

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 930.4(B), (C), (D), and (E), and
3 930.8(A)(1), relative to post conviction relief; to provide for a time period to
4 supplement an application for relief; to provide for the mandatory dismissal and
5 denial of relief for certain repetitive applications; to require that the applicant
6 demonstrate diligence in discovering post-conviction claims; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Articles 930.4(B), (C), (D), and (E), and
10 930.8(A)(1) are hereby amended and reenacted to read as follows:

11 Art. 930.4. Repetitive applications

12 * * *

13 B. If the application alleges a claim of which the petitioner had knowledge
14 and inexcusably failed to raise in the proceedings leading to conviction, the court
15 ~~may~~ shall deny relief.

16 C. If the application alleges a claim which the petitioner raised in the trial
17 court and inexcusably failed to pursue on appeal, the court ~~may~~ shall deny relief.

18 D. A successive application ~~may~~ shall be dismissed if it fails to raise a new
19 or different claim.

1 E. A successive application ~~may~~ shall be dismissed if it raises a new or
2 different claim that was inexcusably omitted from a prior application.

3 * * *

4 Art. 930.8. Time limitations; exceptions; prejudicial delay

5 A. No application for post-conviction relief, including applications which
6 seek an out-of-time appeal, shall be considered if it is filed more than two years after
7 the judgment of conviction and sentence has become final under the provisions of
8 Article 914 or 922, unless any of the following apply:

9 (1) The application alleges, and the petitioner proves or the state admits, that
10 the facts upon which the claim is predicated were not known to the petitioner or his
11 ~~attorney; prior attorneys. Further, the petitioner shall prove that he exercised~~
12 diligence in attempting to discover any post conviction claims that may exist.
13 "Diligence" for the purposes of this Article is a subjective inquiry that must take into
14 account the circumstances of the petitioner. Those circumstances shall include, but
15 are not limited to the educational background of the petitioner, the petitioner's access
16 to formally trained inmate counsel, the financial resources of the petitioner, the age
17 of the petitioner, the mental abilities of the petitioner, or whether the interests of
18 justice will be served by the consideration of new evidence. New facts discovered
19 pursuant to this exception shall be submitted to the court within two years of
20 discovery.

21 * * *

22 Section 2. The provisions of this Act shall become effective August 1, 2014.

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.

Present law 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 retains present law except it makes present law applicable to information known by the defendant or his prior attorneys. Further provides that the petitioner shall prove that he exercised diligence in attempting to discover any post conviction claims that may exist.

Proposed law defines "diligence" as a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include, but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. Requires new facts discovered to be submitted to the court within two years of discovery.

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.

Effective August 1, 2014.

(Amends C.Cr.P. Arts. 930.4(B), (C), (D), and (E), and 930.8(A)(1))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Removed the proposed law definition of "shell petition" and provisions requiring the dismissal of a "shell petition".
2. Removed proposed law one-year time limitation on application for post-conviction relief.
3. Changed references from "due diligence" to "diligence" and defined "diligence".
4. Changed time period for filing the discovery of new evidence from 90 days to two years from the date of discovery.