

Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Shedrick GIVENS
Petitioner, pro se,
vs.

TIM HOOPER, WARDEN
Respondent.

APPENDICES FOR PETITION FOR WRIT OF CERTIORARI TO
THE LOUISIANA FIFTH CIRCUIT COURT OF APPEAL

APPENDICES ATTACHED

Appendix A – Decision of Louisiana Fifth Circuit Court of Appeal

Appendix B – Decision of the Trial Court

Appendix C – Decision of the Louisiana Supreme Court Denying Review

Appendix D – Constitutional and Statutory Provisions Involved

Appendix A – Decision of Louisiana Fifth Circuit Court of Appeal

SHEDRICK GIVENS

NO. 24-KH-384

VERSUS

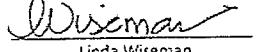
FIFTH CIRCUIT

TIM HOOPER, WARDEN

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

August 22, 2024

Linda Wiseman
First Deputy Clerk

IN RE SHEDRICK GIVENS

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE R. CHRISTOPHER
COX, III, DIVISION "B", NUMBER 95-2188

Panel composed of Judges Jude G. Gravois,
John J. Molaison, Jr., and Timothy S. Marcel

WRIT DENIED

In June of 1996, the relator was found guilty of second-degree murder by a jury. He was thereafter sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. On appeal, this Court affirmed relator's conviction and sentence, and the Louisiana Supreme Court denied his writ application. *State v. Givens*, 97-17 (La. App. 5 Cir. 10/15/97), 701 So.2d 1042, *writ denied*, 97-2893 (La. 3/27/98), 716 So.2d 884. Since that time, the relator filed numerous applications for post-conviction relief ("APCR"), and the Louisiana Supreme Court ruled in 2018 that the relator has exhausted his right to state collateral review. *State ex rel. Givens v. State*, 17-0238 (La. 4/20/18), 240 So.3d 916.

In the relator's most recent APCR filing, he asserted that the district court lacked subject matter jurisdiction over his criminal trial on the grounds of double jeopardy and the absence of a grand jury indictment. The trial court denied the APCR as being time barred, repetitive, and successive. As to the merits of the claims, the court found that the relator had not carried his burden of proof under La. C.Cr.P. art. 930.2. In the instant writ application, the relator contends that the trial court erred in denying his APCR as time barred, repetitive, successive, and without merit.

As correctly noted by the trial court, the relator originally raised the issue of double jeopardy on appeal and his argument was found to be without merit by both this Court and the Louisiana Supreme Court. Similarly, the relator's claim about the trial court's subject matter jurisdiction based on the amendment of charges by the State has also previously been addressed and denied by this Court and the

supreme court in prior writ applications. *See, Givens v. State*, 10-103 (La. App. 5 Cir. 2/8/10), *writ denied*, *State ex rel. Givens v. State*, 11-1999 (La. 5/4/12), 88 So.3d 460; *Givens v. State*, 19-605 (La. App. 5 Cir. 1/3/20), unpublished disposition, *writ denied*, *Givens v. State through Att'y Gen.'s Off.*, 20-268 (La. 10/6/20), 302 So.3d 514. Thus, the claims in the relator's most recent APCR are repetitive under La. C.Cr.P. art. 930.4. In addition, 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. On the showing made, the relator's writ application is denied.

Gretna, Louisiana, this 22nd day of August, 2024.

JJM
JGG
TSM

Appendix B – Decision of the Trial Court

W/Pel

RECEIVED
AUG 05 2024

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

NO. 95-2188

LEGAL PROGRAMS DEPARTMENT

DIVISION "B"

RECEIVED

STATE OF LOUISIANA

VERSUS

SHEDRICK GIVENS

AUG 5 2024

WFPSON

FILED: JULY 30, 2024

W/KH
DEPUTY CLERK

SUPERCEDING ORDER¹

This matter comes before the Court on petitioner/defendant's SECOND OR SUBSEQUENT APPLICATION FOR POST-CONVICTION RELIEF, STAMPED AS FILED JULY 1, 2024.

The petitioner/defendant is serving a life sentence as a result of his 1996 conviction for second degree murder after a trial by jury. Relief was denied on appeal in *State v. Givens*, 97-17 (La.App. 5 Cir. 10/15/97), 701 So.2d 1042, *writ denied*, 97-2893 (La. 3/27/98), 716 So.2d 884. At least twelve previous applications for post-conviction relief have been filed and reviewed by this Court.

The petitioner now files this latest application for post-conviction relief, raising two claims: that the trial court lacked subject matter jurisdiction where jeopardy attached from a mistrial, and that the trial court lacked subject matter jurisdiction where prosecution was initiated by a bill of information rather than a bill of indictment.

Post-conviction law requires an application to be filed within two years of finality unless very narrow exceptions exist. La. C.Cr.P. art. 930.8. The petitioner attempts to evade the time bar (as well as the ban on successive applications) by asserting that he can raise his current claims at any time. The Court finds this argument unpersuasive.

The petitioner does not raise any claims that were not known at the time of trial. On direct appeal, the sole issue was one of double jeopardy. Many courts have reviewed his conviction and sentence, and the claims raised on appeal and in collateral review.

This Court finds that the instant application for post-conviction relief is procedurally defective as time barred, repetitive, and successive. This Court also finds the petitioner's claim to be unpersuasive on the merits. In post-conviction cases, the burden of proof is on the petitioner to prove that relief should be granted. La. C.Cr.P. art. 930.2. The petitioner fails to meet this burden.

Accordingly,

IT IS ORDERED that the application for post-conviction relief be, and the same hereby is DENIED.

Gretna, Louisiana this 30th day of July, 2024.

R. Christy Cox

JUDGE



This order amends and supersedes that of July 15, 2024, in order to correct the date of the application's filing.

Appendix C – Decision of the Louisiana Supreme Court Denying Review

The Supreme Court of the State of Louisiana

SHEDRICK GIVENS

No. 2024-KH-01168

VS.

TIM HOOPER, WARDEN

IN RE: Shedrick Givens - Applicant Plaintiff, Applying For Supervisory Writ,
Parish of Jefferson, 24th Judicial District Court Number(s) 95-2188, Court of
Appeal, Fifth Circuit, Number(s) 24-KH-384;

April 01, 2025

Writ application denied.

JLW

JDH

WJC

JBM

PDG

JMG

CRC

Supreme Court of Louisiana

April 01, 2025

Vance Manahan
Chief Deputy Clerk of Court
For the Court

Appendix D – Constitutional and Statutory Provisions Involved

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1 § 2 of the Louisiana Constitution of 1974, guarantees:

“No person shall be deprived of life, liberty, or property, except by due process of law.”

Article 1 § 15 of the Louisiana Constitution of 1974, guarantees:

“Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury.”

Louisiana Revised Statute 14:30.1 B, provides:

“Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.”

Louisiana Code of Criminal Procedure Article 16, provides:

“Courts have th jurisdiction and powers over criminal proceedings that are conferred upon them by the constitution and statutes of this state, except as their statutory jurisdiction and powers are restricted, enlarged, or modified by the provision of this Code.”

Louisiana Code of Criminal Procedure Article 382 A, provides:

“A prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury.”

Louisiana Code of Criminal Procedure Article 383, provides:

“An indictment is a written accusation of crime made by a grand jury. It must be concurred in by not less than nine of the grand jurors, indorsed “a true bill,” and the indorsement must be signed by the foreman. Indictment shall be returned into the district court in open court.”

Louisiana Code of Criminal Procedure Article 384, provides:

“An information is a written accusation of crime made by the district attorney or the city prosecutor and signed by him. It must be filed in open court in a court having jurisdiction to try the offense, or in the office of the clerk thereof.”

Continued...

Louisiana Code of Criminal Procedure Article 930.4 D, provides:

“A successive application shall be dismissed if it fails to raise a new or different claim.”

Louisiana Code of Criminal Procedure Article 930.8 A, provides:

“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 under the provisions of Article 914 or 922 . . .”

Louisiana Code of Civil Procedure Article 1, provides:

“Jurisdiction is the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled.”

Louisiana Code of Civil Procedure Article 3, provides:

“The Jurisdiction of a court over the subject matter of an action or proceeding cannot be conferred by consent of the parties. A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void.”

28 U.S.C. § 1257 (a), provides:

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

Fifth Amendment to the United States Constitution guarantees: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . .”

Continued...

Thirteenth Amendment to the United States Constitution § 1 guarantees:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place to their jurisdiction.”

Fourteenth Amendment to the United States Constitution § 1 guarantees:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.”