

SUPREME COURT OF LOUISIANA

No. 16-KH-1235

STATE EX REL. DAVID BOUDREAUX

v.

STATE OF LOUISIANA

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

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. The application is also repetitive. La.C.Cr.P. art. 930.4. We attach hereto and make a part hereof the district court's written reasons denying relief.

Relator has now fully litigated at least 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 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. 93-1435


DIVISION " E "

STATE OF LOUISIANA

VERSUS

DAVID BOUDREAUX

FILED: 3/18/16


DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED FEBRUARY 11, 2016, AND STATE'S RESPONSE, STAMPED AS FILED MARCH 16, 2016.

On June 9, 1994, the petitioner was convicted after trial by jury of LSA-R.S. 14:42, relative to aggravated rape. On June 28, 1994, the court sentenced him to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The Fifth Circuit Court of Appeal affirmed petitioner's conviction and sentence. *State v. Boudreaux*, 95-153 (La. App. 5 Cir. 9/20/95), 662 So.2d 22; *writ denied*, 96-0840 (La. 5/30/97), 694 So.2d 233.

In this latest application for post-conviction relief, the petitioner alleges the following claims:

1. Court reporter failed to transcribe the June 7, 1994 jury selection transcript, violating due process.
2. Improper number of juror for trial violated due process rights.

Post-conviction procedures are strictly enforced. LSA-C.Cr.P. art. 930.4(E) provides that a successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application.

Additionally, the court finds that under *State ex rel. Rice v. State*, 749 So.2d 650 (La. 1999), defendant's proper use of the Uniform Application satisfies the requirement of LSA-C.Cr.P. art. 930.4(F).

Under the clear language of LSA-C.Cr.P. art. 930.8, the petitioner had two years (previously three) 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). Petitioner's conviction and sentence became final in 1997. 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.

Under LSA-C.Cr.P. art. 928, an application may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle petitioner to relief. In this case, the petitioner has not alleged a claim valid claim reviewable in accordance with LSA-C.Cr.P. art. 930.3 or 930.4. The petitioner is not entitled to relief sought.

Accordingly,
IT IS ORDERED BY THE COURT that the application for post-conviction relief be and is hereby **DENIED**.

Gretna, Louisiana this 18th day of March, 2016.


JUDGE

S/ JOHN J. MOLAISON, JR.

PLEASE SERVE:

PRISONER: David Boudreaux, DOC # 137474, Louisiana State Penitentiary, Angola, LA 70712

e- Terry Boudreaux, District Attorney's Office, 200 Derbigny St., Gretna, LA 70053

(EX D)

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