

WESTLAW

Taylor v. Hooper

Supreme Court of Louisiana. September 19, 2023 370 So.3d 458 (Mem) 2023-00575 (La. 9/19/23) (Approx. 1 page)

370 So.3d 458 (Mem)
Supreme Court of Louisiana.

Justin TAYLOR

v.

Timothy HOOPER, Warden LSP

No. 2023-KH-00575
September 19, 2023

Applying For Supervisory Writ, Parish of Jefferson, 24th Judicial District Court Number(s)
03-1041, Court of Appeal, Fifth Circuit, Number(s) 23-KH-97.

Opinion

*1 Writ application denied.

All Citations

370 So.3d 458 (Mem), 2023-00575 (La. 9/19/23)

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JUSTIN TAYLOR

NO. 23-KH-97

VERSUS

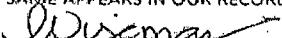
FIFTH CIRCUIT

TIMOTHY HOOPER, WARDEN LSP

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Linda Wiseman
First Deputy, Clerk of Court

March 24, 2023

Linda Wiseman
First Deputy Clerk

IN RE JUSTIN TAYLOR

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE STEPHEN D.
ENRIGHT, JR., DIVISION "N", NUMBER 03-1041

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and John J. Molaison, Jr.

**WRIT GRANTED FOR A LIMITED PURPOSE;
RELIEF DENIED; REMANDED**

On August 8, 2002, the Jefferson Parish District Attorney filed a bill of information charging relator-defendant, Justin Taylor, with nine counts of armed robbery (counts one through nine), in violation of La. R.S. 14:64, and one count of conspiracy to commit armed robbery (count ten), in violation of La. R.S. 14:26 and 14:64. Relator pled not guilty. On September 16, 2003, relator proceeded to trial on counts eight, nine, and ten.¹ After a three-day jury trial, a unanimous twelve-person jury found relator guilty as charged on all three counts. The trial court sentenced relator to 60 years imprisonment for each armed robbery conviction (counts eight and nine) and 40 years imprisonment for the conspiracy to commit armed robbery conviction (count ten), which were ordered to run concurrently with each other. This Court, on appeal, affirmed relator's convictions and sentences and the Louisiana Supreme Court denied relator's writ. *State v. Taylor*, 04-1389 (La. App. 5 Cir. 5/31/05), 905 So.2d 451, 453, *writ denied sub nom. State ex rel. Taylor v. State*, 05-2203 (La. 5/26/06), 930 So.2d 12.

On January 10, 2023, relator filed a "Motion to Correct Illegal Sentence" challenging the excessiveness of his sentence based on the evidence presented at trial. He further filed on that same date a "Petition for Declaratory Judgment" challenging the constitutionality of La. C.Cr.P. art. 381 and contending that the State of Louisiana lacks authority to prosecute him for his alleged crimes. On January 30, 2023, the trial judge found that despite the caption of relator's pleadings, relator sought post-conviction relief. The trial judge denied relator's

¹ On December 17, 2003, the State nolle prossed counts one through seven.

applications for post-conviction relief, finding relator's applications to be repetitive and procedurally time-barred under La. C.Cr.P. art. 930.8.

Relator seeks review of the trial court's January 30, 2023 judgment denying his "Motion to Correct Illegal Sentence" and "Petition for Declaratory Judgment." First, La. C.Cr.P. art. 882(A) states, "[a]n illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review." In his application to this Court, relator fails to point to an illegal term in his sentence and has thus failed to raise a claim cognizable in a motion to correct an illegal sentence. *State v. Parker*, 98-256 (La. 5/8/98), 711 So.2d 694, 695. Rather, relator's motion is appropriately considered as an application for post-conviction relief. Further, relator's pleading seeking declaratory relief is also "a petition filed by a person in custody after sentence...seeking to have the conviction and sentence set aside" based on a newly asserted constitutional challenge to La. C.Cr.P. art. 381. Therefore, we find the trial court correctly considered relator's pleadings as applications for post-conviction relief. Consequently, the prescriptive period set forth in La. C.Cr.P. art. 930.8 applies.

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. 914² and 922,³ unless certain enumerated exceptions apply. Relator filed his application for post-conviction relief on January 10, 2023, more than sixteen years after the finality of his conviction as contemplated under La. C.Cr.P. art. 922(D) by the Louisiana Supreme Court's denial of his writ application. Therefore, relator's applications for post-conviction relief are procedurally time-barred under La. C.Cr.P. art. 930.8.⁴ Accordingly, we deny the relief requested.

However, in considering this writ application and the attachments thereto, we find that the trial judge incorrectly referenced district court case number 03-1041, a case number in connection with relator's second-degree murder conviction, rather than district court case number 02-3671, the district court case number in connection with relator's armed robbery convictions and wherein the post-conviction pleadings at issue were filed. The trial court is authorized to correct an error or deficiency in the record. La. C.Cr.P. art. 916(2); *State v. Williams*, 01-0554 (La. 5/14/02), 817 So.2d 40, 44. We therefore grant this writ for the limited purpose to remand this matter to the district court. The trial court is ordered to correct the January 30, 2023 judgment to reflect the proper district court case number, 02-3671, and the Clerk of Court for the 24th Judicial District Court is

² 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.

³ 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 from which the writ of review is sought becomes final when the supreme court denies the writ.

⁴ We further find that relator's APCR seeking to correct his alleged illegal sentence is procedurally barred as repetitive under La. C.Cr.P. art. 930.4. Relator raised identical issues in a formal writ application to this court in *State v. Taylor*, 11-785 (La. App. 5 Cir. 8/23/11) (unpublished writ disposition).

ordered to properly file the amended judgment in district court case number 02-3671. In all other respects, this writ is denied.

Gretna, Louisiana, this 24th day of March, 2023.

**FHW
MEJ
JJM**

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LEGAL PROGRAMS DEPARTMENT

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TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 02-3671

STATE OF LOUISIANA

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DIVISION "N"

VERSUS

JUSTIN TAYLOR

FILED: 3/30/2023

Nichole Abadie
DEPUTY CLERK

AMENDED ORDER¹

This matter comes before the court on remand by the Fifth Circuit Court of Appeal, *Taylor v. Timothy Hooper, Warden LSP*, 23-KH-97 (La. App. 5 Cir. 3/24/23), on Petitioner's **MOTION TO CORRECT AN ILLEGAL SENTENCE, AND PETITION FOR DECLARATORY JUDGMENT, BOTH STAMPED AS FILED JANUARY 10, 2023.**

On September 19, 2003, the defendant was convicted of two counts of LSA-R.S. 14:64, relative to armed robbery, and one count of LSA-R.S. 14:(26)64, relative to conspiracy to commit armed robbery. On November 13, 2003, the court sentenced him on each of the armed robbery counts to 60 years imprisonment at hard labor, and on the conspiracy count to 40 years, all to be served concurrently. His convictions and sentences were affirmed on appeal. *State v. Taylor*, 04-1389 (La.App. 5 Cir. 5/31/05), 905 So.2d 451.

Although petitioner titles his pleadings, "Motion to Correct Illegal Sentence" and "Petition for Declaratory Judgment," they are in fact applications for post-conviction relief. It is well-settled that the characterization of a pleading is not controlling. *State v. Chapman*, 699 So.2d 504 (La.App. 4 Cir. 9/3/97). An application for post-conviction relief is defined as, "a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside." La. C.Cr.P. art. 924. It is clear that these applications are governed by the law of post-conviction relief.

The court notes that petitioner fails to allege any illegal terms in his sentencing.

Post-conviction relief applications are subject to strict procedural requirements. No application for post-conviction relief may be considered if it is filed more than two years after the judgment of conviction and sentence have become final (unless one of four very restricted exceptions apply). La. C.Cr.P. art. 930.8 (A). Furthermore, a successive application may be dismissed if it fails to raise a new or different claim. La. C.Cr.P. art. 930.4 (D).

The record establishes that the defendant has had full review of his claims. The instant applications are time-barred and repetitive. For these reasons, the court will not consider the present pleadings.

Accordingly,

IT IS ORDERED BY THE COURT that the Petitioner's motions are hereby **DENIED**.

Gretna, Louisiana, this 29 day of March 2023.

[Signature]
JUDGE

PLEASE SERVE:

PETITIONER: Justin Taylor, DOC # 475424, Louisiana State Penitentiary, Angola, LA 70712

Thomas Butler, Appeals Division, District Attorney's Office, 200 Derbigny Street, Gretna, LA 70053

¹ The Fifth Circuit Court of Appeal granted writ in *Taylor v. Timothy Hooper, Warden LSP*, 23-KH-97 (La. App. 5 Cir. 3/24/23), for the limited purpose to remand this matter and ordered the district court to correct the January 30, 2023 judgment so that it reflects the proper district court case number. In all other respects, the writ was denied.



"APPENDIX B"

**Additional material
from this filing is
available in the
Clerk's Office.**