

SUPREME COURT OF LOUISIANA

No. 15-KH-1564

STATE EX REL. JOHN HOSFORD

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE NINETEENTH
JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE**

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 Commissioner's Recommendation adopted by the district court 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.

JOHN HOSFORD
#126928

VS

STATE OF LOUISIANA

NUMBER 01-89-0447 SECTION II

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COMMISSIONER'S RECOMMENDATION

Petitioner, John Hosford was arrested and charged with second degree murder of his wife. On January 12, 1989, the grand jury returned a true bill against the petitioner, charging Second degree murder. On July 17, 1989, the jury trial was commenced and a verdict of guilty as charged was returned on July 22, 1989. Appeal was taken, and in Docket No. KA-89-2088, the First Circuit Court of Appeal affirmed the conviction and sentence. On March 1, 1991, certiorari was denied in the Louisiana Supreme Court.¹

On January 15, 1993, petitioner filed his first application for post-conviction relief, which was denied on July 21, 1994. Petitioner did not file another application for post conviction relief until August 11, 2014 wherein he alleges ineffective assistance of counsel. Petitioner argues that he meets the requirements of La. C.Cr.P. art. 930.8(A)(2) and that his application is based on *Martinez v. Ryan*² and *Trevino v. Thaler*.³

The application for post-conviction relief is untimely. As enacted in 1990, La. C.Cr.P. art. 930.8 provided a three-year time bar for filing applications for post-conviction relief. The petitioner's conviction and sentence became final in 1992 and he filed this application in 2014, which is over twenty years past the time allowed.

Moreover, the jurisprudence in which the petitioner relies are not applicable here. The holdings in *Martinez* and *Trevino* concern federal habeas proceedings. Although petitioner refers to *Trevino v. Thaler*, __U.S.__, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013), which is also inapplicable in this case. *Trevino* allows a federal habeas corpus court to consider a substantial claim of ineffective assistance of counsel even if state law creates a procedural default. In addition, the Second Circuit gave some direction in *State v. Broom*⁴ wherein it was found that *Trevino* expanded the application of the Martinez exception in federal habeas courts, but did not create an exception under Louisiana law.⁵

¹ Docket No. 90-K-2689.

² *Martinez v. Ryan*, 132 S.Ct. 1309 (U.S., March 20, 2012).


³ *Trevino v. Thaler*, 133 S.Ct. 1911, 1921, 185 L.Ed. 2d 1044 (2013).

⁴ *State v. Broom*, 49,166 (La. App. 2 Cir. 2/27/14).

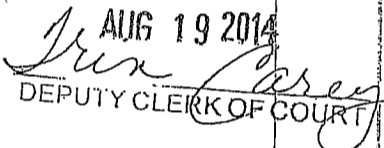
⁵ *Id.*

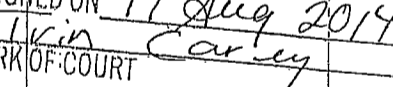
Considering the petitioner's pleadings, application for post-conviction relief and the applicable law, it is hereby recommended that the application be dismissed as untimely pursuant to La. C.Cr.P. art. 930.8.

Respectfully recommended this 19 day of August 2014.


QUINTILLIS K. LAWRENCE
COMMISSIONER, SECTION B
19TH JUDICIAL DISTRICT COURT

FILED

AUG 19 2014

DEPUTY CLERK OF COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS / JUDGMENT /
ORDER / COMMISSIONER'S RECOMMENDATION / WAS
MAILED BY MC WITH SUFFICIENT POSTAGE AFFIXED TO.
ALL PARTIES NOTIFIED
DONE AND SIGNED ON 19 Aug 2014

DEPUTY CLERK OF COURT