

SUPREME COURT OF LOUISIANA

No. 15-KH-1131

STATE EX REL. BENJAMIN BRUCE

v.

STATE OF LOUISIANA

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

PER CURIAM:

Denied. Relator's claim concerning the allegedly defective bill of information is repetitive. La.C.Cr.P. art. 930.4. In addition, relator's sentencing claims are 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. 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 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. 10-4584


DIVISION "M"

STATE OF LOUISIANA

VERSUS

BENJAMIN BRUCE

FILED: 2-10-15


DEPUTY CLERK

ORDER

- This matter comes before the court on the petitioner's
- APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED OCTOBER 27, 2014,
 - STATE'S RESPONSE, STAMPED AS FILED DECEMBER 1, 2014,
 - PETITIONER'S MOTION FOR SUMMARY DISPOSITION, STAMPED AS FILED DECEMBER 19, 2014,
 - PETITIONER'S TRAVERSE, STAMPED AS FILED JANUARY 7, 2015.

On March 23, 2011, the petitioner was convicted of LSA-R.S. 14:51, relative to aggravated arson. On April 4, 2011, the court sentenced him to 15 years imprisonment at hard labor. On June 2, 2011, the court found him to be a fourth felony offender under the multiple bill, and sentenced him to life imprisonment at hard labor. The Fifth Circuit Court of Appeal affirmed his conviction, and vacated the sentence, and remanded for re-sentencing. *State v. Bruce*, 11-KA-991 (La. App. 5 Cir. 10/30/12) 102 So.3d 1029; writ denied, 2012-2568 (La. 4/26/13) 112 So.3d 839. On January 17, 2013, the court re-sentenced him to 25 years imprisonment at hard labor under the multiple bill as a fourth-felony offender.

The court denied petitioner first application for post-conviction relief on December 18, 2013, and his supplement on May 23, 2014.

Petitioner filed another which was not specifically addressed in the court's previous order.

Petitioner's claims are as follows:

1. Invalid indictment.
2. Improper due process of law.
3. Double jeopardy.
4. Jury determination for greater offense.

Claim #1

Petitioner claims that the bill of information in this case is fatally defective as it fails to state with specific particularity the special mental element required for the crime charged. He insists that has the bill of information properly alleged as required a *dwelling*, then the jury may not have found the petitioner guilty of aggravated arson. He argues that a flower bed was on fire, and not an actual structure.

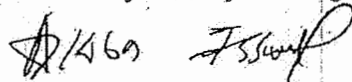
As the State surmises in its response, this claim is procedurally barred under LSA-C.C.P. Art. 930.4(C). Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered. This claim (and/or issues within the claim) was previously an argued assignment of error in defendant's direct appeal. The merits of the claim shall not be reviewed by this court.

Claims #2, #3, and #4

In claim #2, petitioner argues that his due process was violated in the multiple offender adjudication. In claim #3, petitioner argues double jeopardy in relation with the multiple bill. On claim #4, petitioner argues that the jury should have determined the elements put forth under LSA-R.S. 15:529.1, the multiple offender statute. In these three claims, petitioner contests the multiple bill and sentencing proceedings.

These claims are not cognizable in post-conviction relief and petitioner is not entitled to relief on the grounds asserted. A person in custody after a sentence for an offense must articulate one of seven specific and exclusive grounds in order to obtain post-conviction relief. LSA-C.C.P. Art. 930.3 provides,

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:



- (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana;
- (2) The court exceeded its jurisdiction;
- (3) The conviction or sentence subjected him to double jeopardy;
- (4) The limitations on the institution of prosecution had expired;
- (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional; or
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
- (7) The results of DNA testing performed pursuant to an application granted under Article 926. I prove by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

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.

Successive

Post-conviction procedures are strictly enforced. Article 930.4 of the Code of Criminal Procedure provides that a successive application may be dismissed if it fails to raise a new claim. Specifically, if the application alleges a claim which the prisoner had knowledge of but failed to raise in the proceedings prior to the conviction, the court may deny relief. LSA-C.Cr.P. art. 930.4(B). Similarly, if the application raises a claim raised at trial but not on appeal, relief may be denied. LSA-C.Cr.P. art. 930.4(C). A successive application may be dismissed if it raises a new or different claim. LSA-C.Cr.P. art. 930.4(D). Finally, a successive application may be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application. LSA-C.Cr.P. art. 930.4(E). *State v. Gaines*, 701 So.2d 688, (La.App.4.Cir. 1997), explicitly holds that a petitioner is procedurally barred from raising a claim on post-conviction relief if he could have done so on appeal or in prior applications.

929. (A) The court finds petitioner's application procedurally barred, and will not address the merits of the claims. Under LSA-C.Cr.P. art. 929, if the court determines that the factual and legal issues can be resolved based upon the application and answer, and supporting documents, the court may grant or deny relief without further proceedings.

Petitioner's Motion for Summary Disposition

Petitioner contends that the District Attorney failed to appropriately file into the record any procedurally objections. The record reflects that the State filed its response to petitioner's application on December 1, 2014. The court finds this response timely filed, and finds no merit to petitioner's pleading.

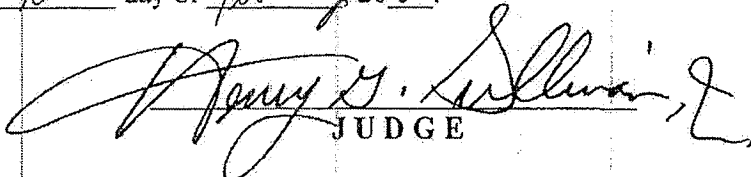
Petitioner's Traverse to State's Responsive Brief

Nothing in petitioner's pleading affects the court's ruling.

Accordingly,

IT IS ORDERED BY THE COURT that Petitioner's Application for Post-Conviction Relief, Motion for Summary Disposition, and Traverse to State's Responsive Brief are hereby **DENIED**.

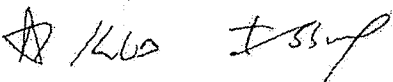
Gretna, Louisiana, this 10th day of February 2015.



JUDGE

PLEASE SERVE:

DEFENDANT: Benjamin Bruce, DOC # 106460, Louisiana State Penitentiary, Angola, LA 70712

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



A TRUE COPY OF THE ORIGINAL
ON FILE IN THE OFFICE

DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA