

STATE OF LOUISIANA

NO. 17-KA-405

VERSUS

FIFTH CIRCUIT

HENRI LYLES

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 15,42, DIVISION "C"
HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

February 21, 2018

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Stephen J. Windhorst

HABITUAL OFFENDER SENTENCE VACATED;
REMANDED FOR RESENTENCING

SJW

SMC

JGG

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA
Bridget A. Dinvaut
Justin B. LaCour

COUNSEL FOR DEFENDANT/APPELLANT,
HENRI LYLES
Bertha M. Hillman

WINDHORST, J.

In this criminal appeal, defendant, Henri Lyles, appeals his sentence to life imprisonment without the benefit of parole, probation, or suspension of sentence as a third felony offender with the third underlying conviction for aggravated battery. Without considering the merits of the assignment of error contending that the habitual offender sentence was excessive, we vacate defendant's sentence and remand for resentencing for the following reasons.

After a jury trial on November 15-16, 2016, defendant was convicted of aggravated battery in violation of La. R.S. 14:34. On November 18, 2016, the State filed an habitual offender bill of information against defendant, alleging that he was a third felony offender with a 1990 predicate conviction of distribution of cocaine and a 2004 predicate conviction of manslaughter. The hearing on defendant's habitual offender bill was held on February 13, 2017. During the course of this hearing, the trial court sentenced defendant for the aggravated battery conviction to eight (8) years imprisonment with the Department of Corrections and imposed a \$1,000 fine. After an evidentiary hearing on the habitual offender bill, the trial court found defendant to be a third felony offender and sentenced him to life imprisonment without the benefit of parole, probation or suspension of sentence in accordance with La. R.S. 15:529.1(A)(3)(b). Defendant filed a motion to reconsider his sentence, which the trial court denied. This appeal followed.

FACTS

Defendant and Imani Wilson met in 1992 and were involved in a relationship off and on for several years. In 2014, Ms. Wilson agreed to allow defendant to stay with her for a limited period of time. In January 2015, Ms. Wilson asked defendant to leave and offered to help him find work and a new residence. On February 1, 2015, defendant, Ms. Wilson, and her two (2) children from another relationship were at Ms. Wilson's home, and defendant informed Ms. Wilson that he would move

out that week. That same day, while Ms. Wilson was in the kitchen cooking, defendant began staring at her and continued to do so for an extended period. Eventually, Ms. Wilson asked defendant why he was staring at her, and he did not respond. Because defendant continued to stare at her, she became nervous and warned her children who were home that they should call 9-1-1 if they heard anything.

After some time had passed, defendant began to approach Ms. Wilson and grabbed her by the throat with his left hand while simultaneously reaching for a knife with his other hand. Ms. Wilson pried defendant's fingers from her throat and ran from him. She fell and defendant held her down and grabbed her around the throat again. Defendant attempted to stab Ms. Wilson, and she tried to block the knife. She eventually blacked out and could not remember additional details. One of Ms. Wilson's children heard the commotion and called 9-1-1. The police arrived at the house before defendant was able to get away and arrested him for aggravated battery.

DISCUSSION

Defendant assigns as error that his sentence is unconstitutionally excessive. Because there are errors patent which necessitate that we vacate defendant's sentence and remand this matter for resentencing, we do not address whether defendant's sentence is unconstitutionally excessive. State v. Netter, 11-202 c/w 203 (La. App. 5 Cir. 11/29/11), 79 So.3d 478, 483-483, writ denied, 12-0032 (La. 8/22/12), 97 So.3d 357.

We have reviewed the record for errors patent as required by La. C.Cr.P. art. 920, and find the following which requires attention. See State v. Oliveaux, 312 So.2d 337 (La. 1975) and State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990). In this case, the record indicates that the trial court did not vacate defendant's original sentence for aggravated battery prior to imposing his enhanced sentence as an habitual offender. When a defendant's original sentence on an underlying offense

has not been vacated by the court at the time of defendant's sentencing as an habitual offender, the original sentence remains in effect and the subsequent sentence as an habitual offender is null and void. State v. Netter, supra. Because defendant's underlying sentence for the aggravated battery conviction was not vacated, we find that defendant's habitual offender sentence is null and void. Accordingly, we vacate defendant's habitual offender sentence and remand this matter to the trial court for resentencing. The trial court is instructed to vacate defendant's sentence for aggravated battery before sentencing him as an habitual offender. State v. Wise, 13-247 (La. App. 5 Cir. 11/19/13), 128 So.3d 1220, 1224.

In light of our finding that defendant's habitual offender sentence is null and void, we cannot address defendant's assignment of error that his habitual offender sentence is excessive.

DECREE

Defendant's habitual offender sentence is vacated and the matter is remanded to the trial court for resentencing.

HABITUAL OFFENDER SENTENCE VACATED;
REMANDED FOR RESENTENCING

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **FEBRUARY 21, 2018** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-405

E-NOTIFIED

40TH DISTRICT COURT (CLERK)

HONORABLE J. STERLING SNOWDY (DISTRICT JUDGE)

BRIDGET A. DINVAUT (APPELLEE)

JUSTIN B. LACOUR (APPELLEE)

BERTHA M. HILLMAN (APPELLANT)

MAILED

NO ATTORNEYS WERE MAILED