

SUPREME COURT OF LOUISIANA

No. 16-KH-1288

STATE EX REL. MICHAEL BALL

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. We attach hereto and make a part hereof the court of appeal's written reasons denying writs.

Relator has now fully litigated his 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'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.

VERSUS 10/09/2017 "See News Release 048 for any Concurrences and/or Dissents."

FIFTH CIRCUIT

STATE OF LOUISIANA

COURT OF APPEAL

STATE OF LOUISIANA

May 26, 2016

Susan Buchholz

First Deputy Clerk

IN RE MICHAEL BALL

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE HENRY G.
SULLIVAN, JR., DIVISION "M", NUMBER 11-396

Panel composed of Judges Fredericka Homberg Wicker,
Robert M. Murphy, and Stephen J. Windhorst

WRIT DENIED

Relator, Michael Ball, seeks review of the trial court's denial of his application for post-conviction relief. For the following reasons, we deny the writ.

On September 8, 2011, a twelve-person jury convicted relator of first degree robbery in violation of La. R.S. 14:64.1. The trial court sentenced relator to thirty years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The state subsequently filed a multiple offender bill of information, and relator stipulated to being a second felony offender. The trial judge adjudicated relator a second felony offender, vacated his original thirty-year sentence, and re-sentenced relator to an enhanced sentence of forty years imprisonment at hard labor without the benefit of probation or suspension of sentence, and with credit for time served.

This Court affirmed relator's conviction and sentence on appeal. *State v. Ball*, 12-710 (La. App. 5 Cir. 4/24/13), 131 So.3d 896. The Louisiana Supreme Court denied relator's writ applications on November 8, 2013 and November 15, 2013. *State ex rel. Ball v. State*, 13-1329 (La. 11/8/13), 125 So.3d 450; *State v. Ball*, 13-1139 (La. 11/15/13), 125 So.3d 1103. On May 10, 2014, relator filed a *habeas corpus* application in federal court, which was dismissed with prejudice on August 27, 2014. *Ball v. Tanner*, 2014 U.S. Dist. LEXIS 119641 (E.D. La. Aug. 27, 2014).

On February 10, 2016, relator filed an application for post-conviction relief in the trial court, challenging his conviction and asserting various claims, including insufficiency of the evidence and ineffective assistance of counsel claims. On

to be procedurally time-barred under La. C.Cr.P. art. 930.8. On March 31, 2016, relator filed a motion to reconsider the denial of his application for post-conviction relief, which the trial court denied. ^{10/09/2017} "See News Release 048 for any Concurrences and/or Dissents."

Upon review of relator's application for post-conviction relief and motion to reconsider, we find that the trial court did not err in its denial of relator's application and motion. La. C.Cr.P. art. 930.8 provides that no application for post-conviction relief shall be considered if it is filed more than two years after defendant's conviction and sentence become final under the provisions of La. C.Cr.P. arts. 914¹ and 922,² unless certain enumerated exceptions apply. Relator filed his application for post-conviction relief on February 10, 2016, more than two years after the Louisiana Supreme Court's denial of his writ applications and the finality of his conviction and sentence as contemplated under La. C.Cr.P. art. 922(D). Relator's application for post-conviction relief is, therefore, procedurally time-barred under La. C.Cr.P. art. 930.8. Accordingly, this writ is denied.

Gretna, Louisiana, this 26th day of May, 2016.

FHW
RMM
SJW

**A TRUE COPY
GRETN**

MAY 26 2016

Susan Buckner
DEPUTY
CLERK
COURT OF APPEAL, FIFTH CIRCUIT

¹ La. C.Cr.P. art. 914 provides:

A. A motion for an appeal may be made orally in open court or by filing a written motion with the clerk. The motion shall be entered in the minutes of the court.

B. The motion for an appeal must be made no later than:

(1) Thirty days after the rendition of the judgment or ruling from which the appeal is taken.

(2) Thirty days from the ruling on a motion to reconsider sentence filed pursuant to Article 881.1, should such a motion be filed.

² La. C.Cr.P. art. 922, titled "Finality of Judgment on Appeal," provides:

A. Within fourteen days of rendition of the judgment of the supreme court or any appellate court, in term time or out, a party may apply to the appropriate court for a rehearing. The court may act upon the application at any time.

B. A judgment rendered by the supreme court or other appellate court becomes final when the delay for applying for a rehearing has expired and no application therefor has been made.

C. If an application for a rehearing has been made timely, a judgment of the appellate court becomes final when the application is denied.

D. If an application for a writ of review is timely filed with the supreme court, the judgment of the appellate court