

STATE OF LOUISIANA

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NO. 2001-KA-1129

VERSUS

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COURT OF APPEAL

PAUL GILLAN

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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. 418-302, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JAMES F. MCKAY, III
JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge James F. McKay, III, Judge David S. Gorbaty)

HARRY F. CONNICK
DISTRICT ATTORNEY OF ORLEANS PARISH
DONNA R. MUSSELMAN
ASSISTANT DISTRICT ATTORNEY OF ORLEANS PARISH
New Orleans, Louisiana
Attorneys for Plaintiff/Appellee

PAMELA S. MORAN
LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorney for Defendant/Appellant

AFFIRMED

On November 27, 2000, Paul A. Gillan was charged with simple robbery, in violation of La. R.S. 14:65. At arraignment on December 4, 2000, he pleaded not guilty. On January 11, 2001, the bill of information was amended to charge Gillan with purse snatching in violation of La. R.S. 14:65.1, and he pleaded not guilty. When he was tried (on that same day), a six-member jury found him guilty as charged. He was sentenced on March 12th to serve twenty years at hard labor, and the state filed a multiple bill of information charging him as a third felony offender. After a hearing on March 27th at which the state proved the charge and his earlier sentence was vacated, he was sentenced to life imprisonment at hard labor under La. R.S. 15:529.1(A)(1)(b)(ii). His motion to reconsider the sentence was denied, and his motion for an appeal was granted.

At trial Mr. Merwin Klein testified that about 9:30 p.m. on September 25, 2000, he and Alice Plaatje were walking to their hotel on Esplanade Avenue after dinner in the French Quarter. About a block after they crossed Rampart Street, two men jumped them. The men came up behind them. Mr. Klein turned so that he was struggling face-to-face with a man thirty to forty years younger than himself; however, Mr. Klein said he outweighed his

assailant by about seventy-five pounds. They tussled and fought on the ground, and Mr. Klein's pants and shirt were ripped as his wallet was taken. Mr. Klein was able to rip off the man's shirt in the fight. Ms. Plaatje began screaming, and a resident of the area called 911. Ms. Plaatje's purse was taken. Later that same night, Officer Conaghan came to their hotel room to present a photographic lineup, and Mr. Klein recognized the defendant's picture and identified him as the man who took his wallet. Mr. Klein's wallet was found in a garbage can, but all the contents were removed.

Ms. Alice Plaatje testified that as she walked on Esplanade Avenue near Treme Street she was attacked by a man who took her purse and turned and ran. She began to scream. People came out on a balcony, and she asked them to call 911. When the police arrived, they took a description of her attacker and returned with him. After Ms. Plaatje pleaded that she needed medication from the purse, the attacker told the officers where the purse could be found, and they retrieved it. Ms. Plaatje recovered most of her belongings.

Officer Ronnie Voorhies testified that about 9:30 p.m. on September 25, 2000, he and his partner, Officer Sal Battaglia, responded to a call concerning an armed robbery at the intersection of Esplanade Avenue and Marais Street. He learned that one of the men was wearing a white shirt and

jeans, and the other was wearing a white shirt and blue jean shorts. In the 1300 block of Columbus Street the officers saw two men who matched the descriptions of the suspects. When the officers stopped, one of the men began to run. The officers detained one man, but they could not catch the other.

Officer Patrick Conaghan testified that through his investigation he developed a suspect and created a photographic lineup that he showed to both Mr. Klein and Ms. Plaatje. She was unable to recognize anyone, but Mr. Klein selected the defendant's picture and named him as the man who attacked him and took his wallet.

Before addressing the assignment of error, we note an error patent in the sentence. The defendant was sentenced under La. R.S. 15:529.1(A)(1)(b)(ii), which provides for a life sentence without benefit of parole, probation or suspension of sentence. The trial court did not deny the benefits. However, under La. R.S. 15:529.1(G), the sentence is imposed without probation or suspension of sentence. The error as to parole is favorable to the defendant, and an appellate court may not amend or set aside an illegally lenient sentence on its own motion, when the defendant alone has appealed, and the state has not raised the issue. State v. Fraser, 484 So. 2d 122 (La. 1986); State v. Gervais, 546 So. 2d 215 (La. App. 4 Cir. 1989).

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, abrogated in part on other grounds, State ex rel. Olivieri v. State, 2000-0172, 2000-1767 (La. 2/21/2001), 779 So. 2d 735, cert. denied, Olivieri v. Louisiana, ____ U.S. ____, 121 S.Ct. 2566 (2001).

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.

Accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED

