

SUPREME COURT OF LOUISIANA

No. 15-KH-1545

STATE EX REL. JAMES LYNDAL FOSTER

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE NINTH
JUDICIAL DISTRICT COURT, PARISH OF RAPIDES**

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. 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; State v. Thomas, 08-2912, (La. 10/16/09), 19 So.3d 466. We attach hereto and make 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.

CRIMINAL DOCKET NO. 297,291
DIVISION "D"

STATE OF LOUISIANA

NINTH JUDICIAL DISTRICT

VERSUS

PARISH OF RAPIDES

JAMES LYNDAL FOSTER

STATE OF LOUISIANA

ORDER

This matter comes before the Court on Defendant's Motion to Correct Illegal Sentence. Defendant was found guilty by jury of Possession of CDS II on November 13, 2009. The Court sentenced Defendant to serve five years at hard labor with the Department of Corrections, to run consecutive with any other time being served, with credit for time served. The State then filed a Habitual Offender Bill. The Court held a hearing on March 1, 2010, at which time the Court found Defendant guilty as a fourth felony offender. Thereafter, the Court vacated the previous sentence and sentenced Defendant to serve twenty years at hard labor with the Department of Corrections, with credit for time served.

After a review of the record, the Court finds that both the initial sentence and the habitual offender sentence do not exceed the maximum sentence authorized by law, pursuant to Louisiana Revised Statutes 40:967(C) and 15:529.1, respectively. In addition, the Court finds that Defendant was informed of his rights during the court proceedings by the Court.

Further, Defendant states allegations of ineffective assistance of counsel that are consistent with claims that must be properly raised in an application for post conviction relief. Defendant has not raised these claims in the proper procedural manner. However, the time period in which Defendant may file an application for post conviction relief has lapsed, and Defendant would now be barred from bringing such application. Accordingly,

IT IS ORDERED that Defendant's motion is DENIED.