

NEW ORLEANS, LA 70130
COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE AFFIRMED

The defendant, Kenneth Harris (“Harris”), was charged by bill of information on 5 February 2001, with theft of goods worth from \$100 to \$500, a violation of La. R.S. 14:67.10. He pleaded not guilty at his arraignment on 8 February 2001. The trial court found probable cause to bind the defendant over for trial after a hearing on 20 February 2001. A six-member jury found him guilty as charged after trial on 27 March 2001. The state filed a multiple bill charging the defendant as a fourth felony offender, and on 27 April 2001, after a hearing, the court found him to be a quadruple offender and sentenced him to serve twenty years at hard labor under La. R.S. 15:529.1. He was granted an out-of-time appeal by this court on 1 August 2001.

At trial, Antonio Allen, a surveillance officer at the Lord & Taylor department store, testified that on 13 January 2001, he was monitoring video cameras during a routine sweep of the store when he noticed a man pick up a pair of boots and put them under his jacket. Mr. Allen immediately went to the shoe department where he saw the man leaving the store and walking

into the mall. He approached the man, later identified as Harris, and told him that he had been seen taking merchandise. The two began to wrestle, and Harris dropped the boots and attempted to flee. Another security officer helped detain Harris who was taken to the security office. The police were summoned; the video of the incident was turned over to them. At trial the video was played for the jury. The boots were valued at \$119.99.

Detective James O'Hern responded to the shoplifting call from Lord & Taylor on 13 January 2001. There, the security officer showed him tapes of Harris putting boots under his jacket and attempting to leave the store without paying for them. He arrested Harris.

In a single assignment of error, Harris argues that the court erred in sentencing him as a fourth felony offender because the state failed to prove that the cleansing period had not lapsed.

At the multiple bill hearing Officer Raymond Loosemore, an expert in fingerprint analysis, testified that he took Harris' prints in court that day and compared them to those on the arrest registers from cases bearing docket numbers 356-089 in 1992, 321-978 in 1987, and 267-218 in 1978, to find that the four sets of prints matched. The state introduced documentation for each offense and also listed Harris' three additional offenses for which he was not charged as a multiple offender. The trial court examined the

documents and stated, “I think all the cases fit within the time, the 10-year window, as mandated by 15:529.1.” The court added on its own, apparently without any comment from defense counsel, “Note the defense objection.” The defense counsel’s only recorded statement was to ask the court, just prior to the announcement of the sentence, to consider this case a “Dorothy situation.” The court then sentenced Harris to twenty years at hard labor

The state has the burden of proving that the cleansing period has not expired. State v. Brown, 598 So.2d 565, 575 (La. App. 4 Cir. 1992). However, in the present case, Harris’s failure to object contemporaneously or file a motion for reconsideration of sentence concerning the cleansing periods for the prior offenses used to enhance the multiple offender sentence precludes review of his claim on appeal. See, La. C.Cr.P. arts. 841 and 881.1; State v. Arvie, 505 So.2d 44, 47 (La. 1987); State v. Carter, 589 So.2d 1212, 1214 (La. App. 4 Cir. 1991); State v. Alford, 99-0299, p. 11 (La. App. 4 Cir. 6/14/00), 765 So.2d 1120, 1127; State v. Washington, 98-0583, pp. 16-17 (La. App. 4 Cir. 11/17/99), 747 So.2d 1191, 1200.

Furthermore, Harris is denied appellate review of his multiple offender adjudication because he did not file a written response to the habitual offender bill of information objecting to the state’s failure to prove the cleansing period had not lapsed. La. R.S. 15:529.1(D)(1)(b); State v.

Cossee, 95-2218 (La. App. 4 Cir. 7/24/96), 678 So.2d 72.

Accordingly, Harris's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.