

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 KA 0973**

**STATE OF LOUISIANA**

**VERSUS**

**DARRICK C. SAMS**

**Judgment Rendered: DEC 21 2011**

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On Appeal from the Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Docket No. 479973

Honorable Raymond S. Childress, Judge Presiding

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Darrick C. Sams

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

*970 Pettigrew, J. Concurs*

**McCLENDON, J.**

Defendant, Darrick C. Sams, was charged by bill of information with operating a vehicle while intoxicated (DWI), fourth offense, a violation of LSA-R.S. 14:98. Defendant pled not guilty, and filed two motions to quash the bill of information. Defendant's first motion to quash alleged that one of the predicate convictions set forth in his bill of information occurred outside the ten-year cleansing period of LSA-R.S. 14:98. Defendant's second motion to quash alleged that the State, in charging him with DWI, fourth offense, violated an earlier plea agreement where defendant entered a plea of guilty to a second second-offense DWI. The trial court granted defendant's second motion to quash. We granted the State's application for supervisory writs and reversed this ruling, remanding defendant's case for further proceedings. **State v. Sams**, 10-0676 (La.App. 1 Cir. 6/21/10) (unpublished). The trial court then granted defendant's first motion to quash. The State later filed a motion to reconsider the trial court's ruling granting defendant's first motion to quash, and the trial court granted the State's motion, ordering that defendant's first motion to quash be denied.<sup>1</sup>

Thereafter, defendant withdrew his prior not guilty plea and entered a plea of guilty as charged, reserving the right to appeal the trial court's ruling on his first motion to quash pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976). Defendant was sentenced to imprisonment at hard labor for ten years, with all but seventy-five days suspended, and with that term of imprisonment to be served without the benefit of probation, parole, or suspension of sentence. The trial court also placed defendant on five years probation upon his release, with special conditions, and imposed a fine of \$5,000.00. Defendant now appeals, alleging as his sole assignment of error that the trial court had no authority to reconsider its ruling granting defendant's first motion to quash.

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<sup>1</sup> We note that the trial court minutes from January 20, 2011 show that the trial court denied the State's motion to reconsider, but the transcript from this date indicates that the motion to reconsider was granted. Whenever there is a conflict between the transcript and the minutes, the transcript prevails. **State v. Lynch**, 441 So.2d 732, 734 (La. 1983).

Finding no merit in the assigned error, we affirm defendant's conviction and sentence.

### **FACTS**

The facts surrounding defendant's instant offense were not developed in this case because defendant pled guilty to the charged offense, and defense counsel stipulated that a factual basis existed for the guilty plea. However, the record reveals that the bill of information charging defendant with the instant offense of DWI, fourth offense, was filed by the State on December 14, 2009. The bill of information alleges that, on October 30, 2009, defendant committed the offense of DWI after having been previously convicted of DWI in St. Tammany Parish on January 7, 1998, August 5, 2004, and August 19, 2008.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, defendant contends that the trial court erred in granting the State's motion to reconsider defendant's first motion to quash. Defendant does not reargue the merits of his motion to quash in this appeal. Rather, defendant asserts merely that the trial court lacked the authority to reconsider its initial ruling on defendant's first motion to quash.

Defendant filed his first motion to quash on February 3, 2010. In this motion to quash, defendant argued that one of his predicate convictions fell beyond the scope of the ten-year cleansing period of LSA-R.S. 14:98. On December 10, 2010, the trial court granted defendant's first motion to quash, agreeing with defendant's contention that one of his predicate convictions fell beyond the ten-year cleansing period and could not be used to enhance his instant DWI offense. On this date, the State gave the trial court oral notification of its intent to seek supervisory writs with this court, and the trial court granted a stay. The State later filed its written notice of intent to seek writs with the trial court on January 10, 2011, and the trial court set a return date of February 9,

2011.<sup>2</sup>

The trial court's December 10, 2010 ruling was based on an inaccurate calculation of the ten-year DWI cleansing period. In the time between the trial court's December 10, 2010 ruling on defendant's motion to quash and the State's filing of its notice of intent to apply for supervisory writs to this court, we issued two unpublished writ actions that clarified the method in which the ten-year DWI cleansing period should be calculated. On January 18, 2011, the State filed its motion to reconsider based solely upon this court's actions in those writ applications. At a hearing on January 20, 2011, the trial court granted the State's motion to reconsider, reversed its prior ruling, and denied defendant's first motion to quash. Defendant now argues that the trial court had no authority to reconsider its earlier granting of the motion to quash because this ruling was an appealable judgment that became final after the State failed to file a timely motion for appeal.

Article 912B(1) of the Louisiana Code of Criminal Procedure provides that the State may appeal a trial court's ruling on a motion to quash an indictment or any count thereof. Such a motion for appeal must be made no later than thirty days after the rendition of the ruling from which the appeal is taken. LSA-C.Cr.P. art. 914B(1). However, defendant also concedes in his brief, and we agree, that the State could have sought review of the trial court's granting of defendant's first motion to quash by filing an application for supervisory writs.

The use of a motion to reconsider as a means for addressing an adverse ruling on a motion to quash is not addressed in the Code of Criminal Procedure. However, where the law is silent, it is within the inherent authority of the court to fashion a remedy that will promote the orderly and expeditious administration of justice. **State v. Mims**, 329 So.2d 686, 688 (La. 1976); LSA-C.Cr.P. art. 17. The imposition of such a remedy will not be overturned absent a showing of

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<sup>2</sup> If the notice of intent to seek writs and/or a motion and order requesting a return date was filed with the trial court within 30 days of the ruling at issue, this court has interpreted a return date set outside the 30-day period as an implicit extension of the return date by the trial court. See **Barnard v. Barnard**, 96-0859 (La. 6/24/96), 675 So.2d 734.

abuse of discretion. See **State v. Gutweiler**, 06-2596, p. 21 (La. 4/8/08), 979 So.2d 469, 483.

Although the State did not file a timely motion for appeal, it did file a timely notice of intent to seek supervisory writs with the trial court. At that time, the trial court set a return date of February 9, 2011. Therefore, when the State filed its motion to reconsider with the trial court on January 18, 2011, the State still had the opportunity to seek review before this court. The trial court's decision to reconsider its ruling on defendant's first motion to quash in light of two actions taken by this court served to promote judicial efficiency and the orderly administration of justice. Thus, we find no abuse of discretion in the trial court's granting of the State's motion to reconsider.

This assignment of error lacks merit.

For the foregoing reasons, defendant's conviction and sentence are affirmed.

**CONVICTION AND SENTENCE AFFIRMED.**