

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 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.

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.

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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

Present law 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))