

SUPREME COURT OF LOUISIANA

No. 15-KH-2124

STATE EX REL. JERRY BUTLER

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 at least 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.

W. Felle

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W.F.P.S.O.

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 04-1545

DIVISION "L"

STATE OF LOUISIANA

FILED

VERSUS

JERRY BUTLER

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ORDER

This matter comes before the court on defendant's MOTION AND ORDER TO WITHDRAW PLEA OF GUILTY, STAMPED AS FILED AUGUST 19, 2015.

On July 12, 2005, defendant pled guilty to the amended charge of LSA-R.S. 14:42.1, relative to forcible rape. The court sentenced him in accordance with his plea agreement to 40 years imprisonment at hard labor.

Petitioner moves the court to withdraw his guilty plea. He claims that his plea is constitutionally flawed and that he was not advised of his right against self-incrimination.

Regardless of the caption 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." La. C.Cr.P. art. 924.

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). La. C.Cr.P. art. 930.8 (A). The instant application is untimely and thus is procedurally barred.

However, the court notes that the record clearly reflects that the defendant was advised of his right against self-incrimination in the Waiver of Rights and Guilty Plea form, located in the court record and signed by the defendant, his attorney, and the court. He was also advised of his right against self-incrimination on page 6, lines 13-23 of the *Boykin* transcript, also located in the court record. The defendant is clearly not entitled to relief.

Accordingly,
IT IS ORDERED BY THE COURT that the defendants' motion be and is hereby DENIED.

Gretna, Louisiana this 26 day of AUGUST, 2015.

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Ronald Rousey
JUDGE

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