

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2014 KA 0162

STATE OF LOUISIANA

VERSUS

JAMAAL REINE

Judgment Rendered: SEP 19 2014

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On Appeal from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 511014-1, Division A

The Honorable Raymond S. Childress, Judge Presiding

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Walter P. Reed
District Attorney
Covington, Louisiana

and

Kathryn W. Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Prentice L. White
Louisiana Appellate Project
Baton Rouge, Louisiana

and

Frank Sloan
Mandeville, Louisiana

Attorneys for Plaintiff/Appellee
State of Louisiana

Attorneys for Defendant/Appellant
Jamaal Reine

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

Guidry, Theriot and Drake

DRAKE, J.

The defendant, Jamaal Reine, was charged by bill of information on counts one and two with armed robbery, violations of La. R.S. 14:64.¹ The defendant originally pled not guilty, but subsequently withdrew his former pleas and pled guilty as charged on counts one and two. The defendant was sentenced to fifteen years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on each count, to be served concurrently. The trial court denied the defendant's motion to reconsider sentence. The defendant filed a writ of supervisory review with this court following the trial court's denial of his application for postconviction relief. In granting the defendant's writ application in part and denying it in part, this Court reversed the trial court's ruling, vacated the sentences, and remanded for resentencing with the defendant's retained or chosen counsel.² *State v. Reine*, 13-0921 (La. App. 1 Cir. 9/20/13) (unpublished). On remand, the defendant was resentenced to fifteen years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on each count, to be served concurrently. The trial court denied the defendant's motion to reconsider judgment. The defendant now appeals, again arguing that the trial court erroneously sentenced him under La. R.S. 14:64.3 when he was not charged under that offense in the bill of information. For the following reasons, we affirm the convictions and sentences.

¹ The defendant was also charged on count three with aggravated flight from an officer, a violation of La. R.S. 14:108.1. Count three was nol-prossed on the date of the guilty plea on counts one and two.

² This court noted that the trial court appointed an attorney to represent the defendant at the sentencing hearing as his retained attorney was not present. This court further noted that the defendant did not request or expressly consent to the change in counsel and ruled that the circumstances constituted an erroneous deprivation of the defendant's right to counsel of choice. This court found no merit in the defendant's claim that he erroneously pled guilty and was sentenced under La. R.S. 14:64.3 because the trial court alluded to a five-year enhancement to explain the fifteen-year sentences. We specifically noted that the sentences do not reflect a five-year enhancement under La. R.S. 14:64.3, to be served consecutively with his sentences under La. R.S. 14:64, but advised the trial court to clarify its explanation for the sentences on remand.

ASSIGNMENT OF ERROR³

In the sole assignment of error, the defendant argues that the trial court erred in imposing the sentences (originally and on remand) based on the fact that a firearm was used during the commission of the armed robberies. The defendant specifically contends that he was penalized with an additional five years for each count although the statute which authorizes the imposition of the five-year enhancement was not included in the bill of information.

At the outset, we note that the defendant did not orally object to the sentencing at the time of the original imposition or resentencing. Moreover, his written motion to reconsider sentence after the original sentencing and motion to reconsider judgment after the resentencing do not include any specific grounds. Louisiana Code of Criminal Procedure article 881.1(A)(1) provides that “[i]n felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence.” Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the State or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. La. C.Cr.P. art. 881.1(E); *State v. Duncan*, 94-1563 (La. App. 1 Cir. 12/15/95), 667 So. 2d 1141, 1143 (en banc per curiam).

In *State v. Jones*, 97-2521 (La. App. 1 Cir. 9/25/98), 720 So. 2d 52, 53, this court held that a defendant who made a general oral motion to reconsider his armed robbery sentence at sentencing and later timely filed a written motion to reconsider sentence, urging in the written motion only that he had been convicted

³ At the time of the guilty pleas in this case, the defense counsel stipulated to a factual basis, however, the facts were not set forth in the record. In any event, the facts of the offenses are not relevant to the instant appeal.

of the offense and sentenced to thirty years imprisonment at hard labor, was precluded appellate review of his assignment of error alleging an excessive sentence. It is well settled that a contemporaneous objection to a sentence on excessiveness grounds alone preserves a bare claim of excessiveness (see *State v. Caldwell*, 620 So. 2d 859 (La. 1993); *State v. Mims*, 619 So. 2d 1059 (La. 1993) (per curiam)). In light of *Caldwell* and *Mims*, the clear and unequivocal wording of La. C.Cr.P. art. 881.1(E), and this Court's holding in *Jones*, we find that a general objection to a sentence preserves nothing for appellate review. See *State v. Bickham*, 98-1839 (La. App. 1 Cir. 6/25/99), 739 So. 2d 887, 891.

Thus, the defendant's failure to urge any specific ground for reconsideration of the sentences by oral or written motion at the trial court level precludes our review of the issue raised on appeal. This assignment of error lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.

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GUIDRY, J., dissents and assigns reasons.

 **GUIDRY, J., dissenting.**

I respectfully disagree with majority's decision, affirming the defendant's sentence. The majority concludes that this court is precluded from reviewing the defendant's sentence because he failed to urge any specific ground for reconsideration of the sentence by oral or written motion at the trial court level. However, our review for error in this case is pursuant to La. C.Cr.P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence." La. C.Cr.P. art. 920(2).

The sentence imposed on remand is illegal. The defendant's two guilty pleas to two counts required the imposition of two separate sentences. The minutes indicate that the trial court imposed a sentence on both counts on remand. However, rather than resentencing the defendant on each count, the trial court imposed one sentence. When there is a discrepancy between the minutes and the transcript, the transcript prevails. State v. Lynch, 441 So. 2d 732, 734 (La. 1983). A defendant can appeal from a final judgment of conviction only where a sentence has been imposed. La. C.Cr.P. art. 912(C)(1). Error under La. C.Cr.P. art. 920(2)

occurs when a trial court, in sentencing on more than one count, does not impose a separate sentence for each count. In the absence of valid sentences, the defendant's appeal is not properly before this court. See State v. Soco, 94-1099 (La. App. 1st Cir. 6/23/95), 657 So. 2d 603. As such, the sentence imposed by the trial court should be vacated, and this matter should be remanded to the trial court for resentencing on each count.

Therefore, I respectfully dissent.