

SUPREME COURT OF LOUISIANA

No. 15-KH-1521

STATE EX REL. VERSHAWN WILLIAMS

v.

STATE OF LOUISIANA

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

PER CURIAM:

Denied. Relator fails to show the state withheld material exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In addition, relator's sentencing claim is not cognizable on collateral review. 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. Relator's remaining claims are repetitive and/or unsupported. La.C.Cr.P. art. 930.2; La.C.Cr.P. art. 930.4. 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.

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Save

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 11-151

DIVISION "B"

STATE OF LOUISIANA

VERSUS

VERSHAWN WILLIAMS

#499447

FILED: 4/9/15


DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED JANUARY 16, 2015, AND STATE'S RESPONSE, STAMPED AS FILED MARCH 31, 2015.

The court will find and list pertinent aspects of the procedural history of this case. As shown on appeal, on July 13, 2011, a Jefferson Parish jury found the petitioner guilty of possession of cocaine, in violation of LSA-RS. 40:967. On January 14, 2013, the petitioner admitted status as a three-time felony offender. He was sentenced to ten years incarceration as a multiple offender.

The Fifth Circuit denied relief on direct appeal. *State v. Williams*, 128 So.3d 359 (La.App. 5 Cir. 10/9/13). The petitioner filed a post-conviction relief application, which the court ordered the state to respond within thirty days. The state obtained an extension of time in which to respond, specifically, the date of March 25, 2015. The state's opposition, entitled "State of Louisiana versus Veshawn Williams," was filed on March 31, 2015.

Claims Raised

In his application, the petitioner raises four claims, which the court for accuracy will quote from his brief:

Claim 1: Detectives of the Parish of Jefferson erred in returning the petitioner to the scene after an arrest had been made shortly after leaving the scene of the crime for identification purposes.

Claim 2: Insufficient evidence to support the finding of guilt for possession of cocaine with intent to distribute.

Claim 3: Prosecutorial Vindictiveness

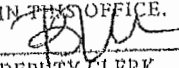
Claim 4: Conviction and sentence obtained in violation of the United States Constitution Amendment VI and the Louisiana Constitution Article 1 Section 2, 13, 16, "Right to a Fair and Impartial Trial," "Brady Violation."

Analysis

As to all claims now made, the state appears to raise procedural objections. By statute, if procedural objections are raised, no answer on the merits may be ordered until the objections have been considered and have become final. LSA-C.Cr.P. art. 927(A). In order to resolve the objections, the court will address each claim in turn.

Claim 1: Detectives of the Parish of Jefferson erred in returning the petitioner to the scene after an arrest had been made shortly after leaving the scene of the crime for identification purposes.

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


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PARISH OF JEFFERSON, LA

Post-conviction law contains a bright-line prohibition against bringing claims in a post-conviction proceeding that could have been raised in the trial court. The precise procedural bar is: "If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief: LSA-C.Cr.P. art. 930.4(B)."

The state argues that this claim was known and should have been raised in the trial court. In factual support, the state informs the court that it relies on some unidentified portion of "transcripts," stating that such is attached as Exhibit 1. There is no Exhibit 1 attached, however, and the court is unaware of any specific portion of proceedings related to this claim.

The court finds due to the nature of this claim it necessarily was known at the trial level, being concerned with the circumstances of the arrest, an event obviously pre-dating all court proceedings. Furthermore, the court's search reveals no instance of this issue being raised in the trial court.

After investigation and consideration, the court finds that the petitioner bypassed the trial court in failing to raise this issue. Relief is denied on this claim under the provisions of LSA-C.Cr.P. art. 930.4(B).

Claim 2: Insufficient evidence to support the finding of guilt for possession of cocaine with intent to distribute.

The court concludes that the state raises a procedural bar in response. The state makes note that the petitioner challenges lack of sufficiency of intent to distribute cocaine, a crime the petitioner was not charged with.

The court agrees that the claim fails to list a ground for relief listed in LSA-C.Cr.P. art. 930.3. Post-conviction relief may be granted only if one of the enumerated grounds is proven. Therefore, this claim does not support relief.

Claim 3: Prosecutorial Vindictiveness

The petitioner alleges prosecutorial vindictiveness by the state's filing of a multiple offender bill.

This claim was raised prior to trial. The Fifth Circuit denied writs on March 9, 2012, in a written opinion. Writs were denied by the Supreme Court, *State v. Williams*, 2012-KK-1170, (La. 9/14/12).

In addition, this claim was raised on appeal and was again denied by the Fifth Circuit. *State v. Williams*, 128 So.3d 359, 367 (La.App. 5 Cir. 10/9/13). Having been resolved by the Court of Appeal, this claim is barred by application of LSA-C.Cr.P. art. 930.4(A).

In addition, this claim fails to state a basis for relief under the exclusive grounds of LSA-C.Cr.P. art. 930.3. The Supreme Court of Louisiana in *State ex rel. Melinie v. State*, 665 So.2d 1172 (La. 1/12/96), has held that article 930.3 provides no basis for review of claims of excessiveness or other sentencing error in post-conviction proceedings. See also *State v. Hebreard*, 708 So.2d 1291, 98-0385 (La.App. 4 Cir. 3/25/98), which explicitly decreed that a challenge to petitioner's adjudication as a multiple offender was not a proper ground for post-conviction relief.

Claim 4: Conviction and sentence obtained in violation of the United States Constitution Amendment VI and the Louisiana Constitution Article I Section 2, 13, 16, "Right to a Fair and Impartial Trial," "Brady Violation."

In this claim, the petitioner alleges the prosecutor at trial failed to disclose discovery materials prior to trial.

The state responds by pointing to deficiencies in the allegation. The state argues, and the court agrees, that the claim is deficient by failing to contain specific allegations of what was withheld or how the petitioner was prejudiced. The claim is thus barred by application of LSA-C.Cr.P. art. 926(B)(3). The court also finds that this claim is repetitive and thus barred by application of LSA-C.Cr.P. art. 930.4.

CONCLUSION

The petitioner was afforded a full and fair trial with competent counsel. Challenges were made prior to trial and after conviction, however, no reversible errors were found, despite extensive review. In this application for post-conviction relief, all claims are procedurally barred.

Accordingly,

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

Gretna, Louisiana this 9th day of April, 2015

Cecilia S. Ryan
JUDGE

PLEASE SERVE:

PRISONER: Vershawn Williams, DOC # 499447, Rayburn Correctional Center, 27268 Hwy. 21, Angie, LA 70426

JEFFERSON PARISH DISTRICT ATTORNEY: Paul Connick, Terry Boudreux, Anne M. Wallis, 200 Derbigny St., Gretna, LA 70053

09/23/2016 "See News Release 047 for any Concurrences and/or Dissents."

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