

**SUPREME COURT OF LOUISIANA**

**No. 16-KH-1430**

**STATE EX REL. OTIS BANKS**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE FIFTH  
JUDICIAL DISTRICT COURT, PARISH OF RICHLAND**

**PER CURIAM:**

Denied. Relator fails to show that he was denied the effective assistance of counsel during plea negotiations under the standard of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). By pleading guilty unconditionally, relator waived all non-jurisdictional defects in the proceedings leading to his conviction, *State v. Crosby*, 338 So.2d 584, 586 (La. 1976), and relator cannot appeal or seek review of a sentence imposed in conformity with a plea agreement. La.C.Cr.P. art. 881.2(A)(2). We attach hereto and make a part hereof the district court's written reasons denying relief.

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.

STATE OF LOUISIANA \*\*\*\* PARISH OF RICHLAND  
FIFTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA  
VS. NO. F2013-84  
OTIS BANKS

FILED: Feb. 17, 2016  
BY: Deane Wroten  
DY. CLERK OF COURT

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**WRITTEN REASONS FOR JUDGMENT ON  
APPLICATION  
FOR POST CONVICTION RELIEF**

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Between February 26 and 27, 2012, Shedrick Dorsey was kidnapped, burned, robbed and beaten by the defendant and a number of co-defendants. The defendant was originally charged with aggravated kidnapping, first degree robbery and seven counts of aggravated second degree battery. On December 11, 2013, with his attorney, Carey J. Ellis present, the defendant plead guilty to seven counts of aggravated second degree battery with an agreement that he would receive no more than thirty (30) years at hard labor. All other charges were dismissed.

On February 19, 2014, the defendant appeared in open Court for sentencing and received a total sentence of thirty (30) years, which was within the terms of the thirty year cap agreed to previously. Defendant was then advised of his post conviction rights.

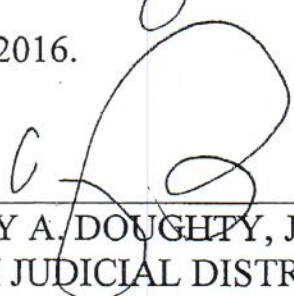
On February 1, 2016, the defendant, Otis Banks, has filed a Post Conviction Relief Application where he makes a request for an out of time appeal and a finding that he did not receive effective assistance of counsel due to the counsel's failure to file the appeal. Mr. Banks does not allege any grounds for which he was entitled or desired to appeal his case. Additionally, the record reflects no grounds for appeal and the defendant admits in his pleading he received a sentence in accord with the plea agreement. Louisiana Code of Civil Procedure, Article 881.2; State v Jonas 698 So2d 744 (2d Cir. 1997).

A review of the record demonstrates that Mr. Banks entered into a written plea agreement wherein the thirty (30) year sentencing cap was specifically set forth. The record also reflects that the defendant voluntarily pled guilty after having been determined to be competent and that he waived all of his constitutional rights. Additionally, during the plea colloquy, the trial Judge specifically informed the defendant that he would not have the right to appeal his sentence, and that it could not be changed after the sentence was imposed. In addition to telling Mr. Banks that he did not have the right to appeal a sentence with a cap, the Court again told Mr. Banks that after his sentence was imposed on February 19, 2014.

The only grounds alleged by Mr. Banks were that he received ineffective assistance of counsel as his counsel failed to appeal and he also asked for an out of time appeal. However, there is nothing shown by Mr. Banks that he had grounds to appeal anything with regard to the case. Since Mr. Banks pled guilty, he waived any other issues which may have been present had the case

been tried. Therefore, this claim is without merit and should be dismissed. Mr. Banks was sentenced to a sentence totaling thirty (30) years, which was within the sentencing range, or "cap" as agreed in the plea agreement. Additionally, there was no evidence to show that the counsel was ineffective in failing to file for an appeal as there are no grounds for appeal that were shown by Mr. Banks. Therefore, this Application For Post Conviction Relief is dismissed on the basis of the record in this proceeding.

THUS DONE AND SIGNED in Rayville, Louisiana on this  
the 17th day of February, 2016.

  
TERRY A. DOUGHTY, JUDGE  
FIFTH JUDICIAL DISTRICT COURT  
DIVISION 'A'