

STATE OF LOUISIANA

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NO. 2001-KA-0777

VERSUS

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COURT OF APPEAL

BRIAN L. JOHNSON

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 418-080, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge
Max N. Tobias, Jr.)

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On November 16, 2000, Brian L. Johnson was charged by bill of information with simple burglary in violation of La. R.S. 14:62. He entered a plea of not guilty at arraignment on November 21, 2000. However, after trial on December 5, 2000, a six-member jury found him guilty as charged. He was sentenced on February 5, 2001, to serve three years at hard labor under La. R.S. 15:574.5, the About Face Program in Orleans Parish Prison. The trial court deferred a ruling on the motion to reconsider the sentence.

For the reason indicated below, a recitation of the facts of the offense is not necessary.

We note that the trial court did not rule on the motion to reconsider the sentence but stated that the ruling was deferred. No provision of law authorizes a trial court to defer ruling on a defendant's motion to reconsider sentence. In State v. Temple, 2000-2183, p. 12 (La.App. 4 Cir. 5/16/01), 2001 WL 670129, we stated:

If the trial court granted an indefinite period within which to file a motion to reconsider the sentence, until the motion is filed *and acted upon*, a defendant would be precluded from appealing his conviction and sentence because a conviction without a final sentence is a non-appealable judgment. (Italics added.)

Moreover, in cases where the defendant has argued that his sentence

was excessive, this court has held that it is not procedurally correct to review a sentence prior to the trial court's ruling on the motion. State v. Allen, 99-2579 (La. App. 4 Cir. 1/24/01), 781 So. 2d 88; State v. Boyd, 00-0274 (La. App. 4 Cir. 7/19/00), 775 So. 2d 463.

In this case the defendant did not object to the deferred ruling by the trial court and does not seek review of his sentence on appeal. However, by deferring the ruling the trial court is able to amend or change a hard labor sentence after the execution of the sentence in violation of La. C.Cr.P. art. 881 (but as apparently authorized by C.Cr.P. art. 881.1(B)). Thus, as the Temple court, *supra*, noted, without a final sentence the conviction is not appealable. Accordingly, the case must be remanded for a ruling on the motion to reconsider the sentence.

For the foregoing reasons, the case is remanded to the trial court for a ruling on the motion to reconsider the sentence, reserving the defendant's right to appeal his conviction and sentence once the court has ruled on the motion.

REMANDED