

SUPREME COURT OF LOUISIANA

No. 16-KH-1470

STATE EX REL. DREW PIZZO

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 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 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

Guidry, Justice, recused.

review. The district court is ordered to record a minute entry consistent with this per curiam.

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Sherrill

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 88-876

DIVISION "E"

STATE OF LOUISIANA

VERSUS

DREW PIZZO

FILED: 4/18/16

[Signature]
DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED MARCH 14, 2016, and STATE'S RESPONSE, STAMPED AS FILED APRIL 4, 2016.

On June 21, 1990, petitioner was convicted of second degree murder, and on July 16, 1990, the court sentenced him to life imprisonment at hard labor. His conviction and sentence was upheld on direct appeal. *State v. Pizzo*, 575 So.2d 844 (La.App. 5 Cir. 1991). Post-conviction relief and many other actions have been denied by this court, the court of appeal, and federal court.

In his latest application for post-conviction relief, petitioner alleges ineffective assistance of counsel for the State withholding evidence and preventing counsel from acting as counsel as guaranteed by the Sixth Amendment. He specifically claims:

1. Failure of District Attorney's Office to disclose supplemental witness statements violated petitioner's due process because information was material to the issue of guilt.
2. Ineffective assistance of counsel by State withholding of exculpatory evidence in violation of *Brady v. Maryland*.

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 case became final on May 2, 1991, when the Louisiana Supreme Court denied his writ application in his direct appeal. The two-year time limit has long passed. The petitioner does not meet any of the exceptions for delayed filing. LSA-C.Cr.P. art. 930.8(A)(1) requires that petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. Furthermore, under LSA-C.Cr.P. art. 930.4(D), a successive application shall be dismissed if it fails to raise a new or different claim. Petitioner has filed 16 previous applications for post-conviction relief.

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 April, 2016

PLEASE SERVE:

DEFENDANT: Drew Pizzo, DOC # 131376, EHCC, Box 174, St. Gabriel, LA 70776

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

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44TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA