

The Supreme Court of the State of Louisiana

RICHARD BENOIT

No. 2023-KP-00250

VS.

**KIRT GUERIN, WARDEN ELAYN HUNT
CORRECTIONAL CENTER**

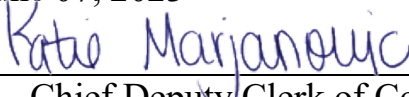
IN RE: Richard Benoit - Applicant Plaintiff; Applying For Writ Of Certiorari, Parish
of St. Charles, 29th Judicial District Court Number(s) 12,159, Court of Appeal, Fifth
Circuit, Number(s) 22-KH-547;

June 07, 2023

Stay denied. Writ application denied. See per curiam.

JLW
JDH
SJC
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
June 07, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 23-KP-0250

RICHARD BENOIT

v.

**KIRT GUERIN, WARDEN,
ELAYN HUNT CORRECTIONAL CENTER**

**ON SUPERVISORY WRITS TO THE TWENTY-NINTH
JUDICIAL DISTRICT COURT, PARISH OF ST. CHARLES**

PER CURIAM:

Motion denied; writ denied. The original application for post-conviction relief was not timely filed in the district court with respect to applicant's conviction for sexual battery. His conviction and sentence on that count became final in January 2018. La.C.Cr.P. art. 922; La.S.Ct.R. X, § 5(a). Resentencing on a separate count of conviction did not restart the time limitations of La.C.Cr.P. art. 930.8 with respect to the sexual battery conviction. *See State v. Brumfield*, 2013-2390, p. 3 (La. 11/14/14), 152 So.3d 870, 871. Thus, his application for post-conviction relief filed on July 10, 2020, was untimely with respect to his sexual battery conviction. Applicant fails to carry his burden to show that an exception applies. La.C.Cr.P. art. 930.8; *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So.2d 1189.

Additionally, because a district court only has the authority to allow amendment or supplement of a timely filed application for post-conviction relief, the district court had no authority to allow a supplemental or amended application with respect to the sexual battery conviction. *See State ex rel. Benn v. State*, 2011-2418, p. 1 (La. 6/22/12), 90 So.3d 1045 ("Established jurisprudence of this Court grants district judges the discretion to allow or to refuse amendment of *timely* filed

but not yet ruled-on applications for post-conviction relief.”) (emphasis added). Accordingly, applicant’s remaining post-conviction claims should be considered by the district court only with respect to his conviction for attempted aggravated incest.

Lastly, applicant shows no error in the court of appeal’s denial with respect to his factual innocence claims. *See* La.C.Cr.P. art. 926.2(B)(1) (“petitioner shall present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was *not known or discoverable* at or prior to trial”) (emphasis added); *see also Schane v. International Board of Teamsters*, 760 F.3d 585, 589 (7th Cir. 2014) (“In propositional logic . . . the rule of inference that not (X or Y) is equivalent to not X and not Y . . . is known as one of De Morgan’s Laws.”) (internal quotes omitted).