

STATE OF LOUISIANA

*

NO. 2018-K-1030

VERSUS

*

COURT OF APPEAL

ANTOINE GREEN

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 514-235, SECTION "D"
Honorable Paul A Bonin, Judge

Judge Paula A. Brown

(Court composed of Judge Edwin A. Lombard, Judge Regina Bartholomew-Woods, Judge Paula A. Brown)

Antoine Green
DOC #280380
Dixon Correctional Inst.
P.O. Box 788 Jackson, La 70788

PRO SE Appellant

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COUNSEL FOR STATE OF LOUISIANA/APPELLEE

**WRIT GRANTED; REMANDED
JANUARY 9, 2019**

PAB This is a criminal matter. Relator, Antoine Green, seeks supervisory review of the district court's November 13, 2018 judgment denying Relator's motion to correct illegal sentence. For the following reasons, we grant Relator's writ application and remand to the district court.

PROCEDURAL HISTORY

In January 2013, Relator pled guilty to attempted first degree murder and domestic abuse aggravated assault. According to the docket master, Relator was sentenced, pursuant to the plea agreement, to ten years at hard labor for attempted first degree murder and five years at hard labor for domestic abuse aggravated assault. The sentences were ordered to run concurrently to each other. Additionally, the State agreed to not file a multiple offender bill.

In September 2014, Relator filed in the district court a pleading entitled a Motion to Correct Illegal Sentence urging his guilty plea entered for attempted first degree murder was invalid because it was not knowingly and voluntarily entered. Specifically, Relator alleged the State and his attorney induced him to enter the guilty plea by leading him to believe that he would not be sentenced as a multiple offender; thus, he would be eligible to receive "good time" credit toward his ten

year at hard labor sentence imposed for attempted first degree murder. Relator contended the primary reason he agreed to enter the plea agreement was receipt of the “good time” credits. Subsequently, he discovered from the Louisiana Department of Corrections he was ineligible to receive “good time” credits toward his ten year sentence resulting in the filing of the motion. Relator acknowledged that the remedies for a breach of a plea agreement were (1) specific performance of the agreement or (2) withdrawal of the guilty plea. Relator prayed for re-sentencing from ten years at hard labor to eight and one-half (8 1/2) years at hard labor, or in the alternative, a hearing on the motion.

The district court denied the motion and found: (1) the pleading should be construed as an application for post-conviction relief; (2) Relator’s pleading was untimely filed under La. C.Cr. P. art. 930.8¹; and (3) Relator waived review of “all non-jurisdictional defects in the proceedings leading up to the guilty plea” because Relator entered an unconditional guilty plea.

This writ application followed.

DISCUSSION

Relator asserts the district court erred in denying his motion.

After reviewing the record before this Court, we find the district court correctly found Relator’s motion should be construed as an application for post-conviction relief. *See State v. Baham*, 13-1069, p. 3 (La. App. 4 Cir. 9/10/14), 149 So.3d 1235, 1238 (citations omitted)(wherein this Court held that the appropriate procedural vehicle to challenge a guilty plea after sentencing is an application for

¹ Generally, pursuant to La. C.Cr.P. art. 930.8(A), a defendant has two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922 to file for post-conviction relief.

post-conviction relief.). However, the district court improperly denied the claim as untimely filed pursuant to La. C.Cr.P. art. 930.8. Relator filed his claim in September 2014, well within the prescriptive period to seek post-conviction relief as set forth in La. C.Cr.P. art. 930.8. Additionally, the district court mistakenly found that Relator, by entering unconditional plea of guilty, waived review of the claim challenging the validity of his plea agreement. *See State v. Crosby*, 338 So. 2d 584, 586 (La. 1976)(citations omitted)(wherein the Supreme Court held that “[a] plea of guilty normally waives all non-jurisdictional defects in the proceedings prior to the plea.”(emphasis added)).² Thus, we find the district court erred in denying Relator’s application on procedural grounds.

Accordingly, Relator’s writ application is granted and the matter is remanded to the district court for a ruling on the merits of Relator’s claim. La. C.Cr.P. arts. 928 and 929. In the event the district court finds an evidentiary hearing is warranted pursuant to La. C.Cr.P. art. 930, Relator may be entitled to appointment of counsel. *See* La. C.Cr.P. art. 930.7; *State v. Solomon*, 12-0202, p. 1 (La. 6/22/12), 90 So.3d 1040, 1041 (wherein the Supreme Court reversed and remanded for an evidentiary hearing to determine “whether any misunderstanding with respect to eligibility for early release on good time credits vitiated the voluntariness of the guilty plea.”)

WRIT GRANTED; REMANDED

² Additionally, Relator is not precluded from asserting his present claim because he was sentenced in conformity with the plea agreement. La. C.Cr.P. art. 881.2(A)(2) provides that “[t]he defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea.” (emphasis added).