

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2004 KA 2665

STATE OF LOUISIANA

VS.

WILLIAM THOMAS CORBITT

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JUDGMENT RENDERED: JUNE 10, 2005

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ON APPEAL FROM THE  
THIRTY-SECOND JUDICIAL DISTRICT COURT  
NUMBER 422,418  
PARISH OF TERREBONNE, STATE OF LOUISIANA  
HONORABLE RANDALL BETHANCOURT, JUDGE

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HOUMA, LA.

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STATE OF LOUISIANA

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WILLIAM THOMAS CORBITT

BEFORE: CARTER, C.J., PETTIGREW AND MCDONALD, JJ.

MCDONALD, J.

The defendant, William Thomas Corbitt, was charged by amended bill of information # 422,418 with operating a vehicle while intoxicated (DWI), fifth offense (instant offense), a violation of La. R.S. 14:98, and pled guilty. Predicate # 1 was set forth as the defendant's January 21, 2004 conviction, under Thirty-Second Judicial District Court docket # 415,022, of DWI on April 26, 2003. Predicate # 2 was set forth as the defendant's June 17, 2004 guilty plea, under Thirty-Second Judicial District Court docket # 415,023, to DWI on May 24, 2003. Predicate # 3 was set forth as the defendant's November 8, 2002 guilty plea, under City Court of Houma docket # 02-6431-01-02 to DWI, on September 30, 2002. Predicate # 4 was set forth as the defendant's June 23, 2004 conviction, under Thirty-Second Judicial District Court docket # 423,403, of DWI on December 26, 2003.<sup>1</sup> For the instant offense, the defendant was sentenced to ten years at hard labor without benefit of probation, parole, or suspension of sentence and a \$5,000 fine; this sentence to run consecutively to the sentences imposed under docket numbers 423,403, and 415,023. He moved for reconsideration of sentence, but the motion was denied. He now appeals, designating one assignment of error. We affirm the conviction, amend the sentence, and affirm the sentence as amended.

### FACTS

The State did not set forth a factual basis for the instant offense. The amended bill of information charged the defendant committed the offense on October 18, 2003.

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<sup>1</sup> We address the defendant's appeal from this conviction in 2004 KA 2663, also rendered this date.

## ILLEGAL SENTENCE

On appeal, the defendant contends the sentence imposed was illegal. He argues he should have been sentenced under La. R.S. 14:98 E(1)(a), rather than La. R.S. 14:98 E(4)(a), because he had not received substance abuse evaluation, treatment for substance abuse at an inpatient facility, or the benefits of home incarceration prior to his sentencing for the instant offense. For the reasons enumerated in **State v. Corbitt**, 2004-2663 (La. App. 1<sup>st</sup> Cir. 6/10/05), \_\_\_So.2d\_\_\_ also decided this date, we find that this assignment of error has no merit.

## PATENT ERROR

The defendant was sentenced to ten years at hard labor without benefit of probation, parole, or suspension of sentence and a \$5,000 fine; this sentence to run consecutively to the sentences imposed under docket numbers 423,403, and 415,023. The applicable sentencing provision, La. R.S. 14:98 E(4)(a), however, does not authorize imposition of a fine.

Correction of this defect in sentencing does not involve exercise of the sentencing judge's discretion and this Court is authorized to correct the sentence by amendment rather than by remand of the case for resentencing. See La. Code Crim. P. art. 882 A.; **State v. Miller**, 96-2040, p. 3, (La. App. 1<sup>st</sup> Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459. Accordingly, the sentence imposed in this case hereby is amended to delete the fine of \$5,000.

**CONVICTION AFFIRMED; SENTENCE AFFIRMED AS AMENDED.**