

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CA 1705

BEN H. SCOTT

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: JUN 03 2019

* * * * *

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C664331

Honorable R. Michael Caldwell, Presiding

* * * * *

Ben H. Scott
Jackson, LA

In Proper Person

Darren A. Allemand
Terry M. Boudreaux
Assistant District Attorneys
Gretna, LA

Counsel for Defendant/Appellee
Paul D. Connick, Jr., District Attorney
24th Judicial District Court

* * * * *

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

GUIDRY, J.

Petitioner, Ben Scott, appeals from a judgment of the district court dismissing with prejudice his writ of habeas corpus for lack of subject matter jurisdiction. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Scott was convicted of First Degree Robbery, a violation of La. R.S. 14:64.1, and was sentenced to forty years imprisonment. Scott's conviction was upheld in State v. Scott, 06-134 (La. App. 5th Cir. 7/25/06), 939 So. 2d 462, writ denied, 06-2133 (La. 3/3/07), 953 So. 2d 61, and he was denied post-conviction relief in State ex rel. Scott v. State, 15-1611 (La. 10/17/16), 202 So. 3d 479 (per curiam). On December 14, 2017, Scott filed an Application for a Writ of Habeas Corpus pursuant to La. C.Cr.P. arts. 351, and 352-354 in the Nineteenth Judicial District Court (JDC). The application asserts that Scott was convicted based upon false testimony that led to a suggestive identification of him in open court, that he was denied a fair suppression hearing, and that his 14th Amendment and Due Process rights were violated.

On February 6, 2018, Paul D. Connick, Jr., the District Attorney for the Twenty-Fourth JDC, responded to Scott's application for writ of habeas corpus and asserted that Scott's application should be dismissed because the relief he seeks must be sought through an application for post-conviction relief. Alternatively, Connick requested that the court transfer Scott's petition to the Twenty-Fourth JDC to be treated as an application for post-conviction relief. The Commissioner for the Nineteenth JDC assigned to review the matter thereafter submitted a screening report, wherein she determined that the district court lacked jurisdiction to hear Scott's complaint, because it was not an actual application for writ of habeas corpus, but it was a collateral attack on the petitioner's criminal conviction. The Commissioner noted that the application does not challenge the authority of the

Department of Public Safety and Corrections (Department), but rather, it challenges the validity of Scott's conviction. As such, the Commissioner recommended that Scott's application be dismissed with prejudice. The district court thereafter signed a judgment in conformity with the screening report, ordering that Scott's writ of habeas corpus be dismissed with prejudice for lack of subject matter jurisdiction. Scott now appeals from the district court's judgment.

DISCUSSION

Louisiana Code of Criminal Procedure article 351 provides:

Habeas corpus is a writ commanding a person who has another in his custody to produce him before the court and to state the authority for the custody.

"Custody" as used in this Title means detention or confinement as a result of or incidental to an instituted or anticipated criminal proceeding.

*The provisions of this Title are not available to persons entitled to file an application for post conviction relief under Title XXXI-A.*¹
[Emphasis added.]

Comment (c) to the Article 351 further provides that "[h]abeas corpus is not the proper procedural vehicle for petitioners who may file an application for post conviction relief...[e]ssentially, habeas corpus deals with preconviction complaints concerning custody." This court has consistently held that habeas corpus is not available to contest the validity of the conviction or to have the sentence set aside. Rather, such claims are considered requests for post-conviction relief. Sinclair v. Kennedy, 96-1510, p. 5 (La. App. 1st Cir. 9/19/97), 701 So. 2d 457, 460, writ denied, 97-2495 (La. 4/3/98), 717 So. 2d 645; see also Eames v. State, 13-0022 (La. App.

¹ We note that in his application for writ of habeas corpus, Scott asserted that he is "procedurally barred from filing an application for Post-Conviction Relief" because he had filed at least four applications for post-conviction relief, which were denied, and in State ex rel Scott, 15-1611 at p. 1-2, 202 So. 3d at 479, the supreme court stated that Scott's claims have been fully litigated and he "has exhausted his right to state collateral review." However, the supreme court further noted that his right to state collateral review is only exhausted "unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies." State ex rel. Scott, 15-1611 at p. 2, 202 So. 3d at 479. Therefore, he is still entitled to file an application for post-conviction relief.

1st Cir. 3/27/14) (unpublished) 2014WL1266360, *3; Dixon v. LeBlanc, 09-0876 (La. App. 1st Cir. 12/23/09) (unpublished) 2009WL4983858, writ denied, 10-0344 (La. 2/11/11), 56 So. 3d 996. An application for post-conviction 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. La. C.Cr.P. art. 924(1).

In the instant case, Scott was convicted and sentenced and seeks to have his conviction set aside. All of the claims raised by Scott in his application relate to the validity of his conviction, and as such, his application is for post-conviction relief and not habeas corpus. Accordingly, we find no error in the judgment of the district court dismissing his application for writ of habeas corpus with prejudice.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court. All costs of this appeal are assessed to petitioner, Ben Scott.

AFFIRMED.