

03/31/2017 “See News Release 019 for any Concurrences and/or Dissents.”

SUPREME COURT OF LOUISIANA

No. 15-KH-2170

STATE EX REL. JERXAVIER LANE

v.

STATE OF LOUISIANA

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

PER CURIAM:

Denied. Relator has exhausted his right to state collateral review. *See State ex rel. Lane v. State*, 16-2217 (La. 1/23/17), 209 So.3d 87. We attach hereto and make a part hereof the district court’s written reasons denying relief.

8-28-15 BW

STATE OF LOUISIANA

FILED

NUMBER: 272,097

VERSUS

AUG 28 2015
B. WASHINGTON
DEPUTY CLERK OF COURT

FIRST JUDICIAL DISTRICT COURT

JERXAVIER LANE

CADDO PARISH, LOUISIANA

OPINION

The Court has for its consideration Petitioner's Motion to Withdraw Guilty Plea filed on July 2, 2015. For the reasons stated below the Petitioner's motion is **DENIED**.

Petitioner was charged with an indictment for Second Degree Murder. On June 14, 2011, the State filed an amended indictment of manslaughter, to which Petitioner pled guilty. The Court informed Petitioner of his rights as per Boykin and sentenced him to forty (40) years at hard labor and he was committed to the Louisiana Department of Corrections, subject to the conditions provided by law.

In his motion, Petitioner alleges violations of his constitutional rights. These violations are: (1) The Court abused its discretion when sentencing him; (2) The Court, counsel, and DA refused to raise the question of his mental health; (3) The indictment was not endorsed by a true bill; (4) the plea colloquy was inadequate; (5) The Court and counsel wrongfully influenced him into pleading guilty; (6) The DA failed to commence the trial within a two year limitation; (7) The DA withheld evidence concerning guilt or innocence; and (8) The plea was made involuntarily and unintelligently.

When a defendant enters an unreserved plea of guilty, he waives his rights to attack the strength of the State's case and any non-jurisdictional defects in the State's case. *State v. Crosby*, 338 So. 2d 584, (La. 1976); *State v. Burnett*, 33,739 (La. App. 2d Cir. 10/4/00), 768 So. 2d 822. The plea of guilty by its nature admits factual guilt and relieves the State of the necessity of proving it by a contested trial. *State v. Buggs*, 567 So. 2d 744, (La. App. 2d Cir. 1990); *State v. Hardy*, 39,233, (La. App. 2d Cir. 1/26/05), 892 So. 2d 710, 712. By pleading guilty, therefore, Petitioner has waived his right to complain about any portion of the State's case against him.

Therefore, the allegations contained in the Petitioner's application are **moot**.

In addition, Petitioner's claim includes each of the claims raised in his prior application for post-conviction relief, which was denied. Petitioner's motion is treated as an Application for Post Conviction Relief on grounds that the substance, rather than the caption, of a pleading that governs the latter's construction. The caption, or heading, of the pleading does not control and the Court

is obligated to ascertain the substance of the pleading. *Adams v. Parish* 43,047, 6 (La.App.2d Cir. 3/19/08) 978 So.2d 1202, 1207; *Smith v. Cajun Insulation, Inc.*, 392 So.2d 398 (La. 1980); *Ford Motor Credit Co. v. Brown*, 32,995 (La.App.2d Cir. 4/5/00), 750 So.2d 654. Petitioner's motion, notwithstanding its caption, was clearly intended by its very substance to serve as an Application for Post-Conviction Relief.

Louisiana Code of Criminal Procedure article 924(1) defines an application for post conviction relief as, "a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside." Petitioner's Motion to Withdraw Guilty Plea, filed on July 2, 2015, in spite of its name or caption, was clearly filed while he was in custody, after sentencing, and for the purpose of having his conviction and sentence set aside.

The guidelines for Post Conviction Relief are outlined in the Louisiana Code of Criminal Law and Procedure. 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.

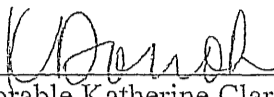
Petitioner's motion is both untimely and repetitive. Petitioner's sentence and conviction became final in June 2011. This motion was not filed until July 2, 2015, far beyond the two (2) year period from final judgment in which to file an application for post-conviction relief. It also raises the same claims that were considered and denied by this Court in his timely-filed Application for Post-Conviction Relief. The new caption on this pleading, which contains the same substance, is simply an attempt to get around the statutory limitations placed on post-conviction relief.

Even if Petitioner's motion were to fall under a Motion to Withdraw Plea Agreement, this Court does not have any authority to withdraw Petitioner's plea. Under Code of Criminal Procedure article 559(a), the Court may permit a plea of guilty at any time before sentencing. Petitioner has already been sentenced. In addition, the Court informed Petitioner at sentencing of his rights as per *Boykin*. Petitioner has presented no evidence to suggest that his claims of a *Boykin* violation occurred, or that his plea was not given voluntarily and intelligently. Additionally, these claims were not sufficient in his timely-filed Application for Post-Conviction Relief.

For the foregoing reasons, Petitioner's **Motion to Withdraw Guilty Plea** filed on July 2, 2015, is **DENIED**.

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

OPINION RENDERED, READ AND SIGNED, this 14th day of Aug, 2015.

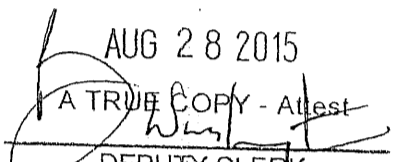

Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

SERVICE INFORMATION

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ENDORSED FILED
B. WASHINGTON, Deputy Clerk

AUG 28 2015
A TRUE COPY - Attest

DEPUTY CLERK