

STATE OF LOUISIANA EX REL,
KEVIN ROBINSON

NO. 21-KH-679

VERSUS

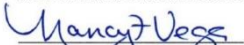
FIFTH CIRCUIT

JERRY GOODWIN, WARDEN
DAVID WADE CORRECTIONAL CENTER

COURT OF APPEAL

STATE OF LOUISIANA

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


Nancy F. Vega
Chief Deputy, Clerk of Court

November 24, 2021

Nancy F. Vega
Chief Deputy Clerk

IN RE KEVON ROBINSON

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 12-2674

Panel composed of Judges Susan M. Chehardy,
Robert A. Chaisson, and Hans J. Liljeberg

WRIT DENIED

Relator, Kevon Robinson, seeks review of the trial court's August 27, 2021 judgment denying his motion to correct illegal sentence. For the following reasons, we deny the writ application.

On July 30, 2012, relator pled guilty to manslaughter, a violation of La. R.S. 14:31, and obstruction of justice, a violation of La. R.S. 14:130.1. On that same date, the trial court sentenced him to concurrent terms of thirty-five years imprisonment at hard labor. Relator did not file an appeal.

On August 21, 2021, relator filed a motion to correct an illegal sentence in the district court, claiming a defective indictment and excessive sentences. On August 27, 2021, the district court denied relief, stating:

It is not disputed that the sentences imposed are within statutory limits and that the defendant agreed to serve the sentences. The sentences are not disproportionate to the crimes and do not shock the court's sense of justice.

Furthermore, the defendant agreed to the sentences imposed and as such cannot seek review. LSA-C.Cr.P. art. 881.2

In his writ application, relator argues, as he did in the court below, that the indictment was defective and his sentences are excessive. Louisiana Code of Criminal Procedure article 882(A) states that “[a]n illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.” Because relator’s filing below did not point to a claimed illegal term in his sentence, he has not raised a claim cognizable in a motion to correct illegal sentence. Instead, he raised claims of a defective indictment and excessive sentences. Accordingly, the “at any time” language provided in La. C.Cr.P. art. 882 does not apply to relator’s filing; rather, the prescriptive period of La. C.Cr.P. art. 930.8 applies.

While relator’s motion is captioned a motion to correct illegal sentence, in effect, it is an application for post-conviction relief (“APCR”)¹ that is untimely pursuant to La. C.Cr.P. 930.8, which provides that an APCR must be filed within two years of the judgment of conviction and sentencing become final.² Moreover, we find that the exceptions set forth in La. C.Cr.P. art. 980.1(A)(1), (2), (3), or (4) are inapplicable to relator’s case because his claim does not rest on newly discovered evidence or an unknown interpretation of constitutional law, his application was filed after October 1, 2001, and he was not sentenced to death. Although the district court denied relator’s application on other grounds, appellate

¹ The Louisiana Supreme Court has recognized that courts should “look through the caption of the pleadings in order to ascertain their substance and to do substantial justice.” See *State v. Moses*, 05-787 (La. App. 5 Cir. 5/9/06), 932 So.2d 701, 706 n. 3, writ denied, 06-2171 (La. 4/5/07), 954 So.2d 140. See also *State v. Sanders*, 93-1 (La. 11/30/94), 648 So.2d 1272, 1284, cert. denied, 517 U.S. 1246, 116 S.Ct. 2504, 135 L.Ed.2d 194 (1996) (citing *Smith v. Cajun Insulation*, 392 So.2d 398, 402 n. 2 (La. 1980)); *Goldbach v. Atchley*, 01-67 (La. App. 5 Cir. 5/30/01), 788 So.2d 690, 693, writ denied, 01-1915 (La. 2/8/02), 808 So.2d 349.

² Relator’s convictions and sentences became final in 2012. As stated previously, relator did not appeal following his guilty pleas entered on July 30, 2012

courts may raise the time bar of La. C.Cr.P. art. 930.8 *sua sponte*. See *Carlin v. Cain*, 97-2390 (La. 3/13/98), 706 So.2d 968.

Accordingly, we find relator's claims are time barred. This writ application is denied.

Gretna, Louisiana, this 24th day of November, 2021.

SMC
RAC
HJL

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

CURTIS B. PURSELL
CLERK OF COURT
NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN S. BUCHHOLZ
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 **11/24/2021** 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 COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-KH-679

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Stephen C. Grefer (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

MAILED

Kevon Robinson #600934 (Relator)
David Wade Correctional Center
670 Bell Hill Road
Homer, LA 71040