

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2024-KH-00537

VS.

TYRONE LINDSEY

IN RE: Tyrone Lindsey - Applicant Defendant; Applying For Supervisory Writ, Parish of Jefferson, 24th Judicial District Court Number(s) 80-220, Court of Appeal, Fifth Circuit, Number(s) 24-KH-61;

October 08, 2024

Writ application denied. See per curiam.

JLW

JDH

SJC

JTK

WJC

JBM

PDG

Supreme Court of Louisiana
October 08, 2024

Katie Maranonic
Chief Deputy Clerk of Court
For the Court

STATE OF LOUISIANA

NO. 24-KH-61

VERSUS

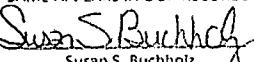
FIFTH CIRCUIT

TYRONE LINDSEY

COURT OF APPEAL

STATE OF LOUISIANA

March 27, 2024

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

Susan S. Buchholz
Chief Deputy Clerk

IN RE TYRONE LINDSEY

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
STEPHEN C. GREFER, DIVISION "J", NUMBER 80-220

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Timothy S. Marcel

WRIT DENIED

Relator, Tyrone Lindsey, seeks supervisory review of the district court's August 7, 2023 ruling that denied his Application for Post Conviction Relief ("APCR"). For the following reasons, we find no error in the trial court's ruling.

Relator was previously convicted of first degree murder and sentenced to death. *State v. Lindsey*, 428 So. 2d 420 (La. 1983). After numerous re-sentencings and a retrial, realtor was again sentenced to death. *State v. Lindsey*, 543 So.2d 886 (La. 1989), *cert. denied*, 494 U.S. 1074, 110 S.Ct. 1796, 108 L.Ed.2d 798 (1990).¹

¹As noted by the district court, relator's case has received extensive legal review in federal and state courts since July 1980. Specifically, on July 15, 1980, a jury found relator guilty of first degree murder. On the same date, the jury unanimously recommended the death penalty in the sentencing phase of the trial. On September 8, 1981, the Louisiana Supreme Court affirmed relator's conviction, vacated his death sentence, and remanded the matter to the trial court to empanel a new jury for a determination of his penalty. *State v. Lindsey*, 404 So.2d 466 (La. 1981). After remand, the jury unanimously recommended the death sentence for relator. On February 23, 1983, the Louisiana Supreme Court affirmed the death sentence. *State v. Lindsey*, 428 So.2d 420 (La. 1983), *cert. denied*, 464 U.S. 908, 104 S.Ct. 261, 78 L.Ed.2d 246 (1983).

Relator subsequently filed a petition for habeas corpus with the United States Court for the Eastern District of Louisiana alleging that the prosecutor failed to disclose exculpatory information. See *Lindsey v. King*, 769 F.2d 1034 (5th Cir. 1985). Relator also appealed the district court's ruling denying the petition for habeas corpus with the

On April 5, 2004, on joint motion of the State and Defense, the district court set aside the death penalty and resentenced relator to life in prison pursuant to *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).²

On July 27, 2023, relator filed an APCR with the district court. In it, relator made three claims: (1) the trial court lacked subject matter jurisdiction to impose a life sentence; (2) the grand jury indictment was based on false testimony; and (3) Louisiana's non-unanimous verdict laws for non-capital cases were constitutionally invalid. On August 7, 2023, the district court denied relief, stating, "The strict requirements mandated by La. C.Cr.P. art 930.8 are not met." In doing so, the district court found that "[n]o exceptions to the time bar are established or even alleged in this application" and that relator fail[ed] to meet his heavy burden of proof under La. C.Cr.P. art. 930.2."³

In his writ application to this Court, relator re-urges his three claims raised in his APCR in the district court.

DISCUSSION

We first consider the timeliness of the APCR. Relator's conviction was final in 1989. *State v. Lindsey*, 543 So.2d 886 (La. 1989) (relator's third appeal). And as noted above, relator was resentenced to a life term in 2004. The instant APCR was not filed until July 2023.

² In *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 214 (1963) violation had occurred in that the State failed to disclose the identification of a witness and reversed relator's conviction.

In relator's third appeal, *State v. Lindsey*, 543 So.2d 886, (La. 1989), the Louisiana Supreme Court affirmed relator's conviction and the death sentence, and noted the following procedural history after the remand by the Fifth Circuit:

In April of 1987, defendant's third trial was conducted, this time with the benefit of the identification witness's prior inconsistent statement. At the conclusion of the guilt phase of his bifurcated trial, the jury found defendant guilty of first degree murder. Following the sentencing phase of the proceedings, the jury unanimously recommended the death penalty, finding that numerous statutory aggravating circumstances were applicable to the homicide.

³ In *Atkins*, the United States Supreme Court held that the Eighth Amendment does not permit the execution of intellectually disabled defendants.

³ La. C.Cr.P. art. 930.2 states, "The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted."

La. C.Cr.P. art. 930.8 states in pertinent part, "No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final," unless one of the enumerated exceptions apply. The exceptions to the two-year prescriptive period are as follows:

- (1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that shall take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery. If the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to Article 926.2 and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, he shall not be eligible for the exception provided for by this Subparagraph.
- (2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.
- (3) The application would already be barred by the provisions of this Article, but the application is filed on or before October 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (4) The person asserting the claim has been sentenced to death.
- (5) The petitioner qualifies for the exception to timeliness in Article 926.1.
- (6) The petitioner qualifies for the exception to timeliness in Article 926.2.

Relator contends his claims relate to jurisdictional and constitutional defects and are not subject to La. C.Cr.P. art 930.8 and other procedural bars.

After reviewing the instant APCR, we find, other than his assertions, relator offered no new facts or evidence to support his claims. We also find that relator has not established any exception under La. C.Cr.P. art. 930.8 that would permit the filing of an APCR beyond the statutory limits. Consequently, because relator failed to file his APCR within the two-year prescriptive period and no exceptions are applicable to his claims, we find that his claims are time barred under La. C.Cr.P. art. 930.8. See *Carlin v. Cain*, 97-2390 (La. 3/13/98), 706 So. 2d 968 (appellate courts may raise the time-bar of La. C.Cr.P. art. 930.8 *sua sponte*).

CONCLUSION

Relator's APCR is untimely pursuant to La. C.Cr.P. art. 930.8. Accordingly, we find no error in the district court's judgment and deny the relief sought in the instant writ application.

Gretna, Louisiana, this 27th day of March, 2024.

TSM
SMC
MEJ

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