

DWAYNE BLAIR

NO. 25-KH-222

VERSUS

FIFTH CIRCUIT

STATE OF LOUISIANA

COURT OF APPEAL

STATE OF LOUISIANA

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

  
Morgan Naquin  
Deputy, Clerk of Court

July 11, 2025

Morgan Naquin  
Deputy Clerk

IN RE DWAYNE BLAIR

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT,  
PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE CONNIE M.  
AUCOIN, DIVISION "C", NUMBER 12,251

Panel composed of Judges Fredericka Homberg Wicker,  
John J. Molaison, Jr., and Timothy S. Marcel

## WRIT DENIED

In this *pro se* writ application, Relator, Dwayne Blair, seeks to have this Court review the denial of his Motion and Order to Clarify and/or to Correct Illegal Sentence (the “Second Motion to Correct”). For the reasons stated below, Relator’s application is denied.

Relator filed the Second Motion to Correct on April 4, 2025. The district court denied the motion on April 15, 2025, with the notation, “See Order of 5-30-17). It appears that Relator failed to file a Notice of Intent to apply for supervisory writs from the district court’s judgment and to have the district court set a return date for the writ, as required by Rules 4-2 and 4-3 of the Uniform Rules of the Courts of Appeal (“URCA”). Instead, Relator simply filed the instant application in this Court. Relator’s application indicates that it was placed in the prison mailbox on May 15, 2025.<sup>1</sup> The record indicates that Relator’s application was post-marked on May 23, 2025, and was marked filed in this Court on that date. No Notice of Intent or evidence of the return date is attached to Relator’s writ application.<sup>2</sup> URCA Rule 4-3 provides that we may not consider an application that does not contain the mandatory documentation of the return date. Nevertheless, in

<sup>1</sup> For purposes of determining timeliness of pleadings filed by inmates, the date that the pleading is delivered to prison authorities for mailing is considered to be the date of filing. *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379 (1988); *State ex rel Johnson v. Whitley*, 92-2689 (La. 1/6/95), 648 So.2d 909.

<sup>2</sup> Relator was aware of these requirements, as he previously filed an application for supervisory writs in this Court (Docket No. 18-KH-175) wherein he filed a Notice of Intent, had a return date set and attached the Notice of Intent and evidence of the return date as exhibits to his writ application.

the interests of justice and judicial economy, we will consider Relator's *pro se* filing.

Relator challenges his sentence, but has not attached the sentencing transcript, the minute entry of sentencing or the Uniform Commitment Order ("UCO") reflecting his sentence. Thus, in order to ascertain the facts surrounding the sentence, we have reviewed the Relator's prior application for supervisory writs seeking to correct an illegal sentence (Docket No. 18-KH-175), filed in this Court on April 6, 2018 (the "First Application"), and the database of the 29<sup>th</sup> Judicial District Court from which this case arose.

On August 1, 2012, pursuant to a Guilty Plea and Sentence, signed by the Relator on July 31, 2012 (the "Plea Agreement"), Relator pled guilty to four counts of simple burglary of an inhabited dwelling (La. R.S. 14:62.2). The Plea Agreement provided that Relator would be sentenced to a total of 35 years, which the Relator agreed would be served without benefit of probation, parole or suspension of sentence. Relator agreed that the 35 years would be imposed as follows: 12 years on Counts 1 and 2, to run consecutively; 11 years on Count 3, to run consecutively to Counts 1 and 2; and 11 years on Count 4, to run concurrently with Counts 1, 2, and 3. In exchange for his guilty plea, the District Attorney agreed to refuse charges in two other cases that had been filed against Relator (Case #s 12-0259 and 12-0334) and not to file a multiple bill against Relator. Relator was sentenced in accordance with the Plea Agreement.

Attached to Relator's First Application is the district court's order denying a prior Motion to Correct Illegal Sentence (the "First Motion to Correct") wherein Respondent sought to have the district court amend his sentences by deleting the parole restriction on all four counts of simple burglary of an inhabited dwelling. The district court denied Relator's First Motion to Correct on March 6, 2018, noting that the Relator had been sentenced in accordance with the Plea Agreement and, under La. C.Cr.P. art. 881(A)(2), Relator was prevented from seeking review of his sentence. Thereafter, Relator filed a Notice of Intent to seek supervisory writs from this Court seeking a reversal of the district court's denial of his First Motion to Correct.<sup>3</sup>

On May 18, 2018, this Court granted Relator's First Application, finding that, under La. C.Cr.P. art. 881.5, a court may correct sentences exceeding the maximum authorized by law; that the sentences imposed on Relator exceeded the

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<sup>3</sup> This was not Relator's first attempt to challenge his sentence. In May, 2017, Relator filed a Motion for Concurrent Sentence, seeking to have the district court run all of his sentences concurrently. That motion was denied. Then, on or about July 20, 2017, Relator filed a Motion for Amendment of Sentence, also seeking to have his sentences run concurrently. That motion was denied on July 21, 2017. On March 5, 2018, Relator filed the First Motion to Correct, which was denied, but as to which we granted relief on Relator's First Application, as discussed above. On December 12, 2022, Relator filed another Motion for Concurrent Sentence so that he could participate in a work release program. That motion was denied on December 15, 2022. On March 1, 2023, Relator filed a Motion to Vacate Sentence as to Count 3 to reduce it to six years and as to Count 4 to increase it to 12 years, still with the sentences on Counts 1-3 running consecutively and the sentence on Count 4 running concurrently with the sentences on Counts 1-3. This motion was again motivated by a desire to move up his eligibility for work release. That motion was denied on March 3, 2023. This Second Motion to Correct followed nearly two years later.

maximum sentence authorized by law;<sup>4</sup> and that La. C.Cr.P. art. 881.5 authorized the Court to correct excessive sentences to conform to the law. Accordingly, we amended Relator's sentences to restrict the benefits of parole, probation or suspension of sentence to one year on each of the four counts on which Relator was sentenced; remanded the matter to the district court to enter a minute entry or commitment order correctly reflecting the sentences, as amended; and ordered the Clerk of the 29<sup>th</sup> Judicial District Court to transmit the minute entry or commitment order reflecting the amended sentences to the Department of Corrections.

Relator is now before us seeking review of the denial of the Second Motion to Correct, wherein he asserts that his sentence is indeterminate and, therefore, illegal. La. C.Cr.P. art. 882(A) provides that an illegal sentence "may be corrected at any time by the court that imposed the sentence or by an appellate court on review." As stated above, however, Relator has not provided this Court with any evidence such as a transcript of the sentencing hearing, a UCO, or minute entry of sentencing, demonstrating that the sentence imposed was indeterminate. The transcript of Relator's August 1, 2012 sentencing, available on the 29<sup>th</sup> Judicial District Court's database, reveals that Relator was sentenced in accordance with the Plea Agreement that he signed on July 31, 2012.

Relator's sentence is not indeterminate. He was sentenced, on four counts of violating La. R.S. 14:62.2 to 12 years on Counts 1 and 2 to run consecutively with one another, to 11 years on Count 3, to run consecutively with his sentences on Counts 1 and 2 and to 11 years on Count 4 to run concurrently with the sentences imposed in Counts 1-3 and with any other sentences that he might have been serving, for a total sentence of 35 years. Relator agreed to these exact sentences in the Plea Agreement. Relator's sentence imposed in accordance with both the Plea Agreement and with law. Under La. C.Cr.P. art. 883, it was within the district court's discretion to run Relator's sentences consecutively or concurrently, even in the absence of a plea agreement.

Under the circumstances, Relator has not demonstrated that his sentence is indeterminate or illegal and has not stated a cognizable claim to correct an illegal sentence under La. C.Cr.P. art. 882(A). Additionally to the extent that Relator's Second Motion to Correct can be construed to be an application for post-conviction relief, it is untimely under La. C.Cr.P. art. 930.8(A), as more than two years have passed since the date of Relator's sentencing. If considered as an application for post-conviction relief, Relator's Second Motion to Correct is repetitive and would also be barred under La. C.Cr.P. art. 930.4.

Accordingly, for the reasons stated above, Relator's writ application is denied.

Gretna, Louisiana, this 11th day of July, 2025.

**FHW**  
**JJM**  
**TSM**

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<sup>4</sup> At the time of commission of Relator's offenses, La. R.S. 14:62.2 provided, in pertinent part: "Whoever commits the crime of simple burglary of an inhabited dwelling shall be imprisoned at hard labor for not less than one year, without benefit of parole probation or suspension of sentence, nor more than twelve years."

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



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CURTIS B. PURSELL  
CLERK OF COURT

SUSAN S. BUCHHOLZ  
CHIEF DEPUTY CLERK

LINDA M. TRAN  
FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

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**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 **07/11/2025** 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:

**CURTIS B. PURSELL**  
CLERK OF COURT

**25-KH-222**

**E-NOTIFIED**

29th Judicial District Court (Clerk)  
Honorable Connie M. Aucoin (DISTRICT JUDGE)  
No Attorney(s) were ENOTIFIED

**MAILED**

Dwayne Blair #50707110 (Relator)  
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P. O. Box 388  
Gretna, LA 70054

Honorable Joel T. Chaisson, II  
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