

SUPREME COURT OF LOUISIANA

No. 15-KH-2267

STATE EX REL. LYNDON JOHNSON

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-FOURTH
JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

PER CURIAM:

Denied. Relator does not identify an illegal term in his sentence, and therefore, his filing is properly construed as an application for post-conviction relief. *See State v. Parker*, 98-0256 (La. 5/8/98), 711 So.2d 694. As such, it is subject to the time limitation set forth in La.C.Cr.P. art. 930.8. Relator's application was not timely filed in the district court, and he 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. In addition, relator's sentencing claim is not cognizable on collateral review. *See* La.C.Cr.P. art. 930.3; *State ex rel. Melinie v. State*, 93-1380 (La. 1/12/96), 665 So.2d 1172; *see also State v. Cotton*, 09-2397 (La. 10/15/10), 45 So.3d 1030. We attach hereto and make a part hereof the court of appeal's written reasons denying relator's writ 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.

STATE OF LOUISIANA

NO. 15-KH-631

VERSUS

FIFTH CIRCUIT

LYNDON JOHNSON

COURT OF APPEAL

STATE OF LOUISIANA

WRIT DENIED

Relator seeks review of the ruling of the trial court denying his "Motion to Correct Illegal Sentence Nunc Pro Tunc, Withdraw Plea, and Expungement of Records."

The official trial court record shows that on August 21, 2002, relator pled guilty in case #01-2706 in the 24th Judicial District Court for the Parish of Jefferson to count one, simple escape in violation of La. R.S. 14:110; and count two, simple criminal damage to property, a police unit window, with the damage amounting to between \$500.00 and \$50,000.00, in violation of La. R.S. 14:56, and was sentenced to four years at hard labor on count one, and two years at hard labor on count two, with the sentences to be served consecutively. In case #01-2707 in the 24th Judicial District Court for the Parish of Jefferson, relator pled guilty to one count of simple criminal damage to property under \$500.00 and was sentenced to six months, concurrently with his sentences in #01-2706. Relator did not appeal from these convictions and sentences.

Also, on August 21, 2002, relator pled guilty in case #02-2015 in the 24th Judicial District Court for the Parish of Jefferson to one count of possession with intent to distribute cocaine, a violation of La. R.S. 40:967, sections A and F, and was sentenced to two years without benefit of probation, parole or suspension of sentence. That same day, relator pled guilty in case #02-2016 to one count of willfully and unlawfully opposing an officer of the law, a violation of La. R.S. 14:108A; one count of knowingly or intentionally possessing drug paraphernalia, a violation of La. R.S. 40:1033; and one count of possession of marijuana, a violation of La. R.S. 40:966C, and was sentenced to six months on each count, to run concurrently with the sentence imposed in case #02-2015 and in cases #01-2706 and #01-2707. Relator did not appeal from these convictions and sentences.

On August 23, 2002, in case #01-2706, relator pled guilty to a habitual offender bill of information charging him as a third felony offender. His four-year sentence on count one, simple escape in violation of La. R.S. 14:110, was vacated and he was resentenced to four years at hard labor without benefit of probation, parole or suspension of sentence, to be served consecutive to his sentence on count two. Relator did not appeal.

On July 28, 2014, relator filed his "Motion to Correct Illegal Sentence Nunc Pro Tunc, Withdraw Plea, and Expungement of Records." On August 4, 2015, the trial court denied relator's motions.

Although relator styled his motion in the trial court as a motion to correct illegal sentence, as well as to withdraw his guilty plea, relator failed to allege any

illegality in his sentence. Instead, he challenges the validity of his habitual offender bill of information and adjudication in case #01-2706. Pursuant to La. C.Cr.P. art. 930.8, relator had two years from the time his conviction and sentence became final to apply for post-conviction relief. We find no error in the trial court's ruling that relator's application, filed almost twelve years after his convictions and sentences became final, is untimely.

This application is denied.

Gretna, Louisiana, this 3rd day of November, 2015.



JUDGE STEPHEN J. WINDHORST



JUDGE JUDE G. GRAVOIS



JUDGE ROBERT A. CHAISSON