

**STATE OF LOUISIANA**

\*

**NO. 2002-KA-0067**

**VERSUS**

\*

**COURT OF APPEAL**

**TRAVIS JORDAN**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\*

\*\*\*\*\*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 422-350, SECTION "J"  
Honorable Leon Cannizzaro, Judge

\*\*\*\*\*

**JUDGE**

**JOAN BERNARD ARMSTRONG**

\*\*\*\*\*

(Court composed of Judge Joan Bernard Armstrong, Judge Terri F. Love and Judge Max N. Tobias, Jr.)

**TOBIAS, J., CONCURS.**

**HARRY F. CONNICK**, DISTRICT ATTORNEY  
**ANNE M. DICKERSON**, ASSISTANT DISTRICT ATTORNEY  
619 SOUTH WHITE STREET  
NEW ORLEANS, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

**KAREN G. ARENA**  
9605 JEFFERSON HWY., SUITE I  
RIVER RIDGE, LA 70123

COUNSEL FOR DEFENDANT/APPELLANT

**REMANDED.**

The defendant, Travis Jordan, was charged by bill of information on June 20, 2001 with distribution of cocaine and possession of cocaine with intent to distribute, both violations of La. R.S. 40:967(A). At his arraignment on June 25, 2001 he pleaded not guilty. A twelve-member jury found him guilty of the lesser-included offenses of attempted distribution and simple possession of cocaine after trial on July 24, 2001. He was sentenced on September 10, 2001 to serve five years on each count; the sentences are to run concurrently. The sentences were suspended and the defendant was placed in the About Face Program. At sentencing the trial court made a motion to reconsider the sentence, and whether it was ruled upon is at issue in this appeal. The motion for an appeal was granted.

At trial Detective Joseph Belisle and his partner, Officer Tommy Felix, testified that about 11:30 p.m. on April 19, 2001, they were working as undercover officers in a narcotics operation. Officer Felix was wearing a small device that allowed everything occurring during the transaction to be recorded and heard by a nearby police unit. The officers parked and walked into an apartment complex. Few people were about at that time, and the

officers approached two young men who were sitting on an electric box. The detective asked if the men had any “weed” or heroin, and they replied that they did not. The officers then asked about crack and were told that it was “in the area” and could be found. The men agreed to get it and then negotiated a price for the cocaine. The defendant left the area very briefly and returned with an object wrapped in white paper which he threw to the ground. Detective Belisle picked it up and Officer Felix handed the other man twenty dollars. The paper contained a white rock wrapped in plastic. Each couple then walked away in different directions. As the officers left they radioed a description of the men from whom they had purchased the rock. About ten minutes after the purchase, the detective drove through the area and identified the defendant who was being detained as the man who sold him the white rock. At trial a tape of the transaction between the defendant and the officers was played. Both officers identified the defendant as the man who left briefly for the cocaine and then threw it to the ground.

Detective Eugene Landry testified that he was working as part of a surveillance team for Officers Belisle and Felix. Detective Landry, who was wearing plain clothes, was also within the complex and observed the transaction from a distance of about ten feet; however, he could not hear what the men were saying. He saw the defendant throw down a small object;

Detective Belisle retrieve it; Officer Felix hand currency to the other man; and the officers leave. Then Detective Landry observed the defendant and his companion who stayed in place for a short time and then entered the nearby building. The detective directed the takedown team to the area and apprised them of the position of the defendant. As Detective Landry walked through the hallway of the second floor of the building, he saw the defendant coming out of one of the apartments. The defendant was arrested, informed of his rights, and, after a search incident to arrest, found to be carrying nine pieces of individually wrapped cocaine in his pocket.

The parties stipulated that the rock sold to Detective Belisle and the nine rocks found in the defendant's pocket were tested and proved to be crack cocaine.

In a single assignment of error, the defendant maintains that the trial court erred in neglecting to rule on the motion to reconsider the sentence and requests that this Court remand the case for clarification.

At the sentencing hearing the court gave reasons for imposing the five year sentences and then explained that the defendant's sentences would be suspended and he would be placed in the About Face Program under La. R.S. 15:574.5; additionally he would be required to receive his GED and complete a drug abuse program. Once he fulfilled those conditions, he

would be placed on probation. The court then stated:

On his behalf the Court will file a motion to reconsider the sentence. The Court will also file a motion for appeal. That motion shall be granted. The record will be due on November 20, 2001.

In its brief, the State argues that remand for a ruling on the motion to reconsider is not necessary because the court's statement in which the two motions were named and then the second motion granted indicates the court's intention to deny the motion to reconsider the sentence. The State also points out that preprinted forms for the two motions are in the record, and the judge signed only the motion for an appeal. However, the unsigned motion and the court's statement can certainly be interpreted as an *implicit* deferral of the ruling on the motion to reconsider.

This Court has held that where a ruling on the motion to reconsider was deferred, and the sentence was at issue on appeal, consideration of sentencing errors is premature. State v. Davis, 2000-0275 (La. App. 4 Cir. 2/14/01), 781 So.2d 633, 640.

In the instant 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, because there is no ruling on the motion to reconsider the sentence, the trial court could 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 this court noted in State v. Temple, 2000-2183 (La. App. 4 Cir. 5/16/01), 789 So.2d 639, 646, 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.**