

STATE OF LOUISIANA

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NO. 2001-KA-0971

VERSUS

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COURT OF APPEAL

EDWARD HARRIS

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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. 394-530, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Steven R. Plotkin, Judge Michael E. Kirby, Judge
Max N. Tobias, Jr.)

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This appeal concerns a resentencing only.

Edward J. Harris was charged with distribution of cocaine in violation of La. R.S. 40:967(A) and possession of a firearm while distributing a controlled dangerous substance, cocaine, in violation of La. R.S. 14:95. After a jury trial, he was convicted on both counts. Harris was adjudicated a second felony offender after a multiple offender hearing on April 2, 1998. He was sentenced on the distribution of cocaine charge to twenty-five years at hard labor and on the possession of firearm charge to ten years at hard labor without benefit of probation, parole or suspension of sentence; the sentences were to be served consecutively. He appealed, and his conviction for distribution of cocaine was affirmed, but his other conviction and the sentences were vacated and the case remanded for resentencing. State v. Harris, 98-2932 (La. App. 4 Cir. 5/3/00), 761 So. 2d 662.

On August 10, 2000, the defendant was sentenced to serve twenty years at hard labor. He was granted an out-of-time appeal on September 29, 2000.

The facts of the case are not at issue here.

Before addressing the defendant's argument, we note an error patent.

The sentence imposed on the distribution of cocaine conviction is illegally lenient. The trial court sentenced defendant to serve twenty years at hard labor but failed to state that the first five years of the sentence was to be served without benefit of parole, probation or suspension of sentence as required by La. R.S. 40:967(B)(4)(b). However, on appeal this Court will not correct errors favorable to a defendant where the issue is not raised by the State. State v. Fraser, 484 So.2d 122 (1986).

In a single assignment of error the defendant complains that the trial court erred when it failed to advise him of post-conviction relief provisions under La. C.Cr.P. art. 930.8. However, this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State ex rel. Glover v. State, 93-2330, 94-2101, 94-2197, p. 21 (La. 9/5/95), 660 So.2d 1189, 1201.

In the interest of judicial economy, we note for defendant that La. C.Cr.P. art. 930.8 generally requires that applications for post-conviction relief be filed within two years of the finality of a conviction.

The sentence is affirmed.

AFFIRMED