

SUPREME COURT OF LOUISIANA

State ex rel. Flank v. State

188 So. 3d 1028 (La. 2016) · Decided April 4, 2016

SUMMARY

The Louisiana Supreme Court, per curiam, denied Raymond Flank’s application for post-conviction relief. The court held that the application was untimely, that no exception to the limitations period applied, and that Flank failed to establish a Brady violation based on alleged withholding of a laboratory report; the attached district court reasons likewise denied relief.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	April 4, 2016
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Louisiana Supreme Court denied Raymond Flank's application for post-conviction relief after the Orleans Parish Criminal District Court denied the application as untimely and unsupported by a Brady claim.
STANDARD OF REVIEW	The court required the relator to carry his burden of showing that an exception to the post-conviction filing limitation applied and that the alleged nondisclosure satisfied the Brady materiality standard.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court per curiam opinion
PARTIES	Raymond Flank v. State

TOPICS

- state post-conviction relief
- successive petitions
- prosecutorial misconduct
- evidence
- appellate procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- prosecutorial misconduct

QUESTIONS PRESENTED

1. Whether Flank's post-conviction application was timely or fell within an exception to Louisiana's post-conviction limitations period.

2. Whether the prosecution violated *Brady v. Maryland* by withholding a material exculpatory or impeachment report.
3. Whether a successive state post-conviction application could proceed absent one of the narrow statutory exceptions.

HOLDINGS

1. The application was untimely, and Flank failed to carry his burden of showing that an exception to the applicable limitations period applied.
2. Flank failed to establish that the State withheld material exculpatory evidence in violation of *Brady v. Maryland*.
3. A second or successive Louisiana post-conviction application may proceed only under the narrow circumstances authorized by Louisiana Code of Criminal Procedure article 930.4 and within the limitations period established by article 930.8.

KEY QUOTATIONS

“Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La. C.Cr.P. art. 930.8.” (1029)

“Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of successive application applies, relator has exhausted his right to state collateral review.” (1029)

FACTUAL BACKGROUND

Flank was charged with first-degree murder in 1983, convicted by a jury on May 15, 1985, and sentenced to life imprisonment on June 11, 1985. In his post-conviction application, he alleged that the district attorney withheld a laboratory examination report prepared by the Bureau of Alcohol, Tobacco, and Firearms. The courts concluded that he did not show the report had been withheld, that the prosecution engaged in misconduct, or that disclosure would have changed the outcome.

PROCEDURAL HISTORY

Flank was convicted of first-degree murder in 1985 and sentenced to life imprisonment. He later filed an application for post-conviction relief alleging that the prosecution withheld a laboratory examination report constituting material exculpatory evidence. The Orleans Parish Criminal District Court denied relief, concluding that the application was untimely and that Flank failed to establish prosecutorial misconduct, suppression, materiality, or a likelihood of a different outcome. The Louisiana Supreme Court denied relief and ordered the district court to record a minute entry consistent with its per curiam opinion.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

The district court was ordered to record a minute entry consistent with the Louisiana Supreme Court's per curiam decision. The court stated that Flank had exhausted his right to state collateral review unless he could show a narrow statutory exception authorizing a successive application.

CASES CITED

- State ex rel. Glover v. State, 93-2330 (La. 9/5/95), 660 So. 2d 1189
- Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- United States v. Bagley, 473 U.S. 667 (1985)

OPINION

PER CURIAM.

PER CURIAM. | denied. The application was not timely filed in the district court, and relator 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.

In addition, relator fails to show the state withheld material exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). We attach hereto and make a part hereof the *1029District Court's written reasons denying relator's application. Relator has now fully litigated at least two applications for post-conviction relief in state court.

Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La. C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory.

Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review.

The District Court is ordered to record a minute entry consistent with this per curiam. *1030STATE OF LOUISIANA CRIMINAL DISTRICT COURT VERSUS PARISH OF ORLEANS RAYMOND FLANK CASE NO. 299-809 SECTION *E* JUDGMENT Defendant, Raymond-Flank, hereinafter referred to as Petitioner, has filed with this Court on Application for Post Conviction Relief.

In 1983, Petitioner was charged with First Degree Murder in violation of La.R.S. 14:30. On May 15, 1985, Petitioner was found guilty as charged by jury. On June 11, 1985, Petitioner was sentenced to life imprisonment at hard labor in the custody of the Department of Corrections without benefit of parole, probation, or suspension of sentence with credit for time served.

In Petitioner's application, he asserts that the district attorney committed prosecutorial misconduct by withholding exculpatory evidence during trial. Specifically, Petitioner avers that the ' district attorney's office failed to provide him with the laboratory examination report prepared by the Department of the Treasury, Bureau of Alcohol, Tobacco-and Firearms, Petitioner contends that disclosure of the laboratory examination report at trial would have resulted in a stronger case for the defense.

According, to Brady, the prosecutor may not suppress evidence which is favorable to the, defendant and material of tlrc issue of defendant's guilt or innocence. Brady v. Maryland, 373 U.S. 83 (1963). Favorable evidence includes both exculpatory evidence and impeachment evidence. Id. Furthermore, the "evidence is material if there is a reasonable probability, sufficient to undermine confidence in the outcome, 'that the evidence, if disclosed to the defense, would have changed the outcome of the proceeding or created a irosf. n-hic ctc.ibi that did not otherwise exist", United States v. Bagley, 473 U.S. 667 (1985), i-lac, P;i itionet fails to provide sufficient evident e to support his claim.

Petitioner fails to show that the prosecutor engaged in any misconduct or that disclosure of the laboratory examination report was not made to the defense prior to trial. Further, Petitioner's falls to show that the outcome of the proceeding would have been different.

Accordingly, Petitioner's claim is without merit. Lastly, Petitioner's application for post conviction relief is untimely. At the time of the offense, La.C.Cr.P. art. 930,8 provided that an application for post conviction relief should not be considered if it is filed more than three years after die judgment of conviction and sentence have become final under the provisions of I,.8.1' C-r.P i»' 914 or OIL unless it fails within certain *1031exceptions to the time limitation fbr filing.

Here, Petitioner's claim does not fail under the exceptions to the time limitation. Specifically, Petitioner fails to prove that the facts upon -which the claim is predicated were not known to the petitioner or his attorney; thus, under La. C.Cr.P. art, 330.8, Petitioner's motion is time-barred.

Accordingly, Petitioner's claim is Without merit, For the forgoing reasons, the Petitioner's Application lor Post Conviction Relief is hereby DENIED. [[Image here]] A copy of this ruling sent to the defendant at the following address: Raymond Flank DOC# 110756 General Delivery Louisiana State Penitentiary Angola, Louisiana 70712 [[Image here]]