Regular Session, 2013

HOUSE BILL NO. 385

BY REPRESENTATIVE HODGES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana. CRIMINAL/PROCEDURE: Amends provisions of law regarding post-conviction relief

1	AN ACT
2	To amend and reenact Code of Criminal Procedure Articles 928, 930.4(B), (C), (D), and (E),
3	930.8(A)(introductory paragraph) and (1) and to repeal Code of Criminal Procedure
4	Article 930.4(F), relative to post-conviction relief; to provide for the dismissal of
5	certain petitions; to provide for definitions; to provide for a time period to
6	supplement an application for relief; to provide for the mandatory dismissal and
7	denial of relief for certain repetitive applications; to require that the applicant
8	demonstrate due diligence in discovering post-conviction claims; to provide with
9	respect to time limitations for the filing of post-conviction relief applications; and
10	to provide for related matters.
11	Be it enacted by the Legislature of Louisiana:
12	Section 1. Code of Criminal Procedure Articles 928, 930.4(B), (C), (D), and (E),
13	930.8(A)(introductory paragraph) and (1) are hereby amended and reenacted to read as
14	follows:
15	Art. 928. Dismissal upon the pleadings
16	\underline{A} . The application may be dismissed without an answer if the application
17	fails to allege a claim which, if established, would entitle the petitioner to relief.
18	B.(1) A shell petition shall be dismissed in its entirety unless it is
19	supplemented within ninety days of filing the petition.

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	(2) For the purposes of this Title, "shell petition" means a petition that fails
2	to assert any specific factual allegations in support of a claim.
3	* * *
4	Art. 930.4. Repetitive applications
5	* * *
6	B. If the application alleges a claim of which the petitioner had knowledge
7	and inexcusably failed to raise in the proceedings leading to conviction, the court
8	may shall deny relief.
9	C. If the application alleges a claim which the petitioner raised in the trial
10	court and inexcusably failed to pursue on appeal, the court may shall deny relief.
11	D. A successive application may shall be dismissed if it fails to raise a new
12	or different claim.
13	E. A successive application may shall be dismissed if it raises a new or
14	different claim that was inexcusably omitted from a prior application.
15	F. If the court considers dismissing an application for failure of the petitioner
16	to raise the claim in the proceedings leading to conviction, failure to urge the claim
17	on appeal, or failure to include the claim in a prior application, the court shall order
18	the petitioner to state reasons for his failure. If the court finds that the failure was
19	excusable, it shall consider the merits of the claim.
20	* * *
21	Art. 930.8. Time limitations; exceptions; prejudicial delay
22	A. No application for post-conviction relief, including applications which
23	seek an out-of-time appeal, shall be considered if it is filed more than two years one
24	year after the judgment of conviction and sentence has become final under the
25	provisions of Article 914 or 922, unless any of the following apply:
26	(1) The application alleges, and the petitioner proves or the state admits, that
27	the facts upon which the claim is predicated were not known to the petitioner or his
28	attorney attorneys, either previous or current. Further, the petitioner shall prove that
29	he exercised due diligence in attempting to discover any post-conviction claims that

1	may exist after trial and that he attempted to file his post-conviction application
2	within the time limitation provided for by this Code for post-conviction relief. Once
3	discovered, facts submitted pursuant to this Subsection shall be submitted to the
4	court with due diligence, not to exceed ninety days from the date of discovery.
5	* * *
6	Section 2. Code of Criminal Procedure Article 930.4(F) is hereby repealed in its

7 entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Hodges

HB No. 385

Abstract: Amends provisions regarding the application for and granting of post-conviction relief.

Present law provides procedures for post-conviction relief.

<u>Present law</u> provides that an application for post-conviction relief may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief.

<u>Proposed law</u> provides that a shell petition shall be dismissed in its entirety unless it is supplemented within 90 days, and defines a "shell petition" as a petition that fails to assert any specific factual allegations in support of a claim.

<u>Present law</u> provides that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final unless the application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his attorney.

Proposed law changes the time period from two years to one year.

<u>Proposed law</u> provides that the petitioner shall prove that he exercised due diligence in attempting to discover any post-conviction claims that may exist after trial and that he attempted to file his post-conviction application within the time limitation provided for post-conviction relief. Once discovered, facts shall be submitted to the court with due diligence, not to exceed 90 days from the date of discovery.

<u>Present law</u> provides that if the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. If the court finds that the failure was excusable, it shall consider the merits of the claim.

Proposed law repeals this provision of present law.

<u>Present law</u> provides that the court may deny relief for claims which were known at trial but not raised on appeal, claims raised at trial but not appealed, new claims which were not raised in subsequent applications, or claims which raise new issues which could have been raised in previous applications.

Proposed law provides that the court shall deny relief for those same reasons.

(Amends C.Cr.P. Arts. 928, 930.4(B), (C), (D), and (E), 930.8(A)(intro. para.) and (1); Repeals C.Cr.P. Art. 930.4(F))