

STATE OF LOUISIANA
VERSUS
WILLIE EDWARD CARTER

NO. 19-KA-127
FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 17-4240, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

January 28, 2020

**FREDERICKA HOMBERG WICKER
JUDGE**

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Hans J. Liljeberg

APPEAL DISMISSED

FHW

SJW

HJL

WICKER, J.

In this out-of-time appeal, defendant sought review of his unconditional guilty plea and enhanced sentence. For the following reasons, we dismiss this appeal.

Factual and Procedural History

On July 24, 2017, the Jefferson Parish District Attorney's Office filed a bill of information charging defendant with purse snatching, in violation of La. R.S. 14:65.1. On February 5, 2018, defendant entered an unconditional guilty plea to purse snatching in exchange for a sentence of five years at hard labor, concurrent with a sentence in another case and credit for all time served. That same day, the Jefferson Parish District Attorney's Office filed a multiple offender bill of information alleging that defendant was a second felony offender, having previously been convicted of second degree rape, in violation of La. R.S. 14:42.1. Also, on February 5, 2018, defendant stipulated to the allegations of the multiple offender bill of information. Thereafter, the trial judge vacated the underlying sentence, identified the underlying crime as a crime of violence, and imposed an enhanced sentence of five years at hard labor, without probation or suspension of sentence, pursuant to La. R.S. 15:529.1.

On December 20, 2018, defendant filed a *pro se* application for post-conviction relief, requesting an out-of-time appeal pursuant to *State v. Counterman*, 475 So.2d 336, 339 (La. 1985), which the district court granted on January 3, 2019. On January 28, 2019, the State filed an application for supervisory review with this Court, seeking review of the district court's grant of defendant's motion for out-of-time appeal.¹

¹ The State cited recent Louisiana Supreme Court decisions in *State ex rel. Burton v. State*, 17-1915 (La. 1/14/19), 261 So.3d 769 (*per curiam*); *State v. Johnson*, 16-2232 (La. 3/9/18), 237 So.3d 1184 (*per curiam*); *State ex rel. Payton v. State*, 16-1795 (La. 2/9/18), 235 So.3d 1098 (*per curiam*); and *State ex rel. Rainey v. State*, 16-1439 (La. 10/27/17), 228 So.3d 193 (*per curiam*).

On May 1, 2019, this Court granted the State's writ application, vacated the trial court's order granting defendant an out-of-time appeal, and denied the defendant's application for post-conviction relief requesting an out-of-time appeal. *State v. Carter*, 19-25 (La. App. 5 Cir. 5/1/19), 2019 WL 1949559, --- So.3d ----. Thus, this Court vacated the district court's order granting defendant's out-of-time appeal.

Defendant immediately sought a writ of certiorari to the Louisiana Supreme Court, which the court granted in part and remanded to the district court for a hearing to determine if defendant was entitled to an out-of-time appeal. *See, State v. Carter*, 19-788 (La. 10/8/19), 280 So.3d 142. Meanwhile, at defendant's request, this appeal was stayed awaiting disposition of defendant's writ application to the Louisiana Supreme Court.

On January 9, 2020, the remanded matter was heard by the trial court. At that hearing, defendant "withdrew" this appeal. Further, in exchange for the State's agreement not to file a multiple offender bill of information against him, he entered a new plea agreement. His 2018 sentence was vacated and he was resentenced to imprisonment at hard labor for five years with credit for time served since the date of his initial arrest.

For several reasons, we dismiss this appeal. First, defendant "withdrew" this appeal at the re-sentencing on January 9, 2020. More importantly, the enhanced sentence from 2018 that was at issue in this appeal was vacated at the re-sentencing hearing and, thus, there is no judgment that imposes sentence to appeal pursuant to La. C.Cr.P. art. 912(C)(1). Accordingly, this appeal is hereby dismissed.

APPEAL DISMISSED.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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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 **JANUARY 28, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

19-KA-127

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)

TERRY M. BOUDREAUX (APPELLEE)

THOMAS J. BUTLER (APPELLEE)

MAILED

MARY CONSTANCE HANES (APPELLANT)

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