

SUPREME COURT OF LOUISIANA

No. 15-KH-1341

STATE EX REL. CLARENCE JACK

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE SIXTEENTH
JUDICIAL DISTRICT COURT, PARISH OF ST. MARY**

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 ten 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.

VS. NO. 123,348; SUPP. 1998-149,630;
SUPP. 2003-163,031; &
SUPP. 2009-181,570

PARISH OF ST. MARY

CLARENCE JOSEPH JACK

STATE OF LOUISIANA

REASONS FOR JUDGMENT ON APPLICATION
FOR POST CONVICTION RELIEF

Petitioner filed this tenth Application for Post Conviction Relief on December 10, 2014.

Petitioner was indicted by a grand jury for Second Degree Murder, in violation of La. R.S. 14:30.1. On September 30, 1987, he was convicted by a petit jury of Second Degree Murder. This Court sentenced him to serve the mandatory sentence of life imprisonment at hard labor, without benefit of probation, parole, or suspension of sentence.

Petitioner filed an appeal with the First Circuit Court of Appeal, which affirmed his conviction and sentence on December 19, 1989. *State v. Jack*, 88-2026 (La. App. 1st Cir. 12/19/89), 554 So.2d 1292. The Louisiana Supreme Court denied Petitioner's application for writs on April 20, 1990.

Petitioner has filed nine previous applications for post-conviction relief over the years.

Petitioner's first Application for Post Conviction Relief was filed on February 12, 1988. It was denied by the trial court because the case was pending on direct appeal to the First Circuit Court of Appeal at the time the application for post-conviction relief was filed.

Petitioner filed his second Application for Post Conviction Relief on April 6, 1990, in which he alleged ineffective assistance of counsel. This court denied that application on April 20, 1990.

Petitioner filed his third Application for Post Conviction Relief on May 2, 1991, alleging that he was denied due process and effective assistance of counsel. The trial court issued an order, ordering Petitioner to explain why he did not raise these grounds in his prior applications for post-conviction relief. Petitioner did not respond to the court's order.

Petitioner filed his fourth Application for Post Conviction Relief on June 10, 1998, claiming that the reasonable doubt instruction given to the jury at his trial was unconstitutional. This court denied that application on January 7, 1999.

Petitioner filed his fifth Application for Post Conviction Relief on March 13, 1999, in which he claimed that La. C.Cr.P. art. 413(B) is unconstitutional because it allowed the trial court to select the grand jury foreman in violation of *Campbell v. Louisiana*, 523 U.S. 392 (1988), and that his trial

counsel was ineffective for failing to file a motion to quash the indictment on *Campbell* grounds. This court denied that application for post-conviction relief on March 15, 1999. The First Circuit Court of Appeal denied Petitioner's application for writs on April 23, 2000.

Petitioner then filed a Motion to Correct Illegal Sentence on May 16, 2000, on the grounds that his indictment was invalid. That motion was denied by this court on June 6, 2000. The First Circuit Court of Appeal affirmed this court's denial of the motion.

Petitioner filed his sixth Application for Post Conviction Relief on September 3, 2003, in which he claimed that his indictment, conviction, and sentence violated his right to due process and equal protection of the law as there was an intentional discrimination in the selection of the grand jury. This court denied that application for post-conviction relief on May 21, 2004, finding that it raised a claim which had been raised and denied in a prior application for post-conviction relief.

Petitioner then filed on October 20, 2009, an Ex Parte Motion for Lack of Subject Matter Jurisdiction of the Trial Court, alleging that the statute under which he had been convicted did not contain an enacting clause.

Petitioner also filed his seventh Application for Post Conviction Relief on August 18, 2010, alleging that his indictment was defective and his trial counsel was ineffective for failing to file a motion to quash.

A hearing was held before this court on April 20, 2011, at which it considered Petitioner's Ex Parte Motion for Lack of Subject Matter Jurisdiction of the Trial Court and his seventh Application for Post Conviction Relief. Petitioner was assigned an attorney who represented him at this hearing. After hearing arguments from Petitioner's counsel and the State, the court denied both the motion for lack of subject matter jurisdiction and the application for post-conviction relief.

Petitioner filed his eighth Application for Post Conviction Relief on January 10, 2013, in which he claimed that his trial counsel failed to communicate a plea offer to him prior to his jury trial. This court denied that application for post-conviction relief on February 6, 2013, on the basis that it was filed more than two years after Petitioner's conviction and sentence became final. See La. C.Cr.P. art. 930.8.

Petitioner filed his ninth Application for Post Conviction Relief on April 21, 2014, claiming that he was denied effective assistance of counsel at both the trial and appellate stages of this matter. This court denied that application for post-conviction relief on the grounds that (1) it was untimely; (2) it failed to raise a new or different claim; and/or (3) it was a successive application which raised a

new or different claim that was inexcusably omitted from a prior application. See La. C.Cr.P. art. 930.8; 930.4(D) and (E).

Petitioner has now filed his tenth Application for Post Conviction Relief, in which he claims that a member of the Grand Jury that indicted him failed to reveal that he was related to Petitioner and that he and Petitioner had a very bad relationship with one another. Auston Connor was a member of the Grand Jury that indicted Petitioner with Second Degree Murder. According to Petitioner, he and Mr. Connor are related by blood and have had a very bad relationship with each other in the past. Mr. Connor allegedly failed to disclose his relationship to Petitioner at the time Petitioner's case was presented to the Grand Jury. Petitioner believes that the Grand Jury was therefore biased, causing them to indict him on the charge of Second Degree Murder when the charge should have been Manslaughter. Petitioner asserts that he should be allowed to raise this claim in his most current application for post-conviction relief because he only recently obtained the information pursuant to a public records request sent to the District Attorney's Office.

The Court has reviewed the entire record in this matter. It notes that Petitioner's seventh Application for Post Conviction Relief, filed on August 18, 2010, included as Claim I, "Nine members of the Grand Jury did not concur and my cousin was a member of my Grand Jury." See page 5 of Petitioner's Application for Post Conviction Relief, filed on August 18, 2010. See also page 2 of the memorandum attached to Petitioner's seventh Application for Post Conviction Relief, where he again includes as part of his claim that his cousin was a member of the Grand Jury that indicted him. A contradictory hearing was scheduled in regards to this application for post-conviction relief. Pursuant to an Order dated January 13, 2011, this Court appointed the Public Defender's Office to represent Petitioner in this matter.

A hearing was held before this Court on April 20, 2011, for Petitioner's seventh Application for Post Conviction Relief. Gary Legros, with the Public Defender's Office, represented Petitioner at the hearing. After hearing arguments from both the State and Petitioner's counsel, this Court denied the application for post-conviction relief. It is noted that at the hearing, Petitioner's counsel introduced as Exhibit 2 a list of the members of the Grand Jury which indicted Petitioner for Second Degree Murder. Auston L. Connor's name is circled on that list. It is a copy of the same list which Petitioner has attached to this, his tenth, application for post-conviction relief.

La. C.Cr.P. art. 930.8(A) provides, in part:

No application for post-conviction relief ... shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

- (1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised due diligence in attempting to discover any post-conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

Petitioner contends that his claim in this latest application for post-conviction relief falls under the above exception to the two-year time limitation because he just recently obtained the information that Mr. Connor was on the Grand Jury that indicted him. However, the record of this matter indicates that Petitioner was aware of this exact claim when he filed his seventh application for post-conviction relief on August 18, 2010, more than four years prior to the filing of this tenth application for post-conviction relief. In fact, Petitioner introduced the exact same evidence at the April 20, 2011 hearing that he has attached to this application for post-conviction relief which was filed December 10, 2014.

This Court therefore finds that Petitioner has not satisfied the exception to the two-year time limitation provided for in La. C.Cr.P. art. 930.8(A). Petitioner was convicted of Second Degree Murder on September 30, 1987. The First Circuit Court of Appeal affirmed Petitioner's conviction and sentence on December 19, 1989. The Louisiana Supreme Court denied writs on April 20, 1990. Petitioner's conviction and sentence thus became final on May 4, 1990. Pursuant to the provisions of La. C.Cr.P. art. 930.8(A), Petitioner's right to file an application for post-conviction relief expired in 1992. This latest Application for Post Conviction Relief is untimely.

In addition, La. C.Cr.P. art. 930.4(D) provides, "A successive application shall be dismissed if it fails to raise a new or different claim." As noted above, Petitioner previously raised this claim of Auston Connor being a member of the Grand Jury in his seventh application for post-conviction relief. This Court considered and denied that claim at a contradictory hearing, at which Petitioner was represented by counsel. Petitioner's claim, therefore, also fails under the provisions of La. C.Cr.P. art. 930.4(D), as it has failed to raise a new or different claim.

For the above reasons, Petitioner's Application for Post Conviction Relief, filed on December 10, 2014, is without merit. It is therefore denied and dismissed.

SIGNED in St. Martinville, St. Martin Parish, Louisiana, on the 9th day of February,

2015.

RECEIVED AND FILED

FEB 18 2015

Sheloni D. LeBlanc
Dy. Clerk of Court

Anthony Thibodeaux
ANTHONY THIBODEAUX
16TH JUDICIAL DISTRICT COURT