

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NUMBER 2013 KW 0119

VERSUS

CARL ENGLAND

APR 10 2013

In Re: Carl England, applying for supervisory writs,
22nd Judicial District Court, Parish of St.
Tammany, No. 396443.

BEFORE: GUIDRY, CRAIN AND THERIOT, JJ.

WRIT GRANTED. The trial court's ruling denying relator's application for postconviction relief is vacated, and this matter is remanded to the district court for reconsideration of the application for postconviction relief. Although resentencing alone does not restart the prescriptive period for filing for postconviction relief once a conviction and sentence have both become final, the prescriptive period does not initially begin to run until "the judgment of conviction and sentence shall have become final under the provisions of Article 914 or 922." See La. Code Crim. P. art. 930.8(A); **State ex rel. Frazier v. State**, 2003-0242 (La. 2/6/04), 868 So.2d 9. On April 8, 2010, the trial court vacated relator's original thirty-five year sentence for attempted second degree murder and resentenced him to forty years imprisonment at hard labor without benefit of parole. Thus, relator's forty-year sentence did not become final until September 23, 2011 when the Supreme Court denied his writ application. See La. Code Crim. P. art. 922(D).

JMG
MRT

Crain, J., dissents and would deny the writ application. Code of Criminal Procedure article 930.8(A) requires that an application for postconviction relief be filed no more than two years after the "judgment of conviction and sentence has become final." A conviction and sentence become final when the supreme court denies writs. La. Code Crim. Pro. art. 922; **State ex rel. Frazier v. State**, 03-0242 (La. 2/6/04), 868 So.2d 9. The defendant's conviction and sentence for his underlying crimes, aggravated burglary and attempted second degree murder, became final on October 16, 2009. See **State v. England**, 08-0217 (La. App. 1 Cir. 10/31/08) (unpublished opinion), writ denied, 09-0176 (La. 10/16/09), 19 So.3d 475. His habitual offender adjudication and sentence were the subject of a separate appeal and those matters became final on September 23, 2011. See **State v. England**, 10-1246 (La. App. 1 Cir. 2/11/11) (unpublished opinion), writ denied, 11-0456 (La. 9/23/11). The defendant's postconviction relief

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

2012 KW 0119
Page 2

application was filed August 27, 2012. His only claims for postconviction relief relate to matters involving his underlying convictions and sentence, not the habitual offender adjudication and sentence. Therefore, the application is untimely.

COURT OF APPEAL, FIRST CIRCUIT



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FOR THE COURT