

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 KA 0372**

**STATE OF LOUISIANA**

**VERSUS**

**RANDOLPH EDWARDS SMITH, JR.**

**Judgment Rendered: SEP 21 2012**

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On Appeal from the Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Docket No. 401,223

Honorable William J. Knight, Judge Presiding

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and  
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\* \* \* \* \*

**BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.**

PMC  
WJN  
TJH

**McCLENDON, J.**

The defendant, Randolph Edwards Smith, Jr., was charged by grand jury indictment with two counts of aggravated rape (of O.J., count 1; and R.T., count 2), in violation of LSA-R.S. 14:42. He pled not guilty and, following a jury trial, was found guilty as charged on count 1. On count 2, he was found guilty of the responsive offense of sexual battery, a violation of LSA-R.S. 14:43.1. For the aggravated rape conviction (count 1), the defendant was sentenced to life imprisonment at hard labor; for the sexual battery conviction (count 2), the defendant was sentenced to ten years imprisonment at hard labor. The ten-year sentence was ordered to run consecutively to the life sentence. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. We affirm the convictions and sentences with instructions.

**FACTS AND PROCEDURAL HISTORY**

In 2004 and 2005, eight-year-old O.J. and her nine-year-old cousin, R.T., lived together with their mothers, who were sisters, in Alton, St. Tammany Parish. O.J.'s mother was in a relationship with Randolph Smith, Sr. Randolph Sr. and his sixteen-year-old son, the defendant, also lived with O.J., R.T., and their mothers in Alton. In 2005, allegations arose of the defendant sexually abusing O.J. and R.T. The girls gave interviews at the Children's Advocacy Center (CAC) in Covington. O.J. indicated in her interview that on more than one occasion the defendant inserted his penis into her vagina. At trial, O.J. testified that the defendant put his penis in her vagina. R.T. stated in her interview that the defendant touched her vagina with his hand while both had their clothes on. She also stated the defendant would try to make her perform oral sex on him, but she refused. At trial, R.T. testified that the defendant put his penis in her vagina. When asked at trial why she did not state at the CAC interview that the defendant put his penis in her vagina, R.T. testified, "Because I forgot about it. I didn't want to talk about it."

The defendant provided a recorded video statement to the police. In this interview, the defendant stated that on several occasions he molested O.J. and R.T. He indicated that with each girl, he rubbed his penis on her vagina while he and each girl were naked from the waist down. According to the defendant, he never inserted his penis into the vagina of either O.J. or R.T. At trial, the defendant testified that he never sexually touched either girl or had sex with them. He further testified that he never rubbed his penis on their vaginas, and that when he told the police in his statement that he had done this, he was lying. The defendant stated at trial that he confessed to the police because he was told he would be charged as a juvenile and would possibly get probation and some counseling. The defendant had prior convictions for possession of a firearm while in possession of cocaine and possession of marijuana.

#### **ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant argues the trial court's sentence for the aggravated rape conviction deprived him of a meaningful opportunity for parole.

In **Graham v. Florida**, \_\_\_ U.S. \_\_\_, 130 S.Ct. 2011, 2034, 176 L.Ed.2d 825 (2010), the Supreme Court held that the Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.<sup>1</sup> Louisiana Revised Statutes 15:574.4(B) provides in pertinent part that "[n]o prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years." Louisiana Revised Statutes 15:574.4(A)(2) provides in pertinent part:

a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for thirty years or more shall be eligible for parole consideration upon serving at least twenty years of the term or terms of imprisonment in actual custody and upon reaching the age of forty-five.

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<sup>1</sup> More recently, the Supreme Court held that the same prohibition applies to juveniles who committed homicide. See **Miller v. Alabama**, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 2458, 183 L.Ed.2d 407 (2012).

In **State v. Shaffer**, 2011-1756 (La. 11/23/11), 77 So.3d 939, 942 (per curiam), our supreme court found that **Graham** required the relators, and all other persons similarly situated, to have a meaningful opportunity to secure release as a regular part of the rehabilitative process. Accordingly, the **Shaffer** court, 77 So.3d at 942, held:

[T]he Eighth Amendment precludes the state from interposing the Governor's ad hoc exercise of executive clemency as a gateway to accessing procedures the state has established for ameliorating long terms of imprisonment as part of the rehabilitative process to which inmates serving life terms for non-homicide crimes committed when they were under the age of 18 years would otherwise have access, once they reach the age of 45 years and have served 20 years of their sentences in actual custody. The state thus may not enforce the commutation provisos in La. R.S. 15:574.4(A)(2) and 15:574.4(B) against relators and all other similarly situated persons, and the former provisions offer objective criteria set by the legislature that may bring Louisiana into compliance with the *Graham* decision. [Footnotes omitted.]

Based on the foregoing, the supreme court directed the Department of Corrections to revise Shaffer's prison master according to the criteria in LSA-R.S. 15:574.4(A)(2) to reflect an eligibility date for consideration by the Board of Parole. **Shaffer**, 77 So.3d at 943. In the instant matter, in sentencing the defendant to life imprisonment for the aggravated rape conviction, the trial court correctly, pursuant to **Graham**, did not deny parole eligibility. However, the trial court made no mention of amending the defendant's prison master. Thus, in accordance with **Shaffer**, the Department of Corrections is directed to revise the defendant's prison master according to the criteria in LSA-R.S. 15:574.4(A)(2) to reflect an eligibility date for consideration by the Board of Parole.

#### **CONCLUSION**

Accordingly, the defendant's convictions and sentences are affirmed. The case is remanded with instructions for addressing the defendant's prison master regarding his sentence for aggravated rape.

**CONVICTIONS AFFIRMED ON BOTH COUNTS AND SENTENCE AFFIRMED FOR SEXUAL BATTERY. SENTENCE FOR AGGRAVATED RAPE AFFIRMED WITH INSTRUCTIONS.**