

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2017 KW 1228

VERSUS

NOV 16 2017

ROBERT L. JENKINS

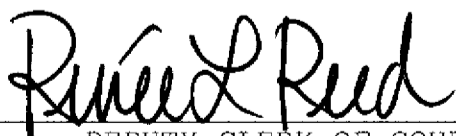
In Re: Robert L. Jenkins, applying for supervisory writs,
22nd Judicial District Court, Parish of St. Tammany,
No. 483,740.

BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

WRIT DENIED. A pleading's nature is determined by its substance and not its caption. **State ex rel. Lay v. Cain**, 96-1247 (La. App. 1st Cir. 2/14/97), 691 So.2d 135, 137. In the writ of habeas corpus, relator seeks to have his conviction and habitual offender sentence set aside and to be released from the custody of the Department of Corrections. An application for postconviction relief is a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside. See La. Code Crim. P. art. 924(1). Habeas corpus is not available to contest the validity of a conviction or to have the sentence set aside; such claims are considered requests for postconviction relief. See La. Code Crim. P. art. 924(1); **Sinclair v. Kennedy**, 96-1510 (La. App. 1st Cir. 9/19/97), 701 So.2d 457, 460, writ denied, 97-2495 (La. 4/3/98), 717 So.2d 645. If an inmate files a pleading that requests postconviction relief, the pleading should be treated as such, including the application of the time limit of article 930.8. See **State v. Jarrow**, 2004-0483 (La. 9/24/04), 882 So.2d 1160. The delay to file an application for postconviction relief has passed. See La. Code Crim. P. art. 930.8(A). Therefore, the district court did not err by denying relator's pleading or by not considering the merits.

JEW
MRT
PMc

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