

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-2013**
VERSUS * **COURT OF APPEAL**
DAVID ALLEN * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 394-080, SECTION "G"
Honorable Julian A. Parker, Judge

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Judge Max N. Tobias, Jr.

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(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, and Judge Max N. Tobias, Jr.)

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**SENTENCES VACATED;
REMANDED.**

This appeal concerns only a resentencing.

The defendant, David D. Allen (“Allen”), was charged with two counts of first degree robbery and was found guilty as charged on both counts after a jury trial on 26 March 1998. The state filed a multiple bill pursuant to La. R.S. 15:529.1. After a hearing on 19 June 1998 at which the trial court adjudicated Allen a second felony offender on each count, the court sentenced the defendant to serve thirty years at hard labor on each count without the benefit of parole, probation, or suspension of sentence. The thirty-year sentences were to be served consecutively. Allen appealed. This court affirmed his convictions, but reversed both his adjudication as a second offender and his sentences. *State v. Allen*, 2000-0013 (La. App. 4 Cir. 1/10/01), 777 So.2d 1252.

On 11 September 2001, a resentencing hearing was held. The trial

court again sentenced Allen to serve thirty years without the benefit of parole, probation, or suspension of sentence on each conviction; the trial court again ordered that the sentences be served consecutively. Apparently, the trial court did not realize that Allen's multiple offender adjudication had been reversed and simply imposed the original sentences on each conviction. The defendant was granted an out-of-time appeal from the resentencing on 18 June 2002.

Allen appeals his resentencing, arguing that the trial court failed to adjudicate him a second offender before imposing his sentences under La. R. S. 15:529.1.

This court had previously reversed Allen's sentences and remanded for correction of two errors. First, we noted an error patent; the trial court had denied the defendant's motions for new trial and post verdict judgment of acquittal after sentencing. The law required that those motions had to be disposed of prior to sentencing and the sentences had to be vacated. Second, we found that the trial court erred in adjudicating Allen a second offender because the documentation of the prior offense was insufficient; the documentation did not prove (1) that Allen was represented by counsel or

(2) whether he pleaded guilty or went to trial. At the resentencing hearing, the trial court noted the first issue, and after denying the motions, resentenced Allen as multiple offender. Accordingly, we conclude that Allen's sentences must be vacated, and the case remanded for resentencing.

We further note that Allen was not represented by counsel at the resentencing. Such is an error patent. A defendant has a right to the assistance of counsel at every stage of a proceeding, including sentencing. La. C.Cr.P. art. 511; *State v. Flowers*, 598 So.2d 1144 (La. App. 1 Cir. 1992).

Accordingly, the defendant's sentences are vacated. The case is remanded to the trial court for resentencing at which Allen must be represented by counsel.

SENTENCES VACATED;

REMANDED.

