

BOBBY CARL TERRICK

NO. 19-KH-261

VERSUS

FIFTH CIRCUIT

STATE OF LOUISIANA

COURT OF APPEAL

STATE OF LOUISIANA

June 24, 2019

Susan Buchholz
First Deputy Clerk

IN RE BOBBY CARL TERRICK

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE E. ADRIAN ADAMS,
DIVISION "G", NUMBER 01-4723

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Robert A. Chaisson

WRIT GRANTED FOR A LIMITED PURPOSE; REMANDED

Relator, Bobby Terrick, seeks review of the trial court's denial of his application for post-conviction relief (APCR) as untimely pursuant to La. C.Cr.P. art. 930.8. Because we find that relator's APCR is not procedurally barred as untimely under La. C.Cr.P. art. 930.8, we vacate the trial court judgment and remand the matter to the trial court.

On July 17, 2002, relator was found guilty of second degree murder in violation of La. R.S. 14:30.1. This Court affirmed relator's conviction and sentence on appeal. *State v. Terrick*, 03-515 (La. App. 5 Cir. 9/30/03), 857 So.2d 1153, 1155, writ denied, 03-3272 (La. 3/26/04), 871 So.2d 346. Pursuant to *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 2466, 183 L.Ed.2d 407 (2012) and La. R.S. 15:574.4(G), relator was resentenced on November 30, 2017, to life imprisonment with the benefit of parole after 25 years. Relator subsequently sought an appeal from that sentence, and, on appeal, this Court affirmed relator's resentencing. *State v. Terrick*, 18-102 (La. App. 5 Cir. 8/29/18), 254 So.3d 1246, 1250, writ denied, 18-0532 (La. 1/14/19), 260 So.3d 1217.

Defendant filed the APCR at issue on April 28, 2019, challenging the constitutionality of the grand jury proceedings against him. On May 2, 2019, the trial judge denied relator's APCR, finding that relator's APCR was filed more than two years after his 2002 conviction and sentence became final and, thus, was procedurally time barred under La. C.Cr.P. art. 930.8.

La. C.Cr.P. art. 930.8 provides, unless certain enumerated exceptions apply, "No application for postconviction 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[.]” Resentencing alone does not restart the prescriptive period for filing for post-conviction relief. *State v. Frazier*, 03-242 (La. 2/6/04), 868 So.2d 9, 9 (per curiam) (citing La. C.Cr.P. art. 930.8). For example, a non-discretionary and ministerial correction of a sentence is not a resentencing and is not accompanied by the right to be present in court, the right to counsel, the right to appeal, or the reinstatement of the two-year delay from finality of conviction after the correction. See *State v. Littleton*, 43,609 (La. App. 2 Cir. 5/7/08), 982 So.2d 978, writ denied, 08-1408 (La. 3/27/09), 5 So.3d 135.

However, the Louisiana Supreme Court has determined that when a defendant is resentenced under *Miller, supra*, that defendant is entitled to appeal that resentencing. *State v. Schane*, 17-0582 (La. 4/6/18), 239 So.3d 286, order clarified on reh’g, 17-0582 (La. 6/1/18), 244 So.3d 433. (See also generally, *State v. Rome*, 96-991 (La. 7/1/96), 696 So.2d 976, 981, wherein the Court found that an illegal sentence results in a situation where “no sentence at all has been imposed[.]”) Moreover, this Court, on an errors patent review, has found that a defendant resentenced pursuant to *Miller* is entitled to a proper advisal of the two-year period within which he may seek post-conviction relief. *State v. Francis*, 17-651 (La. App. 5 Cir. 5/16/18), 247 So.3d 199, 205.

Under La. C.Cr.P. art. 930.8, the prescriptive period does not initially begin to run until the judgment of conviction and sentence have become final under the provisions of La. C.Cr.P. arts. 914 or 922. Under La. C.Cr.P. art. 922, an appellate court’s judgment becomes final if no application for rehearing or review by the supreme court is filed within fourteen days of rendition of the appellate court’s judgment. Thus, we find that relator’s sentence did not become final under La. C.Cr.P. art. 930.8 until 14 days after the rendition of this Court’s judgment in relator’s second appeal, *State v. Terrick, supra*, in which he sought review of his November 30, 2017 sentence imposed upon resentencing.

Accordingly, we find that the trial court erred in finding relator’s APCR to be procedurally time-barred under La. C.Cr.P. art. 930.8.¹ We grant this writ for the limited purpose of remanding the matter to the trial court to consider relator’s timely-filed APCR.

Gretna, Louisiana, this 24th day of June, 2019.

FHW
JGG
RAC

¹ We do not opine as to whether any other procedural deficiencies preclude the trial court from considering the merits of relator’s APCR.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

MARY E. LEGNON
INTERIM CLERK OF COURT

CHIEF DEPUTY CLERK

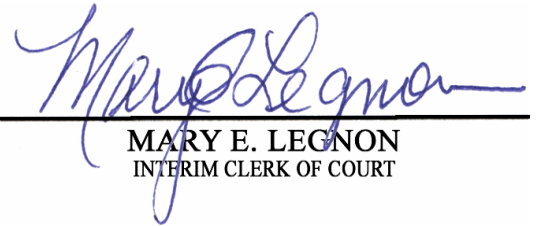
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FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/24/2019** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY



MARY E. LEGNON
INTERIM CLERK OF COURT

19-KH-261

E-NOTIFIED

Terry M. Boudreaux (Respondent)

MAILED

Bobby Carl Terrick #457795 (Relator)
Louisiana State Penitentiary
Angola, LA 70712