

SUPREME COURT OF LOUISIANA

No. 15-KH-1153

STATE EX REL. KEVIN M. DELAUNE

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. 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. 05-462

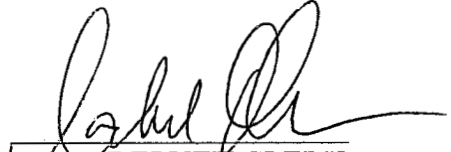
DIVISION " N "

STATE OF LOUISIANA

VERSUS

KEVIN DELAUNE

FILED : 4/7/2015


DEPUTY CLERK

He ORDER

This matter comes before the court on defendant's MOTION TO VACATE INVALID CONVICTION AND SENTENCE, STAMPED AS FILED MARCH 30, 2015.

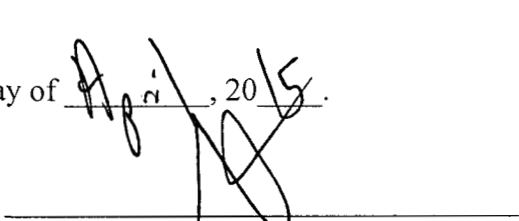
On August 25, 2005, the defendant was convicted of LSA-R.S. 14:64, relative to armed robbery. On February 23, 2006, the court sentenced him to 99 years imprisonment at hard labor. On August 10, 2006, the defendant stipulated to the multiple bill, and the court sentenced him as a multiple offender to 99 years imprisonment at hard labor. His conviction and sentence was affirmed on appeal. *State v. Delaune*, 06-KA-682 (La. App. 5 Cir. 1/16/07), 951 So.2d 397; writ denied, 2007-KO-385 (La. 10/12/07), 965 So.2d 395.

Regardless of the title of his pleading, the defendant seeks post-conviction relief. It is well-settled that the characterization of a pleading is not controlling. *State v. Chapman*, 699 So.2d 504 (La.App. 4 Cir. 9/3/97). An application for post-conviction relief is defined as, "a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside." LSA- C.Cr.P. art. 924.

The court will deny post-conviction relief because the application is untimely. Post-conviction relief applications are subject to strict procedural requirements. No application for post-conviction relief may be considered if it is filed more than two years after the judgment of conviction and sentence has become final (unless one of four very restricted exceptions apply). LSA-C.Cr.P. art. 930.8 (A). The defendant's conviction and sentence in this case has long been final and he is not entitled to relief.

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

Gretna, Louisiana, this 7 day of April, 2015.


JUDGE

S/STEPHEN D. ENRIGHT, JR.

PLEASE SERVE:

PRISONER: Kevin Delaune, DOC # 377362, Louisiana State Penitentiary, Angola, LA 70712

esmond c/c 4/8/15

IMAGED APR 07 2015