

STATE OF LOUISIANA

*

NO. 2000-KA-2239

VERSUS

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COURT OF APPEAL

CHARLES E. WILLIAMS

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 244-080, SECTION "G"
Honorable Julian A. Parker, Judge

Judge Patricia Rivet Murray

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge David S. Gorbaty)

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**JUDGMENTS REVERSED; RESENTENCING VACATED;
ORIGINAL SENTENCE REINSTATED;
REMANDED FOR TRIAL COURT ACTION**

The State of Louisiana appeals the trial court's recent judgment vacating a life sentence imposed in 1974 and resentencing Charles E. Williams to serve twenty-five years at hard labor, with credit for time served. We reverse for the reasons that follow.

In July 1974, Mr. Williams was charged by bill of information with distribution of heroin, a violation of La. R.S. 40:966, on March 11, 1974. He was found guilty as charged by a 12-member jury, and was subsequently sentenced by the court on October 10, 1974. Although the sentencing transcript is not available, the original handwritten minute entry reads as follows:

The defendant appeared at the bar of the Court attended by his counsel Maurice Hattier, O.I.D.P. for sentence. The court sentenced the defendant to imprisonment at hard labor in the custody of the Director of the Department of Corrections for the remainder of his natural life with credit for time served from July 16, 1974. The defendant was said to be 25 years of age born on January 12, 1949 in the State of Louisiana. The defendant through his counsel filed an oral motion for Appeal.

Mr. Williams' conviction was affirmed on appeal. *State v. Williams*, 347 So.2d 184 (La. 1977).

On March 23, 2000, Mr. Williams filed a motion to correct an illegal sentence, asserting that his original sentence was illegal because "the [sentencing] court failed to consider available options under the law and state reasons for imposing the maximum sentence." After contradictory hearing, the trial court granted the motion by written judgment and reasons rendered on May 26, 2000. As previously noted, the original sentence was vacated and Mr. Williams was resentenced on June 9, 2000 to a twenty-five year term of imprisonment with credit for time served. The State's motion for reconsideration was denied, and this appeal followed.

In its first assignment of error, the State maintains that although a life sentence for distribution of heroin was not mandatory in 1974, it was expressly authorized by La. R.S. 40:966 B(1) prior to its amendment in 1977. Therefore, the trial court erred in resentencing Mr. Williams pursuant to a motion to correct an illegal sentence. The defendant counters that the sentence was illegally imposed under error of law because, as demonstrated in *State v. Hopkins*, 367 So.2d 346 (La. 1979), and *State v. Battaglia*, 377 So.2d 264, 265 (La. 1979), the sentencing judge appeared to be "unaware that it was within his discretion to suspend the sentence[]."

However, unlike the cases cited by Mr. Williams or relied upon by the trial court, there is no evidence in this record that the sentencing judge, the late Frank J. Shea, either imposed the life sentence reluctantly or was unaware of the discretion afforded under the statute. Therefore, because a life sentence was authorized under the statute and is not constitutionally excessive *per se*, *State v. Whitehurst*, 319 So.2d 907 (La. 1975), the trial court erred in finding that an illegal sentence had been imposed in this case.

The State next contends that because Criminal Procedure article 894.1 was not enacted until 1977, it was error for the trial court to find Mr. Williams' sentence invalid based upon the sentencing court's failure to "state for the record the considerations taken into account" in imposing a life term. The defendant responds, however, that the trial court correctly vacated the original sentence under *State v. Terriault*, 369 So.2d 125 (La. 1979), where the matter was remanded for reasons for sentencing even though the original sentencing pre-dated the enactment of Article 894.1.

As the State notes, our Supreme Court has held that Article 894.1 is not applicable to a case in which the sentence was imposed prior to its enactment. *State v. Welch*, 368 So.2d 965, 971 (La. 1979). Mr. Williams' reliance upon *Terriault* for the contrary view is misplaced. In that case, the Supreme Court remanded for the trial court to articulate its reasons for

sentencing only because the defendant's claim of an excessive sentence was pending on direct appeal at the time Article 894.1 was enacted. In the instant case, however, because Mr. Williams failed to challenge his sentence in his appeal, there was no need to supplement the record with the factors considered by the sentencing court. Therefore, the sentencing court's failure to articulate the factors considered in sentencing Mr. Williams did not render that sentence illegal or invalid.

In the final assignment of error, the State asserts that because Mr. Williams was legally sentenced to life at hard labor, there is no procedural basis for the trial court to amend or modify that sentence at this point in time. We agree.

At the time Mr. Williams was convicted, the trial court had the discretion to amend a legal sentence, but only if the court acted "prior to the beginning of execution of the sentence." La. Code Crim. Proc. art. 881 A. While this Article was subsequently amended to allow later sentence reductions, this authority was expressly limited to misdemeanor cases and terms of imprisonment without hard labor. La. Code Crim. Proc. art. 881 B, as amended by 1987 La. Acts. No. 59. Therefore, the trial court's action in the instant case did not comport with this provision. *State v. Neville*, 95-0547, pp. 3-4 (La. App. 4th Cir. 5/16/95), 655 So.2d 785, 787.

Similarly, while a trial court may review a legal sentence under Criminal Procedure article 881.1, it can do so only if a timely motion to reconsider has been filed. In this case the original sentence, which was legal, was imposed in 1974, and Article 881.1 did not exist at that time. Thus, because Mr. Williams could not have filed a timely motion to reconsider, this provision does not authorize any modification of his sentence.

In summary, the original sentence imposed on Mr. Williams in 1974 was legal in all respects, and there is no authority in the law for a reduction of that sentence at the present time. Therefore, the trial court erred by vacating the life sentence and resentencing Mr. Williams to a lesser term of imprisonment. Accordingly, the judgments granting the motion to correct an illegal sentence and resentencing Mr. Williams to twenty-five years are vacated, and the original sentence of life imprisonment at hard labor is reinstated. The matter is remanded to the trial court for the actions necessary to effectuate this judgment.

**JUDGMENTS REVERSED; RESENTENCING VACATED;
ORIGINAL SENTENCE REINSTATED;
REMANDED FOR TRIAL COURT ACTION**