues that recently sworn affidavit of a known, but never questioned or subpoenaed alibi witness, Peter D. Turner, Jr., qualifies as newly discovered evidence. He further argues ineffective assistance for counsel's failure to investigate and subpoena known alibi witnesses.

The court finds no merit to petitioner's alleged newly discovered evidence, as the information was clearly available prior to trial, as evidenced by petitioner's *Attachment A*, defense's pretrial *Notice to State of Alibi Defense*, which lists the witness as an alibi, and is locatable in the court record. This "newly discovered evidence" Petitioner does not prove an exception to the time limitations of LSA-C.Cr.P. art. 930.8(A). Thus, petitioner's application is procedurally barred.

The petitioner's application for post-conviction relief is time-barred, pursuant to LSA-C.Cr.P. art. 930.8. The court will not address the merits of petitioner's claims because an application for post-conviction relief would be untimely. Under the clear language of LSA-C.Cr.P. art. 930.8, the petitioner had two years from the date his conviction and sentence became final to file an application for post-conviction relief, unless he proved an exception to the time limitations of LSA-C.Cr.P. art. 930.8 (A).

Accordingly,

IT IS ORDERED BY THE COURT that this application be and the same is hereby **DENIED**.

Gretna, Louisiana this 16th day of April, 2015

Wangell...
JUDGE

Received 4-28-15 @ 10:40 a.m. - Camb D. Raven 1-6-7

PLEASE SERVE:
PRISONER: Carlos McGrew, DOC # 413135, Louisiana State Penitentiary, Angola, LA 70712

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24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA

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