

SUPREME COURT OF LOUISIANA

No. 15-KH-1559

STATE EX REL. HERMAN WALKER

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. In addition, 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 La.C.Cr.P. art. 930.4 to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in state collateral proceedings in accord with La.C.Cr.P. art. 930.6, and

this denial is final. Hereafter, unless relator 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. 03-410

DIVISION "L"

STATE OF LOUISIANA

VERSUS

HERMAN WALKER

FILED:

5/18/15

[Signature]

DEPUTY CLERK

ORDER

This matter comes before the court on petitioner's **MOTION TO SET ASIDE AND VACATE MULTIPLE OFFENDER ADJUDICATION AND CORRECT ILLEGAL SENTENCE, STAMPED AS FILED MAY 4, 2015.**

Petitioner was convicted of count #1, LSA-R.S. 40:981.3, distribution of ods within school area, and count #3, LSA-R.S. 40:967, distribution of cocaine. On April 9, 2003, the court sentenced him on each count to 20 years, concurrently. The court vacated the sentence on count #1, and re-sentenced the defendant under the multiple bill to 32 years.

A Motion to Correct Illegal Sentence which may be raised at any time. LSA-C.Cr.P. art. 882. However, the petitioner does not point to a claimed illegal term in his sentence. Rather, petitioner contests his multiple offender adjudication.

Petitioner's claim is not cognizable in a motion to correct illegal sentence. A defendant may only raise claims relating to the legality of the sentence itself under the applicable sentencing statutes in a motion to correct an illegal sentence. *State v. Taylor*, 12-66 (La, App. 5 Cir. 2/14/12), (unpublished), citing *State v. Gedric*, 99-1213 (La. App. 1 Cir. 6/3/99), 741 So.2d 849, 851-852, writ denied, 99-1830 (La. 11/5/99), 751 So.2d 239, citing *State v. Parker*, 98-256, (La. 5/8/98), 711 So.2d 694, 695. When a defendant fails to point to a claimed illegal term in his sentence, he does not raise a claim cognizable in a motion to correct an illegal sentence. *Parker*, supra.

There is no illegality in petitioner's sentence, as the term of sentence is within the statutory parameters. Petitioner's motion will be denied.

Accordingly,

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

Gretna, Louisiana this 18 day of May, 2015

[Signature]
JUDGE

PLEASE SERVE:

DEFENDANT: Herman Walker, DOC # 127470, A.V.C., 1630 Prison Road, Cottonport, LA 71327

ENTERED
MAY 22 2015
PARISH OF JEFFERSON

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
[Signature]
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA

[Handwritten signature] 5/18/15