

SUPREME COURT OF LOUISIANA

No. 16-KH-0446

STATE EX REL. DEMETRIUS BRADLEY

v.

STATE OF LOUISIANA

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

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 district court's written reasons for judgment.

Relator has now fully litigated at least one application 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 has filed an application for post-conviction relief in the district court, and the district court's ruling denying relief is now 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.

FILED

SEP 21 2015
[Signature]
B. WASHINGTON
DEPUTY CLERK OF COURT

STATE OF LOUISIANA DOCKET NO.: 240612 (SECTION 1)
VERSUS FIRST JUDICIAL DISTRICT COURT
DEMETRIUS BRADLEY CADDO PARISH, LOUISIANA

OPINION

On August 15, 2008, Petitioner was found guilty of two counts of Armed Robbery with a Firearm after a bench trial. A Multiple Offender Hearing was held on January 26, 2009, and Petitioner was adjudicated as a Second Felony Habitual Offender as to each count. He was ordered to pay court costs and to be confined at hard labor for a period of fifty-seven (57) years. Petitioner was subsequently committed to the Louisiana Department of Corrections, subject to the conditions provided by law. The Court ordered each sentence to be served without the benefit of probation, parole, or suspension of sentence and to run concurrently with any other sentence. Petitioner was also given credit for time served. On appeal, the Second Circuit affirmed Petitioner's conviction and sentence. *State v. Bradley*, 44,963 (La. App. 2 Cir. 3/3/10); 33 So.2d 939 *rehearing denied*, (4/8/10), *writ denied*, 2010-1090 (La. 12/10/10); 51 So.2d 723.

Currently, the Court has for its consideration Petitioner's **Application for Post-Conviction Relief**, filed on August 4, 2015. For the following reasons, Petitioner's Application is **DENIED**.

This is the first Application for Post-Conviction Relief filed by the Petitioner. In his Application, Petitioner raises the following claims: (1) he contends that he received newly discovered facts, which demonstrate that his Sixth Amendment right to a fair trial was violated, (2) his Fourteenth Amendment right to due process was violated when State witnesses falsely testified at trial, and (3) his trial counsel failed to object to false testimony at trial, violating Petitioner's rights under the Sixth and Fourteenth Amendments of the United States Constitution and Article I of the Louisiana State Constitution.

First, Petitioner's Application fails because it is untimely. Louisiana's Code of Criminal Procedure Article 930.8 provides:

No application for post-conviction relief, including applications seeking an out-of-time appeal, shall be considered if it is filed more than two years after judgment of conviction and sentence has become final.

Here, more than five (5) years has passed since Petitioner's conviction and sentence was made final. Additionally, Petitioner fails to satisfy one of the enumerated exceptions to the two-year timeline limitation for seeking post-conviction relief. *Id.* Therefore, he is not entitled to post-conviction relief.

Even if Petitioner filed his Application timely, the claims he relies upon would still fail. In his first claim, Petitioner alleges that "newly discovered" facts entitle him to relief. To support his claim, Petitioner attached a letter from the Department of Corrections, which states that he, Petitioner, was released on parole on May 22, 2003. Because he was released on parole prior to the amendment to La. R.S. 15:609 on June 20, 2003, Petitioner claims that he should not have been compelled to submit a DNA sample. Furthermore, he argues that the sample should not have been used as evidence in the armed robbery for which he was subsequently convicted.

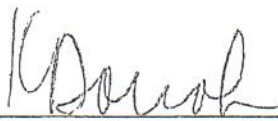
No application for post-conviction relief shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final unless the application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is based were not known to the petitioner or his attorneys. Additionally, the petitioner must prove that he exercised diligence in attempting to discover any post-conviction claims that exist. La. C. Cr. P. art. 930.8 (A)(1). Here, as previously mentioned, more than two years have passed since Petitioner's conviction was made final. Petitioner fails to demonstrate either that this information was unknown to him prior to passing of the two-year time limit or that he exercised diligence in seeking this information. In fact, Petitioner, more than any other party, was in the best position to know the date on which he was paroled.

As to the second and third claims, they are without merit. In the State's response, filed on September 2, 2015, it notes that Petitioner was implicated in the armed robbery based on a buccal swab, not the blood sample obtained pursuant to La. R.S. 15:609. The buccal swab was obtained with Petitioner's consent. Therefore, because the buccal swab, not the blood sample, was used at trial, Petitioner was not unduly prejudiced at trial.

Consequently, Petitioner's **Application for Post-Conviction Relief**, filed on August 4, 2015, is **DENIED**.

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

Signed this 21st day of Sept, 2015, in Shreveport, Caddo Parish, Louisiana.

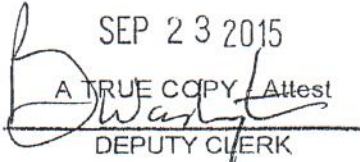

Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

DISTRIBUTION:

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ENDORSED FILED
B. WASHINGTON, Deputy Clerk

SEP 23 2015
A TRUE COPY Attest

DEPUTY CLERK