

SUPREME COURT OF LOUISIANA

No. 16-KH-1877

STATE EX REL. LARRY MITCHELL

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-SECOND
JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY**

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 four 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.

LARRY MITCHELL

DKT. NO. 451323 DIV. D

22ND JUDICIAL DISTRICT COURT

V.

PARISH OF ST. TAMMANY

ROBERT TANNER, CUSTODIAN

STATE OF LOUISIANA

FILED:

6-30-16

Jessie A Cooper
MINUTE CLERK

ORDER DISMISSING APPLICATION FOR POST-CONVICTION RELIEF

Petitioner, Larry Mitchell, was found guilty of Armed Robbery on May 21, 2009, in the above captioned case. A Multiple Offender Bill of Information was filed June 17, 2009, the allegations were denied and the matter was set for hearing on October 8, 2009, at which time the Court determined that the petitioner was a fourth felony offender. Petitioner was then sentenced pursuant to the multiple offender adjudication to 45 years without benefit of probation or suspension of sentence. Petitioner appealed his conviction contesting, among other things, the sufficiency of the evidence as it related to possession of a gun during the commission of the offense. The First Circuit Court of Appeal upheld the conviction by judgment rendered May 7, 2010. In October of 2012, petitioner filed his first application for post-conviction relief in which he raised the same issue based on the affidavit of the witness, Ms. Geary, a copy of which is attached to the instant application for post-conviction relief. The first application for post-conviction relief was dismissed by order dated December 28, 2012 after receipt and review of the entire record including the application for post-conviction relief, the answer of the district attorney, and the appellate court decision referenced above. On June 30, 2014, petitioner filed a Motion for New Trial based on the same affidavit of Ms. Geary and this motion was denied on July 7, 2014. On May 12, 2016, petitioner filed the instant application for post-conviction relief.

After considering the application and memorandum in support thereof, the law and jurisprudence, as well as the entire record in this matter,

IT IS ORDERED that the application for post-conviction relief filed by Larry Mitchell be dismissed. Louisiana Code of Criminal Procedure articles 930.4 and 930.8.

IT IS FURTHER ORDERED that the Clerk of Court of the Parish of St. Tammany give notice of this dismissal to petitioner, the District Attorney for the Parish of St. Tammany, and the petitioner's custodian.

Covington, Louisiana, this 29th day of June 2016.

Peter J. Garcia
PETER J. GARCIA, JUDGE