

STATE OF LOUISIANA

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NO. 2018-KA-0777

VERSUS

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COURT OF APPEAL

NATHANIEL LAMBERT

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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CONSOLIDATED WITH:

CONSOLIDATED WITH:

STATE OF LOUISIANA

NO. 2018-K-1024

VERSUS

NATHANIEL LAMBERT

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 387-752, SECTION "D"  
Honorable Paul A Bonin, Judge

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**Judge Tiffany G. Chase**

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(Court composed of Judge Daniel L. Dysart, Judge Joy Cossich Lobrano, Judge Tiffany G. Chase)

**LOBRANO, J. CONCURS IN THE RESULT.**

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**SENTENCES AFFIRMED; WRIT DENIED  
MARCH 27, 2019**

Nathaniel Lambert (hereinafter “Mr. Lambert”) appeals the trial court’s denial of his motion to quash, motion for discharge, and motion to reconsider sentencing pertaining to the resentencing of his convictions for aggravated rape and aggravated crime against nature. He asserts two counseled assignments of error. First, Mr. Lambert maintains the seventeen-year delay in resentencing is unreasonable, warranting a discharge of his convictions for aggravated rape and aggravated crime against nature. Second, he contends the sentences imposed are excessive.

Additionally before us is Mr. Lambert’s *pro se* writ, seeking review of the trial court’s denial of his motion to correct an illegal sentence – life imprisonment without the possibility of parole, probation, or suspension of sentence – for his conviction of aggravated burglary enhanced by virtue of being adjudged a quadruple offender. We have consolidated this writ with this appeal.

For the reasons that follow, we affirm Mr. Lambert’s sentences and deny his writ.

## RELEVANT FACTS AND PROCEDURAL HISTORY

In 1997, Mr. Lambert was charged by grand jury indictment of aggravated rape (La. R.S. 14:42), aggravated burglary (La. R.S. 14:60), and aggravated crime against nature (La. R.S. 14:89.1).<sup>1</sup> A twelve-person jury found him guilty on all counts. Mr. Lambert was sentenced to life imprisonment without the benefit of parole, probation, or suspension of sentence for the charge of aggravated rape; thirty years for the charge of aggravated burglary; and fifteen years for the charge of aggravated crime against nature. The State then filed a multiple bill on the aggravated burglary conviction. After a habitual offender hearing, the trial court vacated the thirty-year sentence and resentenced Mr. Lambert as a recidivist offender to life imprisonment. He appealed. This Court affirmed all of Mr. Lambert's convictions, but vacated the sentences on his convictions of aggravated rape and aggravated crime against nature, and remanded for resentencing because the trial court sentenced him prior to hearing his motion for new trial. *Lambert*, 1998-0730, p. 45, 749 So.2d at 767. Although the trial court ruled on other post-conviction relief, it never resentenced Mr. Lambert on his convictions for aggravated rape and aggravated crime against nature.

In September 2017, Mr. Lambert filed a *pro se* motion to clarify sentences averring that his "RAP sheet" incorrectly reflected two life sentences and should be amended to only reflect the life sentence resulting from the enhanced sentence on aggravated burglary. The trial court denied the motion for clarification as premature and appointed Mr. Lambert counsel for a resentencing hearing.

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<sup>1</sup> The underlying crimes occurred during a break-in of the victim's home. Mr. Lambert, wielding a hammer, raped the victim over the course of two hours under the threat that he would kill her if she did not comply. *State v. Lambert*, 1998-0730, pp. 2-6 (La.App. 4 Cir. 11/17/99), 749 So.2d 739, 745-47, writ denied, 781 So.2d 1258 (La. 1/26/01).

The resentencing hearing occurred on April 3, 2018. In conjunction with the hearing, Mr. Lambert filed a *pro se* motion to quash and *pro se* motion for discharge from custody based on the delay in resentencing. These motions were denied and the court resentenced Mr. Lambert to life imprisonment without the benefit of parole, probation, or suspension of sentence on the count of aggravated rape, and fifteen years on the count of aggravated crime against nature, with both sentences to run concurrently, with credit for time served. After his motion to reconsider the sentences was denied, Mr. Lambert timely appealed.

After the appeal was lodged in this Court, Mr. Lambert filed a *pro se* motion in the trial court to correct his multiple offender sentence on the aggravated burglary conviction on the grounds of retroactive application of La. R.S. 15:308 and *State ex rel. Esteen v. State*, 2016-0949 (La. 1/30/18), 239 So.3d 233. The trial court denied the motion in a written ruling, finding Mr. Lambert would be ineligible for relief. Since he was resentenced to life imprisonment for the charge of aggravated rape, the retroactive application would not ameliorate his circumstances. La. R.S. 15:308(B). Mr. Lambert filed a *pro se* writ to this Court seeking supervisory review and further requesting a stay of his appeal or consolidation of his writ into his appeal. As disposition of this claim is germane to the appeal of his life sentence for aggravated rape, we ordered the writ to be consolidated with the instant appeal.

### **STANDARD OF REVIEW**

A trial court's ruling on a motion to quash involving factual determinations should not be disturbed absent an abuse of discretion. *State v. Simmons*, 2013-0312, p. 4 (La.App. 4 Cir. 10/16/13), 126 So.3d 692, 695. An appellate court may

not set aside a sentence absent an abuse of discretion by the sentencing court. *State v. Cann*, 471 So.2d 701, 703 (La. 1985).

### **ERRORS PATENT**

The record was reviewed for errors patent pursuant to La. C.Cr.P. art. 920. None were found.

### **DISCUSSION**

Mr. Lambert asserts two counseled assignments of error. We address each in turn before considering his *pro se* writ.

#### **COUNSELED ASSIGNMENT OF ERROR NO. 1: DELAY IN RESENTENCING**

In Mr. Lambert's first counseled assignment of error, he argues the trial court erred in not discharging his sentences for aggravated rape and aggravated crime against nature because the seventeen-year delay in resentencing was unreasonable.<sup>2</sup> Louisiana Constitution Article I § 22 provides:

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.

Principles of due process prohibit inordinate delays in post-conviction proceedings. *State v. Duncan*, 396 So.2d 297, 299 (La. 1981). These principles are primarily safeguarded by statutory law. *See Betterman v. Montana*, 136 S.Ct. 1609, 1617 n.10 (2016) (listing, among other similar provisions, La. C.Cr.P. art. 874). La. C.Cr.P. art. 874 mandates sentences shall be imposed without unreasonable delay. In determining whether the delay in Mr. Lambert's resentencing was unreasonable or prejudicial, this Court must adopt a flexible approach evaluating the

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<sup>2</sup> Per the 1966 Official Revision Comment (d) to La. C.Cr.P. art. 874, the article calls for relief by discretionary supervisory writs, rather than a right of appeal. The comment emphasizes the purpose of the statute is to avoid clogging the docket with "frivolous appeals."

circumstances of his case. *Duncan*, 396 So.2d at 299 (citing *City of Baton Rouge v. Bourgeois*, 380 So.2d 63 (La. 1980) (*per curiam*) and *State v. Johnson*, 363 So.2d 458 (La. 1978)). That there was a delay of seventeen years prior to Mr. Lambert’s resentencing is not disputed. Mr. Lambert contends this delay should be considered as presumptively unreasonable and that, coupled with alleged prejudice stemming from his loss of prison privileges, the appropriate sanction is discharge of his convictions of aggravated rape and aggravated crime against nature.<sup>3</sup> See *Bourgeois*, 380 So.2d at 64. The question thus presented is whether such a sanction is warranted under the foregoing factual circumstances.

The unreasonableness of a sentencing delay is irrelevant in the absence of prejudice to the defendant.<sup>4</sup> *Johnson*, 363 So.2d at 461 (citing La. C.Cr.P. art.

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<sup>3</sup> It has been suggested that the appropriate remedy to a speedy sentencing violation is the imposition of the minimum possible sentence. Kristin Saetveit, *Beyond Pollard: Applying the Sixth Amendment Speedy Trial Right to Sentencing*, 68 Stan. L. Rev. 481, 504 (“at sentencing, a defendant’s freedom is no longer on the table; his best case scenario has instead become the minimum sentence available for his conviction”). As discussed *infra*, this notion is implicit in Louisiana’s jurisprudence requiring a showing of prejudice to the defendant. There can be no prejudice where resentencing will result in the same mandatory sentence.

<sup>4</sup> In *Pollard v. United States*, 352 U.S. 354 (1957), the United States Supreme Court assumed *arguendo* that the Sixth Amendment right to a speedy trial encompassed a right to speedy sentencing. The Court applied a series of factors enumerated in *Barker v. Wingo*, 407 U.S. 514 (1972) – used in determining speedy trial violations – to delays in sentencing. Our Supreme Court, emphasizing *Pollard* did not directly address whether the Sixth Amendment encompasses a right to speedy sentencing, held that it does not. *Johnson*, 363 So.2d at 460-61. *Johnson* focused solely on prejudice and did not address the remaining *Barker* factors. Later opinions of our Supreme Court, dealing with delays in habitual offender enhancement proceedings, have weighed the *Barker* factors. See, e.g., *State v. Muhammad*, 2003-2991, pp. 14-15 (La. 5/25/04), 875 So.2d 45, 55 (“[w]hile these factors are neither definitive nor dispositive in the context of a habitual offender proceeding, they are instructive”). The factors, aside from prejudice to the defendant, include the length of the delay, the reasons for the delay, and the accused’s assertion of his right. *Id.* (citing *Barker*, 407 U.S. at 531-32). However, *Johnson* and its progeny dictate that prejudice to the defendant is the controlling factor. The United States Supreme Court would later directly address the question left open in *Pollard* by holding that the Sixth Amendment right to a speedy trial does not extend beyond conviction. *Betterman*, 136 S.Ct. at 1618. The majority of justices declined to speculate whether the *Barker* factors should be used to consider due process concerns over delayed sentencing. See *id.* (Thomas, J. with whom Alito, J. joins, concurring). The majority opinion (authored by Justice Ginsburg) also expressed doubt as to whether the remedy for speedy trial violations – dismissal of the charges – would be appropriate in the delayed sentencing context: “It would be an unjustified windfall, in most cases, to remedy sentencing delay by vacating validly obtained convictions.” *Id.* at 1615 (citing *Bozza v. United*

921); *Duncan*, 396 So.2d at 300; *State v. Watkins*, 2007-0789, p. 9 (La.App. 4 Cir. 11/21/07), 972 So.2d 381, 386 (“[e]ven assuming the delay was unreasonable, it did not prejudice [the defendant]”). As a conviction for aggravated rape mandates a sentence of life imprisonment without the benefit of parole, probation, or suspension of sentence, we find Mr. Lambert has suffered no prejudice.<sup>5</sup> See *State v. Stewart*, 1998-1215, p. 5 (La.App. 4 Cir. 3/10/99), 732 So.2d 74, 76 (even where delay not attributable to defendant, no prejudice found because he could not have expected a less severe result on resentencing); *State v. Howard*, 2000-2700, p. 9 (La.App. 4 Cir. 1/21/02), 805 So.2d 1247, 1255 (no prejudice found even where delay in sentencing occurred solely through acts and omission of the trial court because defendant could not have expected a less severe sentence on resentencing). On resentencing, Mr. Lambert was subject to the same mandatory sentence he originally received. Moreover, during the seventeen-year delay, Mr. Lambert was concurrently serving his life sentence for aggravated burglary.

Mr. Lambert also argues that he suffered prejudice through the loss of privileges due to the prolonged pendency of resentencing. The privileges include being prevented from enrolling into school to obtain a GED, working at the Angola Rodeo, receiving trustee status and enrolling in educational/trade programs. While we do not dispute the value of such privileges, we find they do not constitute prejudice as contemplated by the jurisprudence. See, e.g., *State v. Hancock*, 1999-

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*States*, 330 U.S. 160, 166 (1947) (“an error in passing the sentence” does not permit a convicted defendant “to escape punishment altogether”). *Johnson*’s requirement of a showing of prejudice prevents such windfalls.

<sup>5</sup> The Fifth Circuit has reached the same result by applying *Johnson* in cases with similar circumstances. See *State v. Sims*, 2009-0509, pp. 5-6 (La.App. 5 Cir. 2/12/10), 33 So.3d 340, 343-44; *State v. Girod*, 2004-0854, pp. 15-16 (La.App. 5 Cir. 12/28/04), 892 So.2d 646, 654-55; *State v. Robinson*, 2009-0104, p. 7 (La.App. 5 Cir. 7/28/09), 19 So.3d 1206, 1210.



0293, pp. 8-9 (La.App. 3 Cir. 11/24/99), 748 So.2d 549, 554 (prejudice where delay in sentencing on prior conviction prevented eligibility for parole to a half-way house). On resentencing, Mr. Lambert would not have stood to gain the benefit of parole or early release. Accordingly, we find this assignment of error without merit.

### **COUNSELED ASSIGNMENT OF ERROR NO. 2: EXCESSIVE SENTENCE**

In Mr. Lambert's second counseled assignment of error, he argues the trial court erred in denying his motion to reconsider sentences. We find the resentencing of Mr. Lambert to life imprisonment for his conviction of aggravated rape is not excessive.<sup>6</sup> In determining the excessiveness of a sentence, appellate courts apply a two-pronged test. *State v. Barbain*, 2015-0404, p. 29 (La.App. 4 Cir. 11/4/15), 179 So.3d 770, 787-88. The first prong, ensuring adequate compliance with the sentencing guidelines of La. C.Cr.P. 894.1, is inapplicable to this case as "failing to articulate reasons for sentencing when imposing a mandatory sentence is not an error because such action would be an exercise in futility." *State v. Hayden*, 1998-2768, pp. 13-14 (La.App. 4 Cir. 5/17/00), 767 So.2d 732, 742 (citations omitted). The trial court was not required to justify its imposition of a mandatory sentence under the sentencing guidelines.

The second prong focuses on the constitutional determination of whether the sentence imposed is too severe in light of the particular defendant and circumstances of the case. *Barbain*, 2015-0404 at p. 29, 179 So.3d at 787-88. A sentence violates La. Const. art. I, § 20, if it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless

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<sup>6</sup> As the sentences run concurrently and the trial court gave Mr. Lambert credit for time already served, the excessive sentence claim in relation to the aggravated crime against nature is moot.

infliction of pain and suffering. *State v. Dorthey*, 623 So.2d 1276, 1280-81 (La. 1993). Furthermore, a sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *State v. Weaver*, 2001-0467, p. 11 (La. 1/15/02), 805 So.2d 166, 174.

Courts start with the presumption that the mandatory sentence is constitutional. *State v. Johnson*, 1997-1906, pp. 7 (La. 3/4/98), 709 So.2d 672, 676. A defendant must rebut this presumption with clear and convincing proof that he is exceptional such that the legislature failed to assign a sentence meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. *Id.*, 1997-1906, p. 8, 709 So.2d at 676. A rebuttal results in a downward departure from the mandatory sentence. Mr. Lambert has failed to demonstrate by clear and convincing evidence that he was entitled to a downward departure of the mandatory life sentence for aggravated rape. Courts have consistently rejected the assertion that the mandatory life sentence for aggravated rape is excessive punishment under the Louisiana Constitution.<sup>7</sup> *Barbain*, 2015-0404 at pp. 30-31, 179 So.3d at 788; *State v. Foley*, 456 So.2d 979, 982-83 (La. 1984) (“[a]ggravated rape deserves a harsh penalty [as] it is one of the most violent felonies a person can commit”); *Edwards v. Butler*, 882 F.2d 160, 166-67 (5<sup>th</sup> Cir. 1989). Mr. Lambert argues his advanced age, sixty-five at the time of resentencing, and the fact that his previous convictions were for non-violent crimes should be taken into consideration. However, this Court has consistently refused to consider a defendant’s age and first-time offender status as exceptional circumstances when the crime committed is violent in nature. *State v. Hunter*,

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<sup>7</sup> Similarly, in holding that a death sentence for rape was excessive punishment, the United States Supreme Court still opined that “[s]hort of homicide, [rape] is the ultimate violation of self.” *Coker v. Georgia*, 433 U.S. 584, 597 (1977).

2018-0206, p. 16 (La.App. 4 Cir. 8/22/18), 252 So.3d 1053, 1065. Mr. Lambert's motion to reconsider sentence, filed immediately after resentencing, does not articulate any factual basis for a downward departure under *Dorthey*. Nor did Mr. Lambert or his counsel make an oral argument regarding any exceptional circumstances at the hearing prior to the trial court's resentencing. Consequently, we find no error in the trial court's determination that no factual grounds exist under *Dorthey* to reconsider the sentences. Thus, this assignment of error is without merit.

#### ***PRO SE WRIT: ILLEGAL SENTENCE***

Relying on our Supreme Court's holding in *State ex rel. Esteen v. State*, 2016-0949 (La. 1/30/18), 239 So.3d 233, and La. R.S. 15:308, Mr. Lambert argues that he is entitled to resentencing on his enhanced sentence of life imprisonment for the charge of aggravated burglary. He contends the other offenses used to enhance his sentence (theft and possession of cocaine) could no longer be used under the current habitual offender statute. *See* La. R.S. 15:529.1. The trial court acknowledged that Mr. Lambert was "superficially" correct. Nonetheless, it concluded that, in light of the resentencing to life imprisonment on the charge of aggravated rape, Mr. Lambert's circumstances would not be ameliorated by retroactive application of the habitual offender statute.<sup>8</sup> We agree. As we have affirmed Mr. Lambert's resentencing, the ameliorative requirements of La. R.S. 308(B) are not met.

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<sup>8</sup> The trial court also noted the State argued Mr. Lambert was convicted of two other felonies (aggravated battery and armed robbery) that would be available for a reconstructed multiple bill.

## **DECREE**

For the foregoing reasons we affirm the trial court's denial of Mr. Lambert's motion to quash, motion for discharge and motion to reconsider sentence. Accordingly, we affirm the sentences imposed on resentencing for Mr. Lambert's convictions of aggravate rape and aggravated crime against nature. We also deny his consolidated *pro se* writ because his circumstances would not be ameliorated given our disposition of his appeal.

**SENTENCES AFFIRMED; WRIT DENIED**