

8/04/2017 "See News Release 039 for any Concurrences and/or Dissents."

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-2293**

**STATE EX REL. IRA MARSHALL**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE FIRST  
JUDICIAL DISTRICT COURT, PARISH OF CADDO**

**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 relief.

Relator has now fully litigated at least three 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.

FILED  
STATE OF LOUISIANA  
VERSUS  
IRA MARSHALL  
NUMBER 191,906  
FIRST JUDICIAL DISTRICT COURT  
CADDOPARISH, LOUISIANA  
SEP 09 2015  
PAULA JOHNSON  
DEPUTY CLERK OF COURT

OPINION

The subject of this Opinion is Petitioner's "Uniform Application for Post-Conviction Relief" filed March 5, 2015. For the reasons below, Petitioner's application is **DENIED**.

On January 12, 1999, the Petitioner was convicted of second degree murder and sentenced to life imprisonment without the benefit of probation, parole, or suspension of sentence. His conviction and sentence were affirmed on appeal. *State v. Marshall*, 761 So. 2d 816 (La. App. 2d Cir. 12/8/99).

According to La. C.Cr.P. Art. 930.8, "no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two (2) years after the judgment of conviction and sentence has become final", unless certain circumstances exist. None of the considered circumstances exist in the case at bar. In the present case, Petitioner's sentence and conviction became final in January of 1999. The current application was not filed until March of 2015, approximately fifteen (15) years later.

In the present application, the Petitioner submits affidavits of eye-witnesses who attest to facts that were known to the Petitioner at the time of his arrest and adjudication. The submitted affidavits do not provide an exception to the two-year time limitation for filing an application for post-conviction relief that seeks an out of time appeal. Additionally, as the Assistant District Attorney stated, it is not clear whether the Petitioner submits the affidavits in support of a claim of self-defense or to establish a conviction to the lesser charge of manslaughter. In either event, the Petitioner fails to establish newly discovered evidence to justify as an exception to La. C. Cr. P., Art. 930.8.

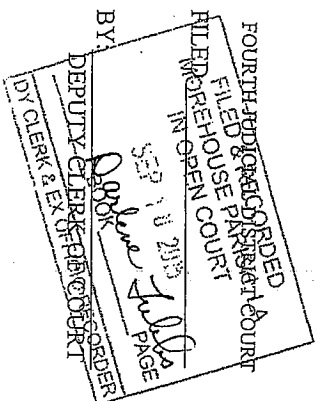
Due to Petitioner failing to set forth any of the circumstances that would exempt him from the two (2) year time limitation pursuant to Art. 930.8, his Application for Post-Conviction Relief filed March 5, 2015 is **DENIED**.

The Clerk of Court is directed to provide a copy of this Opinion to Petitioner, his custodian and the District Attorney.

OPINION RENDERED, READ AND SIGNED this 3<sup>rd</sup> day of July 2015.

Exhibit "D"

STATE OF LOUISIANA                      PARISH OF MOREHOUSE  
STATE OF LOUISIANA  
VS. NO. 82-384F  
ROGER ATKINS



ORDER

CONSIDERING THE ABOVE AND FOREGOING:

IT IS HEREBY ORDERED that the State's procedural objections be GRANTED and  
Petitioner's repetitive application for post-conviction relief is DISMISSED WITH PREJUDICE.

BASTROP, LOUISIANA, on this 10<sup>th</sup> day of August, 2015.

  
JUDGE, FOURTH JUDICIAL DISTRICT COURT

*Karlene Tiller*