

STATE OF LOUISIANA

NO. 25-KH-200

VERSUS

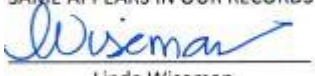
FIFTH CIRCUIT

JOHN MURPHY

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Linda Wiseman
First Deputy, Clerk of Court

May 09, 2025

Linda Wiseman
First Deputy Clerk

IN RE JOHN MURPHY

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE DONALD A.
ROWAN, JR., DIVISION "L", NUMBER 08-3088

Panel composed of Judges Susan M. Chehardy,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED

Defendant-relator, John Murphy, seeks supervisory review of the trial court's Order denying his application for post-conviction relief entitled: "Application and Petition for a Writ of 'Habeas Corpus' challenging the illegality of custody pursuant to La. C.Cr.P. art. 362 (1) to 362 (3) (5), resulting from the occurrence of an illegal thus unlawful 'double enhancement' multiple offender – Habitual Offender Defective Bill of Information, or, Alternatively, Motion for Correction of an Illegal Sentence [under] La. C.Cr.P. art. 882 A."

By way of background, on March 5, 2009, defendant was convicted for possession of clonazepam in violation of La. R.S. 40:969 (C). On March 20, 2009, the trial court sentenced defendant to four years imprisonment at hard labor. This Court affirmed the conviction on appeal. *State v. Murphy*, 09-432 (La. App. 5 Cir. 11/24/09), 28 So.3d 496, *writ denied*, 10-16 (La. 6/25/10), 38 So.3d 334. On July 10, 2009, the court adjudicated defendant a fourth-felony offender and re-

sentenced him to 30 years imprisonment at hard labor. This Court also affirmed defendant's multiple-offender adjudication and sentence. *State v. Murphy*, 09-805 (La. App. 5 Cir. 2/23/10), 34 So.3d 886, *writ denied*, 10-0690 (La. 10/15/10), 45 So.3d 1110.

In a March 26, 2025 Order, the trial court denied defendant's most recent request for relief. The trial court first indicated that defendant had failed to point to an illegal term in his sentence, instead contesting "the procedure and predicates used in the multiple offender adjudication." As such, the trial court determined defendant failed to raise a claim cognizable in a motion to correct an illegal sentence under *State v. Parker*, 98-256 (La. 5/8/98), 711 So.2d 694, 695. Further, the trial court found defendant's claim to be untimely under La. R.S. 15:529.1 (D)(1)(b), which requires any challenge to the constitutionality of a prior conviction used as a predicate offense to be raised in response to the State's multiple-offender bill, which in this case was filed on June 11, 2009, or before the sentence is imposed. Thus, defendant's objections are untimely. Finally, the trial court noted that defendant "has had extensive review of his conviction and sentence," therefore finding the current application to be repetitive and successive. The trial court found no illegality in sentencing, as the sentence is within the statutory parameters provided.

Defendant contends the trial court erred because no court has ever addressed the issue of "double enhancement," claiming that the district attorney used the same predicate offenses in the present case as were used in previous cases as predicate offenses. Defendant further argues that the Multiple Offender Bill was invalid because the predicate offenses did not conform to the requirements of La. R.S. 15:529.1 (C), because they did not include dates of commission.

At the outset, we note that relator has filed his writ application without attaching a notice of intent to seek writs or an order from the trial court

setting a return date, in violation of the Uniform Rules—Courts of Appeal, Rules 4-2, 4-3, and 4-5 (C)(11).

Furthermore, as the trial court recognized, defendant has filed multiple motions seeking to correct his allegedly “illegal” sentence,¹ rendering his application duplicative, successive, and untimely. *See* La. C.Cr.P. arts. 930.4 and 930.8 (A).

Even without these procedural and statutory impediments, defendant’s arguments lack merit. The predicate convictions alleged in the multiple offender bill of information included:

1) a guilty plea to possession of cocaine (LSA–R.S.40:967 C) on October 26, 1995, in case number 95-3807, for which he was sentenced to two years at hard labor; 2) a guilty plea to theft in the amount of \$500 or more (LSA–R.S.14:67) on September 11, 1997, in case number 97-0414, for which defendant was sentenced to five years at hard labor; 3) a guilty plea to distribution of cocaine within 1,000 feet of a church (LSA–R.S.40:981.3) and distribution of counterfeit cocaine (LSA–R.S.40:971.1) on December 4, 2002, in case number 02-5399, for which he was sentenced to 10 years at hard labor; 4) a guilty plea to distribution of cocaine within 1,000 feet of a church and distribution of counterfeit cocaine on December 4, 2002, in case number 02-5576, for which he was sentenced to ten years at hard labor; and 5) a guilty plea to distribution of cocaine within 1,000 feet of a church on December 4, 2002, in case number 02–5691, for which he was sentenced to 10 years at hard labor.

State v. Murphy, 09-805 (La. App. 5 Cir. 2/23/10), 34 So.3d 886, 888-89, *writ denied*, 10-0690 (La. 10/15/10), 45 So.3d 1110.² Contrary to defendant’s argument, the dates of his predicate offenses were established. Again, this Court previously

¹ For example, on November 24, 2020, defendant filed a motion to review and correct an illegal sentence. On January 7, 2021, the trial court entered an Order denying relator’s motion, noting that this Court had affirmed the sentence and relator’s multiple offender adjudication on appeal. The trial court further noted: “Defendant again contests the legality of his sentence. The court has denied defendant’s previously filed motions seeking alleging [sic] similar claims, and finds this pleading repetitive and successive.”

² This Court noted on appeal that La. R.S. 15:529.1 was amended in 2005 “to provide that ‘[m]ultiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section.’ The effective date of this amendment was August 15, 2005. Since defendant’s three 2002 convictions were obtained on the same day, they count as one conviction for purposes of the habitual offender bill.” *Id.* at 889 n.1.

found no error with regard defendant's multiple-offender adjudication. *Id.* Finally, there is no prohibition against recounting the same conviction multiple times in separate habitual offender proceedings to sequentially establish defendant's habitual offender status and enhance defendant's sentence as to the new crime. *State v. Ayche*, 07-753 (La. App. 5 Cir. 3/11/08), 978 So.2d 1143, 1154, *writ denied*, 08-2291 (La. 01/30/09), 999 So.2d 752, and *writ denied*, 08-1115 (La. 02/13/09), 999 So.2d 1140.

For all of these reasons, defendant's writ application is denied.

Gretna, Louisiana, this 9th day of May, 2025.

SMC
JJM
SUS

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. WISEMAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/09/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

25-KH-200

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Donald A. Rowan, Jr. (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

MAILED

John Murphy #342762 (Relator)
Riverbend Detention Center
9450 Highway 65 South
Lake Providence, LA 71254