

SUPREME COURT OF LOUISIANA

No. 15-OK-1527

STATE OF LOUISIANA

v.

GREGORY LEEMING

**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. In addition, relator's claim regarding non-unanimous jury verdicts is repetitive. La.C.Cr.P. art. 930.4(D). We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

Relator has now fully litigated at least three 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.

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 91-0058

DIVISION "J"

STATE OF LOUISIANA

VERSUS

GREGORY LEEMING

FILED: MAY 6, 2015


DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's counseled APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED APRIL 20, 2015, AND THE STATE'S RESPONSE, STAMPED AS FILED MAY 4, 2015.

The petitioner was found guilty after trial by jury on December 18, 1991 of the crime of second degree murder, in violation of LSA-R.S. 14: 30.1. He was sentenced to life in prison without the benefit of probation, parole, or suspension of sentence.

Challenges to the conviction followed. Relief was denied on direct appeal in *State v. Leeming*, 612 So.2d 308 (La.App. 5 Cir. 1992), writ denied, 616 So.2d 681 (La. 1993). This court denied his first application for post-conviction relief on February 24, 1997, writs denied on May 16, 1997, 97-370 (La.App. 5 Cir. 5/16/97), writs denied 97-1545 (La. 11/7/97). This court denied the petitioner's second application for post-conviction relief on June 21, 1999, writs denied, 99-934 (La.App. 5 Cir. 9/3/99), writ denied, (La. 4/28/00), rehearing denied, 08-1868 (La. 2/20/09). The petitioner sought federal habeas relief unsuccessfully, as well.

With the assistance of counsel, the petitioner has now filed his third application for post-conviction relief, claiming (1) that the Sixth Amendment requires unanimous verdicts and that trial counsel was ineffective for not urging that argument and (2) that "counsel's failure to challenge biased juror exacerbated the state's violation of Leeming's right to a unanimous verdict and prejudiced his case."

Post-conviction relief law requires that if an application alleges a claim which, if proven, would entitle petitioner to relief, the court shall order the district attorney to file any procedural objections, or an answer on the merits if there are no procedural objections, within 30 days. LSA-C.Cr.P. art. 927. A district court may grant a summary disposition on an application for post conviction relief only after the required answer by the state has been filed. LSA-C.Cr.P. art. 929. In its earlier order, the court noted awareness of the age of the case and the fact that a previous application for post-conviction relief was filed and denied.

Procedural Rulings

The petitioner's conviction and sentence have been final since April 12, 1993, when the Supreme Court of Louisiana denied writs. *State v. Leeming*, 616 So.2d 681 (La. 1993). Post-conviction applications must be timely. The relevant statute provides as follows:

A. No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of

justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

(2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.

(3) The application would already be barred by the provisions of this Article, but the application is filed on or before October 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.

(4) The person asserting the claim has been sentenced to death.

LSA-C.Cr.P. art. 930.8, emphasis added.

It is immediately evident that this claim is filed after October 1, 2001 and is not a capital case; thus the third and fourth provisions provide no relief. Importantly, there is NO assertion that the facts now raised as grounds were not known or that the claim is based on a new ruling, thus the second provision affords no relief.

In fact, far from a new ruling of an appellate court providing a new basis for interpretation, the Supreme Court of the United States, many years before the petitioner's trial, expressly held that the federal constitution permits a conviction on less than a unanimous verdict. In *Johnson v. Louisiana*, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) and *Apodaca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972), the United States Supreme Court upheld the validity of nonunanimous jury verdicts for twelve person juries. Furthermore, it is beyond question that the controlling law of this jurisdiction accepts nonunanimous jury verdicts. *State v. Edwards*, 420 So.2d 663 (La.1982).

The grounds raised were known at the time of trial. The law is well-settled. Thus the petitioner has not established an exception to the time barrier of article 930.8. The court finds both claims in this 2015 application challenging a 1991 conviction to be time-barred.

In the case of his first claim, there is an additional procedural bar to relief, that of LSA-C.Cr.P. art. 930.4(E). This statute expressly provides that a successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application. The petitioner has filed two previous applications for relief. In both, he could have -- but did not -- raise his present issues.

There is another procedural bar to relief to the second claim, that of LSA-C.Cr.P. art. 930.4(D). By the plain language of that statute, a successive application shall be dismissed if it fails to raise a new or different claim. The petitioner raised this "nonunanimous" claim in his first application for post-conviction relief. He fails to raise a new claim and is procedurally barred.

The claims raised are procedurally barred, for the reasons cited above.

Accordingly,

IT IS ORDERED BY THE COURT that the application for post-conviction relief be and is hereby **DENIED**.

Gretna, Louisiana this 6th day of May, 2015.
[Signature]
JUDGE

PLEASE SERVE:

PRISONER: Gregory Leeming, DOC # 308687, La. State Penitentiary, Angola, LA 70712

COUNSEL OF RECORD: Michael A Fiser, 830 Main St., Baton Rouge, LA 70802

Terry Boudreux, District Attorney's Office, 200 Derbigny St., Gretna, LA 70053

ISSUED ORDER
DATE 5/6/15
Sharon Rueland
Deputy Clerk