

**SUPREME COURT OF LOUISIANA**

**No. 15-KH-0661**

**STATE EX REL. ROMALIS COOK**

**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. In addition, relator's sentencing claims are 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. Finally, relator's claims are repetitive. La.C.Cr.P. art. 930.4. 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 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.

RECEIVED

TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON  
STATE OF LOUISIANA

FEB 09 2015

W.F.F.S.O.

NO. 97-6228

DIVISION "A"

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STATE OF LOUISIANA

FEB 09 2015

VERSUS

Legal Programs Department

ROMALIS COOK

FILED: 1-20-15

*M. Victoriano*  
DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED OCTOBER 14, 2014, AND THE STATE'S OPPOSITION TO APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED DECEMBER 1, 2014.

The petitioner, in his second application for post-conviction relief, argues that he is entitled to post-conviction relief and asserts the presence of newly discovered evidence sufficient to excuse him from the time limitations of LSA-C.Cr.P. art. 930.8. The state responds with procedural objections.

The petitioner is serving a life sentence imposed following his convictions in a judge trial for four counts of first degree robbery and one count of attempted first degree robbery and enhanced sentence as a three-time offender. By his own admission, the petitioner's sentences became final in January of 1999. He now argues that information he learned in August of 2014 establish that he is factually innocent of being a three-time felony offender.

In response, the state raises three procedural bars, those contained in LSA-C.Cr.P. art. 930.8, LSA-C.Cr.P. art. 930.3, and LSA-C.Cr.P. art. 930.4. A finding of any one of these procedural bars would preclude further review.

Post-conviction applications must be timely. LSA-C.Cr.P. art. 930.8 contains the following mandate:

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 years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

- (1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

LSA-C.Cr.P. art. 930.8(A)(1), emphasis added.

In addressing the statutory inquiry into the petitioner's abilities, the state notes that the petitioner is 39 years old, has taken correspondence courses, has had retained counsel in his earlier post-conviction application. With these matters in mind, the court finds that the petitioner did not exercise diligence in seeking his own records. Upon



review of all pleadings on this matter, the court agrees with the state that the petitioner's claim is time-barred.

Post-conviction applications may be based only for certain limited purposes. Such applications must challenge the conviction and sentence for an offense. LSA-C.Cr.P. art. 930.3 provides as follows:

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

- (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana;
- (2) The court exceeded its jurisdiction;
- (3) The conviction or sentence subjected him to double jeopardy;
- (4) The limitations on the institution of prosecution had expired;
- (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional; or
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
- (7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

As can be seen from the statute, post-conviction review is strictly limited to the enumerated grounds, of which habitual offender adjudications and sentencing errors do not number.

The statutory ban on sentencing review is confirmed by case law. *In State ex rel. Melmie v. State*, 93-1380 (La. 1/12/96), 665 So.2d 1172, the Supreme Court of Louisiana held that there is no review of excessiveness in post-conviction proceedings. In addition to that clear ruling, in *State ex rel. Brown v. State*, 03-2568 (La. 3/26/04), 870 So.2d 976, the Supreme Court confirmed that collateral review of multiple offender sentences is not allowed because sentencing error is not cognizable in post-conviction proceedings. For these reasons, the court finds that the petitioner's claims are barred by application of LSA-C.Cr.P. art. 930.3.

Post-conviction proceedings must not be repetitive or successive. The state urges this court to apply the procedural bar of LSA-C.Cr.P. art. 930.4, which is as follows:

- A. Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.
- B. If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.
- C. If the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.
- D. A successive application shall be dismissed if it fails to raise a new or different claim.
- E. A successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application.
- F. If the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. If the court finds that the failure was excusable, it shall consider the merits of the claim.

The state specifically urges this court to deny this application as successive. The petitioner, as the state argues, has sought relief previously on his claim of an invalid multiple offender adjudication. The court finds that subsections 930.4(D) and (E) apply and is unpersuaded by the reasons cited for

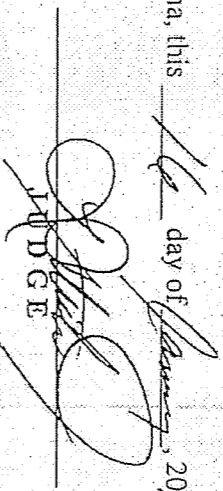
the procedural posture of the claim. The court finds article 930.4 bars consideration.

For the above reasons, the court finds that the petitioner's application for post-conviction relief is procedurally barred. Due to finding the procedural bars apply, the court will not consider the merits and will deny relief with no further proceedings.

Accordingly,

IT IS ORDERED BY THE COURT that the petitioner's application for post-conviction relief be and is hereby DENIED.

Gretna, Louisiana, this 16 day of January, 2015.

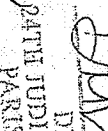
  
JUDGE

PLEASE SERVE:

PRISONER: Romalis Cook, DOC # 351588, Louisiana State Penitentiary, Angola, LA 70712

District Attorney: Andrea F. Long, Paul Connick, Terry Boudreaux, 200 Derbigny St., Gretna, LA 70053

A TRUE COPY OF THE ORIGINAL  
ON FILE IN THIS OFFICE.

 DEPUTY CLERK  
EIGHTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON

ISSUED  
1-20-15  
gmv