

SUPREME COURT OF LOUISIANA

No. 15-KH-1223

STATE EX REL. FREDERICK VEREEN

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE CRIMINAL
DISTRICT COURT, PARISH OF ORLEANS**

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.

STATE OF LOUISIANA

CRIMINAL DISTRICT COURT

VERSUS

PARISH OF ORLEANS, SEC. "K"

FREDERICK VEREEN

CASE NO. 397-821

JUDGMENT

MOTION DENIED.

Petitioner filed Application for Post-Conviction Relief on August 22, 2013. The application alleges Ineffective Assistance of Counsel; the State knowingly used false testimony; and the State failed to disclose a potential witness's statement. The State filed procedural objections stating the current application is untimely and successive, and Petitioner's claims are not predicated upon new law.

La. C.Cr.P. art. 930.8 states that no application for post-conviction relief will 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 became final in 2000 when the Louisiana Fourth Circuit Court of Appeal affirmed Petitioner's conviction and sentence. *State v. Guss*, 99-1817 (La. App. 4 Cir. 12/6/00), 775 So. 2d 622, 626. The two year time period for filing post-conviction relief has clearly expired. The State's objection that the application is time barred is upheld.

Pursuant to La. C.Cr.P. art. 930.4(D), a successive post-conviction relief application may be dismissed if it fails to raise a new or different claim. In previous applications, filed in 2002 and 2005, Petitioner claimed ineffective assistance of counsel, each time stating different ways in which counsel was ineffective. Post-Conviction relief was ultimately denied in both hearings. Petitioner again claims ineffective counsel, alleging counsel allowed the State witness to give false testimony. Per La. C.Cr.P. 930.4(E), "[a] successive application shall be dismissed if it raises new or different claims that was inexcusably omitted from a prior application." Petitioner inexcusably failed to raise this latest claim in the prior applications and offers no justification for the oversight. State's objection that the application is barred as a successive application is upheld.

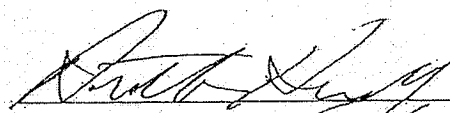
Petitioner claims new law allows for a new application to be submitted even if the time period has elapsed. Specifically, Petitioner argues *Missouri v. Frye*, 132 S. Ct. 1399, 1404 (2012), regarding ineffective counsel extends to consideration of plea offers, is new law to be considered. Louisiana courts have consistently held that *Frye* does not create new law. *State v. Lavigne*, 2014 La. App. LEXIS 411 (La. App. 1 Cir. Feb. 18, 2014); *State v. Bradley*, 2013 La. App. LEXIS 1887

(La. App. 2 Cir. Aug. 26, 2013) (agreeing with *In re King*, 697 F.3d 1189 (5th Cir. 2012); *In re Perez*, 682 F.3d 930 (11th Cir. 2012); *Hare v. United States*, 688 F.3d 878 (7th Cir. 2012). The State's objection that the claims are not predicated on new law is upheld.

Even though Petitioner's application is procedurally barred, this Court reviewed the claim that the State failed to disclose the potentially vindicating statement of Ms. Chantrell Green in violation of *Brady*. The court finds this claim is without merit. Petitioner's 2005 Application for Post-Conviction Relief (hereinafter App. 2005) reveals Petitioner was aware of Ms. Chantrell Green as a potential witness, as well as her statements to officers. The 2005 application states in the introduction that Ms. Green had failed to identify Petitioner as the assailant, and asserted that the State, in opening statements, intended to utilize Ms. Green as a witness. App. 2005 at 1. The application further stated that counsel for Petitioner sought to question Ms. Green regarding her statement to officers at a motion hearing in June 1998. App. 2005 at 6. Both statements reflect the fact that Petitioner was aware of Ms. Green and the statement she made regarding the identification of the shooters. Petitioner's claim is without merit.

Frederick Vereen's motion for Post-Conviction Relief is DENIED. The State procedural objections are upheld. Petitioner Vereen's claim of a *Brady* violation is without merit.

NEW ORLEANS, LOUISIANA this the 6th day of March, 2015.



JUDGE ARTHUR L. HUNTER

SECTION "K"