

SUPREME COURT OF LOUISIANA

No. 15-KH-1276

STATE EX REL. SHAWN WICKEM

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. 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 District Court's written reasons denying relator's application.

Relator has now fully litigated 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.

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

NO. 98-2298

DIVISION " H "

STATE OF LOUISIANA

VERSUS

SHAWN WICKEM

FILED: March 11, 2015

JRG
DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's MOTION TO CORRECT AN ILLEGAL SENTENCE, STAMPED AS FILED MARCH 9, 2015.

On April 9, 1999, the petitioner was convicted of armed robbery, a violation of LSA-R.S. 14:64. On May 20, 1999, the court sentenced him to 25 years imprisonment at hard labor. On December 16, 1999, the court adjudicated him as a multiple offender, and re-sentenced him under the multiple bill to 50 years imprisonment at hard labor.

The defendant's conviction and sentence were affirmed on appeal. *State v. Wickem*, 99-1261 (La. App. 5 Cir. 4/12/00), 759 So.2d 961; *writ denied*, 2000-1371 (La. 2/16/01), 785 So.2d 839. Post-conviction relief has also been denied by this court, with the Fifth Circuit and Supreme Court of Louisiana denying writs.

The petitioner now argues his sentence is constitutionally excessive and therefore illegal under the Eight Amendment to the Constitution of the United States.

The defendant files this pleading pursuant to LSA-C.Cr.P. art. 882, which states that a motion to correct an illegal sentence may be raised at any time. However, the defendant does not point to a claimed illegal term in his sentence. Rather, he argues excessive sentence in a general sense.

The defendant's claim is not cognizable in a motion to correct illegal sentence. A defendant may only raise claims relating to the legality of the sentence itself under the applicable sentencing statutes in a motion to correct an illegal sentence. *State v. Taylor*, 12-66 (La. App. 5 Cir. 2/14/12), (unpublished), citing *State v. Gedric*, 99-1213 (La. App. 1 Cir. 6/3/99), 741 So.2d 849, 851-852, *writ denied*, 99-1830 (La. 11/5/99), 751 So.2d 239, citing *State v. Parker*, 98-256, (La. 5/8/98), 711 So.2d 694, 695. When a defendant fails to point to a claimed illegal term in his sentence, he does not raise a claim cognizable in a motion to correct an illegal sentence. *Parker*, supra.

The court finds no illegality in defendant's sentence, as the terms of defendant's sentences are within the statutory parameters provided. The defendant has had review of his sentence and there is nothing further to review. His motion will be denied.

Accordingly,

IT IS ORDERED BY THE COURT that the defendant's motion be and is hereby **DENIED.**

Gretna, Louisiana, this 11th day of March, 20 15.

[Signature]
JUDGE

PLEASE SERVE:

DEFENDANT: Shawn Wickem, DOC # 360057, Louisiana State Penitentiary, Angola, LA 70712

3-13-15 Issued (JRG)

IMAGED MAR 13 2015