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| **STATE OF LOUISIANA** | * | **NO. 2001-KA-1991** |
| **VERSUS** | * | **COURT OF APPEAL** |
| **LARRY R. PRICE** | * | **FOURTH CIRCUIT** |
| | * | **STATE OF LOUISIANA** |
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 398-639, SECTION "L"
Honorable Terry Alarcon, Judge

* * * * * *

**JOAN BERNARD ARMSTRONG**

**JUDGE**

* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Joan Bernard Armstrong and Judge James F. McKay III)

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**AFFIRMED.**

The defendant, Larry Price, appeals his resentencing to life imprisonment without benefit of parole, probation, or suspension of sentence as a fourth felony offender. We affirm.

After trial on August 31, 1998, the defendant was convicted of possession of cocaine in violation of La. R.S. 40:967(C). On that day the matter was set for a multiple bill hearing. The court initially sentenced Price to serve two years at hard labor on October 30, 1998. At a multiple bill hearing on February 12, 1999, the defendant was found to be a fourth felony offender, and on April 2, 1999, he was sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. He appealed, and, in an unpublished opinion, this Court affirmed his conviction and multiple offender adjudication but found that the original sentence had not been vacated prior to imposition of the life term; his life sentence was vacated and the case remanded for resentencing. State v. Price, 99-1894 (La. App. 4 Cir. 2/9/00), 761 So.2d 822.

The facts as presented in the earlier opinion are as follows:

> Shortly after 10:00 p.m. on May 16, 1998,

> police officers on proactive patrol observed a van being driven toward them on Camp Street. They noticed one of the headlights on the van was not working. The officers turned around, positioned themselves behind the van, and stopped it near the corner of Camp and Upperline Streets. The driver of the van, Larry Price, exited the van and began walking quickly away from the officers. The officers ordered Price to stop, and he returned to the officers. In response to the officers' order, Price placed his hands on the police car while the officers frisked him for weapons. Finding no weapons, the officers asked for his driver's license and the registration and proof of insurance for the van. Price admitted he did not have a current license, had no registration or proof of insurance, and had no home. The officers then decided to arrest Price. When Price moved his hands behind his back to allow them to handcuff him, one officer noticed Price's right fist was clenched. The officer ordered him to open his hand; and when Price did so, the officer saw inside Price's hand a clear plastic bag containing two rocks of what appeared to be crack cocaine. Incident to the arrest, the officers searched Price and also found a glass crack pipe containing residue tucked inside Price's waistband.
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> The parties stipulated that the residue found in the crack pipe and the two rocks found in the plastic bag tested positive for cocaine.

(State v. Price, 99-1894, pp. 1-2).

Through counsel the defendant argues that his mandatory life sentence as a fourth felony offender is excessive, and in a pro se supplement to the brief, the defendant contends that he is being illegally detained because his

sentence on the underlying offense was served before the prosecution as a multiple offender was completed.

This Court considered the excessiveness of sentence argument in his earlier appeal and held that the life sentence was not excessive in this case. This Court found as follows:

> The appellant finally argues that the imposition of a life sentence is excessive in his case. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. State v. Sepulvado, 367 So.2d 762 (La. 1979). A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless and needless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. State v. Lobato, 603 So.2d 739 (La. 1992); State v. Telsee, 425 So.2d 1251 (La. 1983).
>
> The minimum sentences imposed on multiple offenders by the Habitual Offender Law are presumed to be constitutional. State v. Johnson, 97-1906 (La. 3/4/98), 709 So.2d 672. The defendant bears the burden of rebutting the presumption that the mandatory minimum sentence is constitutional. State v. Short, 96-2780 (La. App. 4 Cir. 11/18/98), 725 So.2d 23. [Footnote omitted]. A court may only depart from the minimum sentence if it finds that there is clear and convincing evidence in the particular case before it that would rebut the presumption of constitutionality. State v. Johnson, 97-1906 at p. 7, 709 So.2d at 676.
>
> Here, appellant failed to make this showing. On appeal, he argues that the only convictions he has had for the last ten years have been for simple possession of cocaine. However, he ignores his

> prior convictions for felony theft (of over $60,000) and for attempted simple robbery. In addition, at sentencing the court noted the appellant had **seven prior felony convictions and that the presentence investigation report recommended the appellant be given the maximum sentence**. Given these prior convictions and a criminal career which extends over twenty years, we find the life sentence is not excessive in this case. [Emphasis added].

(State v. Price, 99-1894, pp. 4-5).

There is no merit in this assignment.

In his pro se brief, the defendant contends that he had served the two-year sentence imposed on the possession of cocaine conviction prior to his resentencing on May 23, 2001. He points out that he has been imprisoned since May 16, 1998, when he was arrested. His attorney argued the same point at the resentencing hearing. The defendant cites State v. Deamas, 606 So.2d 567 (La. App. 5 Cir. 1992), for the proposition that an original sentence—not vacated prior to a multiple bill sentence being imposed—remains in effect, and the subsequent multiple bill sentence is null and void. Thus, he maintains that on May 16, 2000, he had served his entire two-year term.

This Court considered an argument similar to the defendant's in State v. Dominick, 94-1368 (La. App. 4 Cir. 4/26/95), 658 So.2d 1, where the defendant, sentenced to two years, had been granted good time release and

placed on parole eleven days before the resentencing as a multiple offender. This Court noted that because the penalty enhancement statute is incidental to the latest conviction, the proceeding to enhance a sentence should be held before an accused has served his sentence. State ex rel. Williams v. Henderson, 289 So.2d 74, 77 (La. 1974). In Dominick as in the instant case, the State filed a multiple bill of information immediately following the conviction. No dilatory action was attributable to the State or the trial court relative to the delay in the filing of the multiple bill, the adjudication, or the sentencing. Nevertheless because he was incarcerated pre-trial, Dominick's parole release date from the two-year sentence was mid-February of 1994, less than two months after the December 28, 1993 sentencing. This Court held that Dominick, though released on parole, was not yet discharged from custody. This Court quoted from State v. Sherry, 482 So.2d 78, 80 (La. App. 4 Cir. 1986): "[T]he expiration of a sentence is the date that the defendant is discharged from supervision; that is the discharge date under the sentence imposed." Since Dominick's date of discharge from supervision was February 6, 1995, he was not discharged under his original sentence before he was resentenced.

Similarly, in the instant case, the defendant’s adjudication as a fourth felony offender occurred long before his two–year sentence was served, and

the habitual offender adjudication was affirmed on February 9, 2000. Furthermore, the defendant was placed on notice immediately after his trial that he would be sentenced under the multiple offender law, and so he could not have expected to be released after two years. This assignment is without merit.

A review of the record for errors patent reveals none.

For the foregoing reasons, the defendant's sentence is affirmed.

**AFFIRMED.**