

SUPREME COURT OF LOUISIANA

No. 15-KH-1567

STATE EX REL. MICHAEL LYNN THOMAS

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE FIRST
JUDICIAL DISTRICT COURT, PARISH OF CADDO**

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. Moreover, even assuming relator could overcome the procedural bars set out in La.C.Cr.P. art. 930.4 and La.C.Cr.P. art. 930.8, he 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). We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

Relator has now fully litigated two 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 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 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.

FILED

STATE OF LOUISIANA MAY 14 2015 NUMBER 185645 - SECTION 1
VERSUS B. WASHINGTON FIRST JUDICIAL DISTRICT COURT
MICHAEL LYNN THOMAS DEPUTY CLERK OF COURT CADDO PARISH, LOUISIANA

ORDER:

On May 5, 1998, Petitioner was found guilty by a jury of Attempted Manslaughter. On May 28, 1998, the State filed a Third Felony Habitual Offender Bill of Information and a hearing was held on July 27, 1998. At said hearing, Petitioner was adjudicated a Third Felony Offender and as such, the Court sentence him to life imprisonment at hard labor and committed him to the Louisiana Department of Corrections, subject to the conditions provided by law. The Court ordered said sentence to be served without benefit of probation, parole, or suspension of sentence and Court costs paid through the inmate banking system.

On appeal, Petitioner's conviction and sentence were affirmed by the Second Circuit Court of Appeal and the Louisiana Supreme Court denied writs. *State v. Thomas*, 32, 215 (La. App. 2 Cir. 8/18/99), 747 So.2d 610, writ denied, 1999-2806 (La. 4/7/00), 759 So.2d 90.

Presently before the Court is Petitioner's Uniform Application for Post Conviction Relief. In said application, Petitioner argues that his sentence and conviction are unconstitutional because a "Brady violation occurred when the investigating detective failed to make it known in police report that eyewitness Ronald Bryant informed him that he could identify the perpetrator of the crime." For the following reasons, Petitioner's motion is **DENIED**.

More than two years have elapsed between the finality of Petitioner's conviction and the filing of this application. Louisiana Code of Criminal Procedure Article 930.8 (A) states that 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.

Petitioner's conviction and sentence were affirmed by the Second Circuit on August 18, 1999. Petitioner has failed to articulate any claims which would warrant an exception under La. C.Cr.P. art. 930.8. Therefore, the two-year time limitation for filing this Application has expired and Petitioner's Application is untimely.

Furthermore, as it pertains to Petitioner's *Brady* claim, Petitioner has failed to prove that the information provided by Ronald Bryant was not known by Petitioner or his attorney at the time of trial. Petitioner has not provided an affidavit from the investigating officer; he simply provides an affidavit from Ronald Bryant that does not sufficiently meet the requirements set forth in *Brady v. Maryland*, 373 U.S. 83 (1963). Therefore, Petitioner's *Brady* claim has no merit.

Accordingly, Petitioner's application is **DENIED**.

The Clerk of Court is ordered to provide a copy of this order to Petitioner and the District Attorney.

Signed this 14th day of May, 2015, in Shreveport, Caddo Parish, Louisiana.



Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

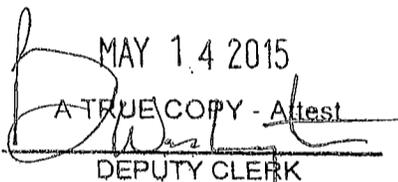
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ENDORSED FILED
B. WASHINGTON, Deputy Clerk

MAY 14 2015
A TRUE COPY - Attest

DEPUTY CLERK