

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

NO. 02-KA-655

VERSUS

**COURT OF APPEAL;
FIFTH CIRCUIT**

FIFTH CIRCUIT

PHILIP L. COLLINS

NOV 13 2002

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 99-2224, DIVISION "H"
HONORABLE KERNAN A. HAND, JUDGE

NOVEMBER 13, 2002

**THOMAS F. DALEY
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr.,
Sol Gothard, and Thomas F. Daley

PAUL D. CONNICK, JR.,
DISTRICT ATTORNEY
THOMAS J. BUTLER,
TERRY M. BOUDREAUX,
FRANK A. BRINDISI,
NANCY A. MILLER,
ASSISTANT DISTRICT ATTORNEYS
24th Judicial District
Parish of Jefferson
Courthouse Annex
Gretna, Louisiana 70053
ATTORNEYS FOR PLAINTIFF/APPELLEE

HOLLI HERRLE-CASTILLO
Post Office Box 2333
Marrero, Louisiana 70073
ATTORNEY FOR DEFENDANT/APPELLANT

**AFFIRMED;
REMANDED WITH INSTRUCTIONS**

T.D.
—
EAD
MJ

Defendant Philip L. Collins appeals his sentence, as a second felony offender, for aggravated battery. Collins received a 20 year sentence after stipulating to the allegations in the multiple bill. For the following reasons, we affirm. We remand the case with instructions for the trial judge to properly notify the defendant of the provisions of LSA-C.Cr.P. art. 930.8 and to correct a minute entry as noted below.

PROCEDURAL HISTORY AND FACTS

The Jefferson Parish District Attorney filed a Bill of Information charging the defendant, Philip Collins, with attempted second degree murder, a violation of LSA-R.S. 14:27:30.1. The defendant pled not guilty at arraignment. After waiving his rights to a jury trial, a bench trial was held on March 14, 2000. The trial judge found defendant guilty of the responsive verdict of aggravated battery.

On April 20, 2000, the trial judge sentenced the defendant to ten (10) years of imprisonment at hard labor. That day, the State filed a Bill of Information alleging defendant to be a second felony offender, and, after being advised of his rights as a multiple offender, the defendant stipulated to the allegations therein. The judge imposed an enhanced sentence of twenty (20) years at hard labor to be served concurrently with a sentence of two (2) years at hard labor in another case. The defendant moved for reconsideration of his sentence, which the court denied, and for an appeal, which the trial judge granted.¹

On January 20, 1999, at approximately 9:00 or 9:30 in the evening, the defendant was arrested after repeatedly beating Taneshia Buchanan, defendant's wife, outside of 435 Fourth Street in Gretna where she resided with her brother and his wife. At trial, Taneshia testified that she had just walked outside when she heard rustling in the bushes. Immediately thereafter, Taneshia heard the defendant say, "B____, you're not going to do this here," and felt a blow to the back of her head. As she stumbled to the ground, Taneshia saw a pipe in the defendant's hands. Taneshia testified that the defendant repeatedly struck her with the pipe, and said, "B____, I'm going to kill you . . . if I can't have you, nobody else can."

Meanwhile, Taneshia's brother, Dewit Buchanan, and his wife Sheila, heard screaming outside. Dewit testified that he thought the noise was the neighbor's music, so he did not immediately believe anything was amiss. Sheila, however, was concerned and looked out of the window, and saw the defendant beating Taneshia with a pipe. Dewit then opened the door and came outside, at which point, the defendant fled with the pipe. Dewit testified that he chased the defendant, who dropped the pipe during the pursuit. Dewit said that he was very angry because

¹It is noted that defendant filed a pro se motion for an out-of-time appeal. The court ruled that the motion was moot, since defense counsel had already moved for an oral appeal at sentencing.

defendant had hurt Taneshia. After defendant dropped the pipe, Dewit picked it up and continued hunting for the defendant. Shelia told Dewit she had seen the defendant crawl underneath a raised house. However, before Dewit could reach the defendant, the police tackled Dewit, who was issued a misdemeanor summons for interfering with a police investigation.

Officers Zemlick and Bealer of the Gretna Police Department responded to the scene. Officer Zemlick testified that initially defendant refused to abandon his hiding place, but was persuaded to come out with the assistance of the K-9 police dog.

Officer Bealer found Taneshia lying against the fence in a vacant lot next to 435 Fourth Street. According to Officer Bealer, she had what appeared to be a laceration to her head, blood on her clothing, blood on her face and on her head. Officer Bealer said that Taneshia was conscious, and was hysterical. Officer Bealer called for the paramedics, and Taneshia was taken to the hospital. According to the medical records, Taneshia was diagnosed with a fracture to her wrist and contusions on her head and shoulder. Additionally, she received stitches in her head.

At trial, Taneshia admitted she had written a notarized letter to the defendant's attorney in which she expressed a desire to drop the charges. However, she explained that the letter was prompted by advice from someone in an attorney's office in Minnesota who represented the defendant in an automobile accident. Taneshia acknowledged that she was told she would have to drop the charges in order to obtain any money from the lawsuit.

The defendant did not testify at trial, but introduced five exhibits, including the letter, the police report, drawings made by the witnesses at trial, and Taneshia's medical records.

After closing arguments, the trial judge found defendant guilty of aggravated battery because the judge believed defendant lacked the specific intent to kill Taneshia.

ASSIGNMENT OF ERROR NUMBER ONE

The defendant contends that his twenty (20) year sentence as a second felony offender is excessive.

Defendant is precluded from challenging the enhanced sentence as excessive, since it was imposed pursuant to defendant's stipulation to the multiple offender Bill of Information. The record reflects that defendant signed a Waiver of Rights form in which he admitted that he was a second felony offender in exchange for a sentence of twenty (20) years at hard labor to run concurrently with a sentence in another case.

The record further reflects that the trial judge informed defendant of the sentencing range for a second felony offender when he advised the defendant of his rights during the multiple bill proceedings. The trial judge specifically told defendant that his sentence would be twenty (20) years at hard labor, which would run concurrently with the other case. After defendant indicated that he understood the legal consequences of stipulating to the multiple bill, the trial judge accepted defendant's stipulation, and sentenced the defendant in conformity with the plea agreement.

According to LSA-C.Cr.P. art. 881.2(A)(2), a "defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea." In State v. Young, 96-195 (La. 10/15/96), 680 So.2d 1171, the Louisiana Supreme Court held that LSA-C.Cr.P. art. 881.2(A)(2) encompassed plea agreements involving sentencing caps, as well as specific sentences.

This Court has held that a defendant's multiple offender sentence, imposed pursuant to a sentencing agreement made in exchange for a stipulation to a multiple offender bill, is not reviewable under LSA-C.Cr.P. art. 881.2(A)(2), in State v. Stanley, 98-920 (La. App. 5 Cir. 2/10/99), 729 So.2d 33, 37, writ denied, 99-614 (La. 6/25/99), 745 So.2d 1186. See also, State v. Charles, 00-664 (La. App. 1 Cir. 12/22/00), 775 So.2d 667, 670, writ denied, 01-1067 (La. 1/4/02), 805 So.2d 1186. Based on the foregoing, the defendant is precluded from challenging his sentence as excessive, since it was imposed in conformity with defendant's stipulation to the multiple offender bill.

ERROR PATENT DISCUSSION

The record was reviewed for errors patent, according to LSA-C.Cr.P. art. 920; State v. Oliveaux, 312 So.2d 337 (La. 1975); State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990). The record reflects that the trial court failed to completely advise defendant of the prescriptive period for filing post-conviction relief as required by LSA-C.Cr.P. art. 930.8(C). The minute entry indicates that the defendant was accurately informed. However, the transcript is inconsistent with the minute entry, which indicates that the trial court informed defendant he had two years to file for post-conviction relief.

Generally, when there is a discrepancy between the minutes and the transcript, the transcript prevails. State v. Lynch, 441 So.2d 732, 734 (La. 1983). Accordingly, we remand the matter to allow the trial judge to accurately inform the defendant of the prescriptive period by sending written notice to him within ten (10) days of the rendition of this opinion and to file written proof in the record that defendant received such notice. State v. Kinsel, 00-1610 (La. App. 5 Cir. 3/28/01), 783 So.2d 532, writ denied, 01-1230 (La. 3/28/02), 812 So.2d 641.

There is an additional discrepancy between a minute entry and the transcript. Although the transcript, and the rest of the record, reflects that the defendant was tried for attempted second degree murder, the trial minute entry reflects that the defendant was on trial for *second degree murder*. To alleviate the possibility of any confusion, we order the trial court to correct the minute entry on remand.

Accordingly, the defendant's sentence is affirmed, and the case remanded with instructions for the trial court to take the corrective actions in the instances noted above.

**AFFIRMED;
REMANDED WITH INSTRUCTIONS**



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. MCMANUS
WALTER J. ROTHSCHILD
JUDGES

Court of Appeal

FIFTH CIRCUIT
STATE OF LOUISIANA

101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054

PETER J. FITZGERALD, JR.
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GENEVIEVE L. VERRETTE
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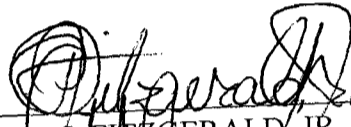
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JERROLD B. PETERSON
DIRECTOR OF CENTRAL STAFF

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

CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY NOVEMBER 13, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:


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Mr. Terry M. Boudreaux
Assistant District Attorney
Fifth Floor - Annex Bldg.
New Gretna Courthouse
Gretna, Louisiana 70053

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