

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2016 KW 0856

VERSUS

SEP 22 2016

KELVIN STEWART


In Re: Kelvin Stewart, applying for supervisory writs, 23rd
Judicial District Court, Parish of Ascension, No.
24771.

BEFORE: WHIPPLE, C.J., GUIDRY AND McCLENDON, JJ.

WRIT DENIED. This Court notes that relator has repeatedly filed writ applications seeking review of the lower court's rulings denying his pleadings that were filed based upon the erroneous belief that the district court judge promised to resentence relator following a mental health evaluation by the Department of Corrections. Following several unfavorable rulings in the lower court, relator now seeks to recuse the judge from presiding over his most recent effort to attack his guilty plea via a motion to null and void an invalid guilty plea contract. The letter from defense counsel reflects that the district court judge merely agreed to permit defense counsel to file a motion to reconsider the sentence based upon the mental health evaluation report. The documentation does not reflect that the district court judge agreed to automatically resentence relator following the filing of the motion, nor is there any indication that the district court judge stated that relator would be allowed to withdraw his guilty plea if the court declined to reduce relator's sentence. The plea agreement was fulfilled in this case by the filing of the motion to reconsider sentence. A plea of guilty will not be set aside upon a defendant's unfulfilled expectation of gaining release as early as possible. See **State ex rel. Miller v. Whitley**, 615 So.2d 1335 (La. 1993) (*per curiam*). Furthermore, the claims presented in the motion to invalidate the guilty plea, filed in June 2016, are untimely for purposes of postconviction relief. See La. Code Crim. P. art. 930.8(A). Accordingly, the district court did not err by denying the motion to null and void an invalid guilty plea contract, or relator's request for an evidentiary hearing. Additionally, the district court did not err by denying the motion to recuse the judge. See **State v. Maten**, 2004-1718 (La. App. 1st Cir. 3/24/05), 899 So.2d 711, 720, writ denied, 2005-1570 (La. 1/27/06), 922 So.2d 544.

JMG
PMc
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