

**SUPREME COURT OF LOUISIANA**

**No. 16-KH-0406**

**STATE EX REL. MICHAEL CLENNON**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE TWENTY-FOURTH  
JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

**PER CURIAM:**

Denied. There is no error in the lower courts' rulings. We attach hereto and make a part hereof the district court's written reasons denying relief.

Relator has now fully litigated several 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 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.

CLERK

TWENTY FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON  
STATE OF LOUISIANA

NO. 97-1136

DIVISION "G"


RECEIVED  
STATE OF LOUISIANA

NOV 23 2015

VERSUS

Legal Programs Department  
MICHAEL CLENNON

FILED: 11/23/15

  
DEPUTY CLERK

ORDER

This matter comes before the court on:

- PETITIONER'S MOTION TO VACATE RULING(S) REASSIGNMENT OF FILINGS PURSUANT TO L.A.C.C.R.P. ARTICLES 671 (A)(3); 672, STAMPED AS FILED APRIL 2, 2015,
- STATE'S RESPONSE, STAMPED AS FILED AUGUST 20, 2015, AND
- PETITIONER'S OBJECTION TO STATE'S RESPONSE, STAMPED AS FILED AUGUST 31, 2015.

On December 2, 1997, Petitioner was found guilty of two counts of armed robbery. Predicated on his two previous convictions for armed robbery, he was found to be a multiple felony offender on December 11, 1998. The Fifth Circuit Court of Appeal affirmed his convictions on June 30, 1999. *State v. Clennon*, 738 So.2d 161, 98-1370 (La.App. 5 Cir. 6/30/99), and remanded for re-sentencing for the court to specify which of Petitioner's sentences is enhanced, and to correct the counts which defendant was convicted. On December 8, 2000, a *nunc pro tunc* order was filed in the court record, vacating Petitioner's original sentence and re-sentencing him on count #1 to 50 years under the multiple bill.

Petitioner filed an application for post-conviction relief on November 8, 2001. Post-conviction relief was denied by all reviewing courts. *State ex rel. Micheal Clennon*, 02-07, (La.App. 5 Cir. 1/8/2), writ denied, 836 So.2d 37, 02-0436 (La. 1/24/03).

On June 2, 2014 and June 10 2014, Petitioner filed another application for post-conviction relief and supplement claiming ineffective assistance of counsel and that this application is timely in light of the recent United States Supreme Court case, *Martinez v. Ryan*, 132 S.Ct. 1309 (3/20/12). On July 22, 2014, the court denied relief. Petitioner sought writs, which the Fifth Circuit Court of Appeal denied, finding no error in the trial court's ruling. *Clennon v. State*, 14-KH-635 (La. App. 5 Cir. 9/15/14).

On December 9, 2014, Division L of the 24<sup>th</sup> Judicial District Court was recused and the case was re-allotted, as the presiding judge of Division L was a former prosecutor on defendant's case.

Petitioner has filed this motion seeking to vacate the ruling of July 22, 2014, when the trial court (Division L) denied Petitioner's application for post-conviction relief. Petitioner requests that the filings previously reviewed and considered by Division L be re-assigned to another judge for review.

The State filed a response, as ordered by the court.

Petitioner filed objections, noting that the following orders should be vacated:

- June 6, 2012, addressing Petitioner's Motion to Correct Illegal Sentence.
- June 19, 2014, addressing Petitioner's Motion for Appointment of Counsel.
- July 22, 2014, denying Petitioner's Application for Post-Conviction Relief.

In accordance with Louisiana jurisprudence, the court will vacate the orders of Judge Rowan, and will now consider Petitioner's previous filed pleadings.

MOTION TO CORRECT ILLEGAL SENTENCE IMPOSED UNDER L.A.R.S. 15:529.1, THE HABITUAL OFFENDER LAW, STAMPED AS FILED MAY 21, 2012.

Petitioner contends that his sentence "at hard labor" is not authorized under the multiple bill and thus is illegal. The court finds no merit to this claim. The multiple offender statute is a sentencing enhancement to be used in conjunction with the sentencing provisions of the underlying offense. In Petitioner's case, he was convicted of armed robbery. Under LSA-R.S.

EXHIBIT #4

Issued 11/9

14:64, the sentencing provision mandates, "Whoever commits the crime of armed robbery shall be imprisoned at hard labor..." The Petitioner is not entitled to relief.

MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO THE FINAL RULINGS IN MARTINEZ V. RYAN, 566 U.S. 1-15 (2012) AND TREVINO V. THALER, 569 U.S. 1-15 (2013) AND L.A.C.CR.P. ARTICLE 930(7)(A),(B), AND (C), STAMPED AS FILED MAY 5, 2014.

Petitioner requests that the court appoint counsel for post-conviction relief. He contends that, "he is unable to afford to retain counsel who will represent/assist him in this equitable collateral proceeding to have his underlying trial counsel's ineffectiveness considered."

Under LSA-C.Cr.P. art. 930.7(A), if a petitioner is indigent and alleges a claim which, if established, would entitle him to relief, the court may appoint counsel.

Under LSA-C.Cr.P. art. 930.7(B), the court may appoint counsel for an indigent petitioner when it orders an evidentiary hearing, authorizes the taking of depositions, or authorizes requests for admissions of fact or genuineness of documents, when such evidence is necessary for the disposition of procedural objections raised by the respondent.

Under LSA-C.Cr.P. art. 930.7(C), the court shall appoint counsel for an indigent petitioner when it orders an evidentiary hearing on the merits of a claim, or authorizes the taking of depositions, or authorizes requests for admissions of fact or genuineness of do for use as evidence in ruling upon the merits of the claim.

In this filing, Petitioner does not allege a claim which, if established, would entitle him to relief, or meet any of the criteria as established in LSA-C.Cr.P. art. 930.7. Petitioner is not entitled to appointment of counsel, or any other relief.

APPLICATION FOR POST CONVICTION RELIEF, STAMPED AS FILED JUNE 2, 2014.

Petitioner files an application for post-conviction relief claiming ineffective assistance of trial counsel, and argues that he is entitled to relief under and that his application is timely pursuant to the recent United States Supreme Court case, *Martinez v. Ryan*, 132 S.Ct. 1309 (3/20/12).

The court finds Petitioner's reliance on *Trevino v. Thaler*, 11-10189 (U.S. 2013), 133 S.Ct. 1911, misplaced, as it addresses whether the rule set out in *Martinez v. Ryan*, 132 S.Ct. 1309 (3/20/12), applies in Texas. *Martinez* addressed whether ineffective assistance of counsel at initial-review collateral proceedings on a claim of ineffective assistance at trial may provide cause for a procedural default in a federal habeas proceeding. Id. at 1315.(Emphasis added.) It recognized that inadequate assistance at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial. Id.

The Supreme Court did not expand a constitutional ruling to provide appointment of counsel in initial-review collateral rulings. Rather, it made an equitable ruling permitting the State a variety of counsel in initial-review collateral proceedings. Id. at 1319-20. Furthermore, "State collateral cases on direct review from state courts are unaffected by the ruling in this case." Id. at 1320. The Supreme Court specifically held,

*"Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective."*

Id.

In *Trevino v. Thaler*, 133 S.Ct. 1911 (2013), the United States Supreme Court held that a federal habeas court can excuse a defendant's procedural default, even if state law does not require that an ineffective assistance of trial counsel claim be raised in initial collateral review, and concluded that *Martinez v. Ryan* exception applies in the Texas procedural regime, which does not on its face require a defendant to initially raise an ineffective assistance of counsel claim in state collateral review proceeding, but rather permits (not requires) the defendant to initially raise the claim on ineffective assistance of trial counsel on direct appeal. Id. at 1916. *Trevino* is inapplicable to the case at bar.

Under the clear language of LSA-C.Cr.P. art. 930.8, the Petitioner had two years from the date his conviction and sentence became final to file an application for post-conviction relief, unless he proved an exception to the time limitations of LSA-C.Cr.P. art. 930.8 (A). The

Petitioner does not meet any of the exceptions for delayed filing. The court, therefore, finds Petitioner's application for post-conviction relief procedurally barred as untimely. Petitioner is not entitled to relief.

Accordingly,

**IT IS ORDERED BY THE COURT** that the following orders are hereby **VACATED**:

- Order of June 6, 2012, denying Petitioner's *Motion to Correct Illegal Sentence Imposed under LA R.S. 15:529.1, the Habitual Offender Law.*
- Order of June 19, 2014, denying Petitioner's *Motion for Appointment of Counsel.*
- Order of July 22, 2014, denying Petitioner's *Application for Post-Conviction Relief.*


**IT IS FURTHER ORDERED BY THE COURT** that Petitioner's *Motion to Correct Illegal Sentence Imposed under La.R.S. 15:529.1, the Habitual Offender Law*, stamped as filed May 21, 2012, be and is hereby **DENIED**.

**IT IS FURTHER ORDERED BY THE COURT** that Petitioner's *Motion for Appointment of Counsel Pursuant to the Final Rulings in Martinez v. Ryan, 566 U.S. 1-15 (2012) And Trevino v. Thaler, 569 U.S. 1-15 (2013) and La.C.Cr.P. Article 930(7)(A),(B), and (C)*, stamped as filed May 5, 2014, be and is hereby **DENIED**.

**IT IS FURTHER ORDERED BY THE COURT** that Petitioner's *Application for Post-Conviction Relief*, stamped as filed June 2, 2014, be and is hereby **DENIED**.

Gretna, Louisiana this 9<sup>th</sup> day of November, 2015.

  
JUDGE

A TRUE COPY OF THE ORIGINAL  
ON FILE IN THIS OFFICE.  
  
DEPUTY CLERK  
24TH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, LA

PLEASE SERVE:

DEFENDANT: Michael Clennon, DOC # 323402, Louisiana State Penitentiary, Angola, LA 70712

Terry Boudreux, Thomas Butler, District Attorney's Office, 200 Derbigny St., Gretna, LA 70053