

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-0363**
VERSUS * **COURT OF APPEAL**
GREGORY TAYLOR * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 403-443, SECTION "C"
Honorable Sharon K. Hunter, Judge

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Judge Terri F. Love

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(Court composed of Chief Judge William H. Byrnes III, Judge Michael E. Kirby, Judge Terri F. Love)

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**CONVICTION AFFIRMED, SENTENCE VACATED AND
REMANDED TO TRIAL COURT**

STATEMENT OF THE CASE

Gregory Taylor was charged by bill of information on December 4, 1998, with burglary of an inhabited dwelling, a violation of La. R.S. 14:62.2. At his arraignment on December 9th he pleaded not guilty. Probable cause was found and the motions to suppress the evidence and statement were denied on March 2, 1999. A mistrial occurred on March 8th. However, on April 1st a twelve-member jury found him guilty as charged. After a multiple bill hearing, he was sentenced on July 8th to serve thirty years at

hard labor as a fourth felony offender under La. R.S. 15:529.1. The defendant's motion to reconsider the sentence was denied and his motion for an appeal was granted.

Taylor now makes three assignments of error concerning his sentence. He maintains that he should not have been adjudicated a habitual offender because (1) no multiple bill was filed into the record and (2) his Boykin rights were not enunciated in a prior conviction; he also argues (3) his thirty year sentence is excessive.

STATEMENT OF THE FACTS

Detective Herman Cade testified at trial that when he investigated a burglary of an inhabited dwelling on September 26, 1998, he found the suspect, Gregory Taylor, already in custody. Detective Cade gave Taylor his Miranda rights, and Taylor told the officer that he had committed the burglary because he was on crack cocaine. However, Taylor refused to make a written statement. In his testimony the detective referred to pictures of the dwelling at 4320 North Claiborne Avenue where the air conditioner had been pulled from the window, and the rooms were ransacked.

Mr. and Mrs. Burton both testified about the burglary of their home at 4320 North Claiborne Avenue. Delores Burton said that she left home about 3:30 p.m. to go to the grocery store. When she returned, she found

everything “scattered.” She did not see any one in the place; however, her husband, Carl, who was walking ahead of her, saw the defendant in the bedroom. When Taylor saw Mr. Burton, he jumped out the window. Mr. Burton ran out of the house, got into his car, and began following the defendant. Shortly thereafter, Mr. Burton saw a police officer and told him what had occurred. With the officer’s help, Mr. Burton was able to detain Taylor in the 1300 block of Japonica Street. Mrs. Burton’s jewelry was found in Taylor’s pockets. Both Mr. and Mrs. Burton testified that they had not given Taylor permission to enter their house.

ASSIGNMENT OF ERROR

In his first assignment, Taylor points out that no multiple bill was filed into the record. Our examination of the record reveals no reference to the filing of the bill. There is no minute entry stating that the bill was filed, and at the multiple bill hearing, there was no mention of the bill.

On August 21, 2000, the State filed a motion to supplement the record with the multiple bill of information and a certified copy of the plea form dated March 12, 1990. The State argued that a copy of the plea form had been admitted at the multiple bill hearing and cited a page in the transcript to support the argument. However, other than the bare statement that the multiple bill of information had been filed, the State offered no evidence

from the record indicating that the multiple bill was filed.

The defendant has filed an opposition to the State's motion, arguing that the documents were not filed in the trial court, and now the State is attempting to rebut defense arguments by introducing them.

In several cases this Court has held that a defendant's adjudication and sentence as a habitual offender was invalid when the multiple bill was oral rather than written. In those cases the multiple offender sentence was vacated and the case remanded. State v. Sutton, 544 So. 2d 1345 (La. App. 4 Cir. 1989); State v. Riggins, 508 So. 2d 918 (La. App. 4 Cir. 1987); State v. Scott, 499 So. 2d 1248 (La. App. 4 Cir. 1986). In Sutton, the State filed a written multiple bill a week after the adjudication on the oral bill, and this Court held that because the defendant was not properly charged, his sentence was invalid.

In State v. Uqdah, 613 So. 2d 1113, 1114, (La. App. 5 Cir. 1993), the Fifth Circuit considered a case similar to the case at bar and stated:

The record does not contain a bill of information charging the defendant as a multiple offender. A habitual offender bill of information does not charge a new crime but is only a method of increasing the punishment of second and subsequent felony offenses. State v. Walker, 416 So.2d 534, 536 (La.1982). **In order to sentence defendant as a multiple offender under the Habitual Offender Law, it is essential that former convictions be formally charged.** State v. Hingle, 139 So.2d 205 (La.1962); State v.

Donahue, 572 So.2d 255 (1st Cir.1990). **Since there is no multiple offender bill of information, the prior conviction cannot be used to enhance the sentence for the present conviction.**

Because the sentence imposed of eight and one-half years is greater than the maximum sentence allowable for a first time offender, we must vacate his sentence and remand to the trial court for resentencing. [Emphasis added].

Similarly, in the case at bar, because there was no multiple bill of information filed in this matter, the defendant's sentence as a fourth felony offender is invalid.

The State's offer to remedy the matter by supplementing the record is no cure for this fatal defect. There is no evidence the defendant was formally charged as required by La. R.S. 15:529.1 and the jurisprudence; yet he has been adjudicated and sentenced as a fourth offender. In State v. Sutton, 544 So. 2d 1345, 1346 (La. App. 4 Cir. 1989), where this Court would not allow the record supplemented by a written multiple bill after the defendant had been sentenced according to an oral bill, the Court stated:

As the defendant was not properly charged as a multiple offender, his adjudication and sentence as a multiple offender is invalid and must be vacated.

The State's motion to supplement the record is denied. Furthermore, the defendant's thirty year sentence cannot be upheld. The statute governing burglary of an inhabited dwelling, La. R.S. 14:62.2, provides for a maximum

sentence of twelve years.

Accordingly, we find defendant's other assignments of error are moot.

DECREE

For reasons stated above, the defendant's conviction is affirmed. His sentence is vacated and the matter is remanded to the trial court for further proceedings.

**CONVICTION AFFIRMED, SENTENCE VACATED AND
REMANDED TO TRIAL COURT**