

SUPREME COURT OF LOUISIANA

No. 15-KH-1082

STATE EX REL. FREDDIE KING, JR.

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE NINETEENTH
JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE**

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 Commissioner's Recommendation which the District Court adopted as its own when it denied relator's application.

Relator has now fully litigated 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 La.C.Cr.P. art. 930.4 to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in state collateral proceedings in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless relator 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.

FREDDIE KING, JR.
#294107

VS

STATE OF LOUISIANA

NUMBER 08-89-0870 SECTION II

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COMMISSIONER'S RECOMMENDATION

Petitioner, Freddie King, Jr. was initially charged with four counts of first degree murder in connection with the shooting deaths of several individuals. Prior to the start of trial, the State amended the charges to four counts of second degree murder. Petitioner proceeded to trial and was found guilty on all four counts. He was sentenced on each count to life imprisonment at hard labor, without benefit of parole, probation or suspension of sentence. The court ordered that the sentences to counts I, II, and III run concurrently and that the sentence on Count IV run consecutively to the sentences on the other three counts.

On June 29, 1992, the First Circuit Court of Appeal affirmed petitioner's convictions and sentences.¹ Petitioner sets forth that a prior application for post conviction relief was denied on February 18, 1994. In addition, petitioner's application for writ review was denied by the First Circuit Court of Appeal on May 22, 1995 and his application for relief denied by the Louisiana Supreme Court on February 7, 1997.

It should be noted that petitioner's initial PCR application in 1994 was denied because it was procedurally barred. Petitioner filed an application for post conviction relief while he had an appeal pending. Petitioner did not file another application for post conviction relief until April 21, 2014 wherein he alleges ineffective assistance of counsel during and before the trial. Petitioner acknowledges that his application appears time-barred except that he meets the requirements of La. C.Cr.P. art. 930.8(A)(2) and that his application is based on *Martinez v. Ryan*² and *Trevino v. Thaler*.³

The application for post-conviction relief is untimely. As enacted in 1990, La. C.Cr.P. art. 930.8 provided a three-year time bar for filing applications for post-conviction relief. The petitioner's conviction and sentence became final in 1992 and he filed this application in 2014, which is over twenty years past the time allowed.

¹ *State v. King*, 604 So. 2d 661, 662 (La. Ct. App. 1992).

² *Martinez v. Ryan*, 132 S.Ct. 1309 (U.S., March 20, 2012).

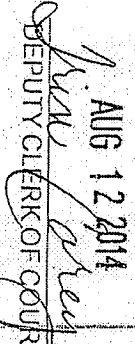
³ *Trevino v. Thaler*, 133 S.Ct. 1911, 1921, 185 L.Ed. 2d 1044 (2013).

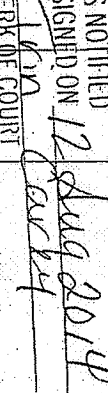
Moreover, the jurisprudence in which the petitioner relies are not applicable here. The holdings in *Martinez* and *Trevino* concern federal habeas proceedings. Although petitioner refers to *Trevino v. Thaler*, ___ U.S. ___, 133 S.Ct. 1911, 185 L.Ed2d 1044 (2013), which is also inapplicable in this case. *Trevino* allows a federal habeas corpus court to consider a substantial claim of ineffective assistance of counsel even if state law creates a procedural default. In addition, the Second Circuit gave some direction in *State v. Broom*⁴ wherein it was found that *Trevino* expanded the application of the Martinez exception in federal habeas courts, but did not create an exception under Louisiana law.⁵

Considering the petitioner's pleadings, application for post-conviction relief and the applicable law, it is hereby recommended that the application be dismissed as untimely pursuant to La. C.Cr.P. art. 930.8.

Respectfully recommended this 12 day of August 2014.


COMMISSIONER QUINTILLIS K. LAWRENCE
19TH JUDICIAL DISTRICT COURT

FILED
AUG 12 2014

DEPUTY CLERK OF COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS / JUDGMENT / ORDER / COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO ALL PARTIES NOTIFIED AND SIGNED ON 12 Aug 2014

DEPUTY CLERK OF COURT

⁴ *State v. Broom*, 49,166 (La. App. 2 Cir. 2/27/14).
⁵ *Id.*