

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1688

STATE OF LOUISIANA

VERSUS

JESSIE MOORE

*PAK
JLW*

Judgment Rendered: MAY - 2 2012

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 03-09-0161

Honorable Donald R. Johnson, Judge Presiding

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

2011
Pettigrew, J. Concurs

McCLENDON, J.

The defendant, Jessie Moore, was charged by amended bill of information with one count attempted second degree murder, a violation of LSA-R.S. 14:30.1 and 14:27, and one count of armed robbery, a violation of LSA-R.S. 14:64. Following a two-day bench trial, the defendant was convicted as charged. The state subsequently instituted a habitual offender proceeding, alleging the defendant is a third-felony offender. The defendant was adjudicated a third-felony habitual offender and was given a single sentence of life imprisonment, with the Department of Public Safety and Corrections, without benefit of parole, probation, or suspension of sentence. The trial court ordered the sentence to run consecutively with any other sentences.

The defendant now appeals, urging the following two counseled assignments of error: (1) the record does not reflect a valid waiver of the right to a jury trial; and (2) the trial court failed to specify which conviction was being enhanced during sentencing. The defendant also filed a pro se brief, which appears to raise several not-well-defined complaints. In his pro se brief, the defendant contends his predicate felony convictions are subject to the ten-year cleansing period provided in LSA-R.S. 15:529.1(C); there was insufficient evidence to support his convictions; and he makes several vague complaints concerning pretrial proceedings.¹ For the following reasons, we vacate the sentence and remand the matter for resentencing.

DISCUSSION

Our review of the record reveals the habitual offender bill of information lists both of the defendant's current convictions. Upon adjudicating the defendant a third-felony habitual offender, the trial court imposed only one enhanced sentence. We agree with the defense's claim that the trial court failed to note what conviction was being enhanced by the sentence. At the sentencing hearing, neither the trial court nor the prosecutor identified which count was

¹ The pro se brief also echoes the counseled assignment of error claiming improper waiver of his right to trial by jury.

being enhanced. Therefore, we can only conclude that the single sentence imposed was intended to enhance both convictions.²

The defendant's convictions on one count of attempted second degree murder and one count of armed robbery, however, require the imposition of two separate sentences. A sentencing error occurs when a trial court, in sentencing for multiple counts, does not impose a separate sentence for each count. See State v. Russland Enterprises, Inc., 542 So.2d 154, 155 (La.App. 1 Cir. 1989). In the instant matter, the trial court's failure to impose a separate sentence for each of the two convictions was a sentencing error. See State v. Soco, 94-1099 (La.App. 1 Cir. 6/23/95), 657 So.2d 603.

It is well settled that a defendant can appeal from a final judgment of conviction only where a sentence has been imposed. See LSA-C.Cr.P. art. 912(C)(1); **State v. Chapman**, 471 So.2d 716 (La. 1985) (per curiam). In the absence of valid sentences, the defendant's appeal is not properly before this court. **Russland Enterprises, Inc.**, 542 So.2d at 155. Therefore, we do not consider the assignments of error as they are not properly before us. Accordingly, the single sentence imposed by the trial court is vacated, and the matter is remanded to the trial court for resentencing and with instructions that the trial court shall impose a separate sentence for each conviction. We further order the trial court to specifically provide in the sentence or sentences, if both are being enhanced, that the sentence is being enhanced pursuant to the defendant's adjudication as a third-felony habitual offender. See State v. Shaw, 06-2467 (La. 11/27/07), 969 So.2d 1233, 1245. After resentencing, the defendant may perfect a new appeal.

SENTENCE VACATED; MATTER REMANDED.

² We assume the state intended to enhance both convictions, as both were listed in the habitual offender bill of information pursuant to LSA-R.S. 15:529.1.