

09/16/2016 "See News Release 046 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 15-KP-2136

STATE OF LOUISIANA

VERSUS

ROBERT B. SANDERS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,

SECOND CIRCUIT, PARISH OF FRANKLIN

PER CURIAM:

Denied. Relator's claims are not cognizable on collateral review and/or repetitive. La.C.Cr.P. art. 930.3; La.C.Cr.P. art. 930.4; State ex rel. Melinie v. State, 93-1380 (La. 1/12/96), 665 So.2d 1172. See also Wainwright v. Torna, 455 U.S. 586, 587-88, 102 S.Ct. 1300, 1301, 71 L.Ed.2d 475 (1982); Ross v. Moffitt, 417 U.S. 600, 615-19, 94 S.Ct. 2437, 2446-48, 41 L.Ed.2d 341 (1974). We attach hereto and make a part hereof the District Court's written reasons denying relator's application.

Relator has now fully litigated his application 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.

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L PERKINS/L ADAMS
No. 7162 P. 2

STATE OF LOUISIANA PARISH OF FRANKLIN

FIFTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

FILED: *August 13, 2015*

VS. NO. 2012-F-415

ROBERT B. SANDERS

BY: *Valerie Adams*
DY. CLERK OF COURT

**WRITTEN REASONS FOR JUDGMENT ON
APPLICATION FOR POST CONVICTION RELIEF**

On July 18, 2012, the defendant, Robert B. Sanders, was charged with the aggravated rape of H. L., in violation of R.S. 14:42. In accordance with a plea agreement with the State of Louisiana, the defendant pled guilty to one count of indecent behavior of a juvenile in violation of La. R.S. 14:81. The victim child was 12 years old at the time of offense and defendant was 21 years old. The plea agreement did not have an agreement as to the sentence and a pre-sentence investigation was ordered. The defendant's sentencing was set for August 28, 2013.

On August 23, 2013, the attorney for the defendant filed a Motion To Continue and reset the sentencing hearing, stating that he needed additional time to prepare for the hearing after receiving the pre-sentence investigative report. The Motion was denied on August 26, 2013. On August 28, 2013, the defendant was sentenced to 22 ½ years at hard labor.

On September 26, 2013, the defendant filed a Motion To Reconsider The Sentence, which was granted in part. A hearing was held on the Motion For Reconsideration on October 30, 2013. On that date, the sentence of the

defendant was reduced to 20 years at hard labor.

The defendant appealed his sentence on the grounds that the sentence was excessive and that there was error in failure to grant the motion to continue the sentencing. The Second Circuit Court of Appeal affirmed the conviction on October 22, 2014.

The defendant then filed an Application For a Writ to the Louisiana Supreme Court, which was denied as untimely filed.

The defendant has now filed an Application For Post Conviction Relief making five claims.

CLAIM NO. I

The first claim of the defendant is that the Louisiana Supreme Court erred when it failed to grant writs after untimely filing. The time period for filing a writ application after the ruling of the appellate court is set forth in Louisiana Supreme Court Rule 10 Section 5A which states that the applicant has 30 days from the appeal court's ruling.

After the appeal court rendered this decision in October, 2014, the defendant missed the deadline for filing a writ and the application to the Supreme Court was denied as untimely.

This allegation fails to set forth any claim upon which relief could be granted. The petitioner has the burden of proof in an Application For Post Conviction Relief. Petitioner has made no allegations which show that the Louisiana Supreme Court would have granted a writ and/or that the conviction and sentence would be reversed or set aside. Therefore, this claim is without merit.

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CLAIM NO. II

In the second claim, the defendant again attempts to claim his sentence was excessive. A claim of excessive sentence is not a ground upon which relief can be granted under a Post Conviction Relief Application. State v Bush 977 So. 2d 1012 (2d Circuit 2007) and La.C.Cr.P. Article 930.3.

This is also a repetitive application as the Second Circuit Court of Appeal has already examined the excessive claim and found that the sentence was not excessive. Therefore, this claim is without merit.

CLAIM NO. III

In his third claim, the defendant maintains he was denied a continuance of his sentencing so he could confront two doctors who wrote letters for the pre-sentence investigation. These doctors and health care providers had written letters regarding the impact that the defendant's crime on the victim. The defendant argued he was entitled to cross-examine the health care providers regarding their evaluations. The Motion To Continue was filed on August 23, 2014 and the sentencing did not place until August 28, 2014. The Motion To Continue was denied, however, after the initial sentence on August 28, 2014, the defendant filed a Motion To Reconsider, which was granted in part by the Court and was set for hearing on October 30, 2014. The defendant was able to provide a report from a medical doctor which stated that some of the statements by the victim as to the effect it had on her was not supported by medical literature or evidence.

Since the defendant had the opportunity to rebut the doctors' letters when the Motion For Reconsideration was held on October 30, 2014, this claim is

without merit. Additionally, the defendant had proper time to rebut the evidence based on the time period he had between the date the pre-sentence investigation was shown to the defendant's attorney and the sentencing.

Additionally, this matter was also decided by the Court Of Appeal who found no error in the denial of the Motion To Continue. The claim is also repetitive under Louisiana Code of Criminal Procedure, Art. 930.4.

For the above reasons, this claim is without merit.

CLAIM NO. IV

In his fourth claim, the petitioner maintains the Louisiana Supreme Court should have granted writs in the case. As noted previously, the Application For Writs was untimely and therefore denied by the Louisiana Supreme Court. Therefore, this claim is without merit.

CLAIM NO. V


In his fifth claim, the petitioner maintains his counsel as ineffective for failing to timely file the *Writ Of Certiorari* with the Louisiana Supreme Court. Under the two-prong test developed by the United States Supreme Court in Strickland v Washington 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), the Court found that in order to establish that an attorney was ineffective, a defendant must show that his counsel's performance was deficient and also must show that his counsel's deficient performance prejudiced his defense.

The defendant, has the burden of proof in this claim, has not proven these prongs or shown that the Supreme Court of Louisiana would have granted writs and/or that the sentence would have been reversed and/or set aside. Additionally, this matter was examined in detail by the Second Circuit Court of Appeal, who found no errors in affirming the conviction.

This Court also notes that the defendant was originally charged with aggravated rape, which carried a mandatory life sentence. His attorney negotiated a sentence to the amended charge of indecent behavior of a juvenile, which carried a maximum sentence of twenty-five years at hard labor. Therefore, this claim is without merit.

Therefore, the Application For Post Conviction Relief filed by Robert B. Sanders in this proceeding is dismissed.

THUS DONE AND SIGNED in Rayville, Louisiana,
on this 5th day of August, 2015.



TERRY A. DOUGHTY, JUDGE
FIFTH JUDICIAL DISTRICT COURT
DIVISION 'A'

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