

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2024-KD-00595

VS.

DONALD RAY LINK

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IN RE: State of Louisiana - Applicant Plaintiff; Applying For Supervisory Writ,  
Parish of East Baton Rouge, 19th Judicial District Court Number(s) 12-72-2398;  
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**May 30, 2024**

Writ application granted. See per curiam.

JTG

JLW

SJC

WJC

JBM

PDG

Hughes, J., concurs in the result.

Crichton, J., additionally concurs and assigns reasons.

McCallum, J., additionally concurs for reasons assigned by Justice Crichton.

Supreme Court of Louisiana

May 30, 2024



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Chief Deputy Clerk of Court  
For the Court

**SUPREME COURT OF LOUISIANA**

**No. 2024-KD-00595**

**STATE OF LOUISIANA**

**VS.**

**DONALD RAY LINK**

On Supervisory Writ to the 19th Judicial District Court, Parish of East Baton Rouge

**PER CURIAM:**

Writ granted. In response to a motion to clarify and/or modify sentence with regard to parole eligibility, the district court sua sponte vacated a final conviction for aggravated rape because it found that the jury instructions were fatally flawed at the trial in 1973. The district court erred.

Citing La.C.Cr.P. art. 920 and *State v. Goodley*, 423 So.2d 648 (La. 1982), the district court found that the jury instructions constituted an error patent. Code of Criminal Procedure art. 920, pertaining to the scope of appellate review, provides that a court of appeal on direct review shall consider “[a]n error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.” This article does not establish any ground for post-conviction relief or apply in the district court on collateral review. Similarly, the *Goodley* decision, a case on direct review that considered the extent of the prohibition against double jeopardy, does not apply here. Furthermore, the jury in the present case was correctly instructed in accordance with former La.C.Cr.P. art. 817, as amended by Act 502 of 1972, effective August 1, 1972, that it could return a verdict of guilty of aggravated rape without capital punishment. The fact that the trial court in 1973 did not fully explain the operation of then La. R.S. 15:571.7, or anticipate its later repeal by 1979

La. Acts, No. 490, does not render the instructions erroneous or the responsive verdict of guilty of aggravated rape without capital punishment that was returned by the jury here a nullity. *Cf. State ex rel. Turner v. Maggio*, 463 So.2d 1304, 1306 (La. 1985).

Respondent's motion to clarify and/or modify his sentence with regard to parole eligibility did not identify an illegal term in his sentence, and therefore his filing is properly construed as an application for post-conviction relief. *See State v. Parker*, 98-0256 (La. 5/8/98), 711 So.2d 694. As such, it is subject to the time limitation set forth in La.C.Cr.P. art. 930.8. Respondent's application was not timely filed in the district court, and he 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. In addition, his claim that he is entitled to parole eligibility after serving 10 years and six months is barred as repetitive. La.C.Cr.P. art. 930.4(D); *State v. Link*, 83-0709 (La. 1/6/84), 443 So.2d 1114.

Accordingly, we grant the State's application to reverse the district court's ruling, which vacated respondent's conviction. We reinstate the conviction and sentence, and we deny respondent's motion to clarify and/or modify his sentence. The stay previously ordered by this court is hereby lifted.

Respondent 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. Respondent'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,

respondent has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

**REVERSED**