

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 KA 1411

STATE OF LOUISIANA

VERSUS

JOHNNY TERRELL STEWART, JR.

**Judgment Rendered: March 22, 2013**

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Appealed from the  
Thirty-Second Judicial District Court  
In and for the Parish of Terrebonne  
State of Louisiana  
Docket Number 573,334

Honorable Randall L. Bethancourt, Judge Presiding

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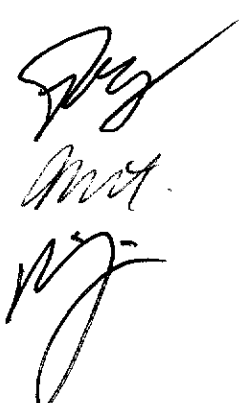
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\*\*\*\*\*

BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.



## **GUIDRY, J.**

Defendant, Johnny Terrell Stewart, Jr., and two codefendants<sup>1</sup> were charged by bill of information, each with two counts of attempted first degree murder, violations of La. R.S. 14:27 and 14:30. After a jury trial, defendant was found guilty of the responsive offense of aggravated battery, a violation of La. R.S. 14:34, on both counts. The trial court subsequently denied defendant's motions for postverdict judgment of acquittal and new trial, and sentenced defendant to five years at hard labor with the recommendation that he be placed in rehabilitative programs through the Department of Corrections. Defendant moved for reconsideration of sentence, but the trial court denied the motion. Defendant now appeals, urging a single assignment of error challenging the sentence imposed.

### **REVIEW FOR ERROR**

This Court reviews the record for error under La. C. Cr. P. art. 920(2). Under Article 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. See State v. Price, 05-2514, p. 18 (La. App. 1st Cir. 12/28/06), 952 So. 2d 112, 123 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So. 2d 1277.

As previously noted, defendant was convicted of two counts of aggravated battery. Instead of imposing a separate sentence for each count, the trial court imposed one sentence of five years at hard labor. At the sentencing hearing, the trial court stated, "[I]t is the sentence of this Court that you serve ten (10) years with the Department of Corrections at hard labor. This sentence shall be suspended upon the following conditions: That you serve five years with the Department of Corrections at hard labor, credit for time served . . . . The Court will recommend that you be placed in the DCI Youthful Offender Program, and/or the Department of Corrections Work Release Program." After a brief recess, the

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<sup>1</sup> The two codefendants are Joshua Raheem Moseley and Davole De'Jon Martin, but they were not tried with defendant, and they are not parties to this appeal.

trial court amended defendant's sentence to "[f]ive years hard labor, credit for time served. And those recommendations." Although the trial judge was clearly aware, considering his earlier statements during the sentencing hearing, that defendant had been convicted of two counts of aggravated battery, the record reflects that he failed to impose two separate sentences for defendant's offenses.

Defendant's convictions of two counts of aggravated battery require the imposition of two separate sentences. See State v. Soco, 94-1099 (La. App. 1st Cir. 6/23/95), 657 So. 2d 603. It is well settled that a defendant can appeal from a final judgment of conviction only where a sentence has been imposed. See La. C. Cr. P. art. 912(C)(1); see also State v. Chapman, 471 So. 2d 716 (La. 1985) (per curiam). The failure of the trial court to impose a separate sentence for each of the two counts is a sentencing error. See Soco, 657 So. 2d at 603; see also State v. Russland Enterprises, Inc., 542 So. 2d 154, 155 (La. App. 1st Cir. 1989). In the absence of valid sentences, the defendant's appeal is not properly before this court. Soco, 657 So. 2d at 603. Accordingly, the single sentence imposed by the trial court is vacated, and we remand this matter to the trial court for resentencing in conformity with the law. After resentencing, the defendant may perfect a new appeal.

**SENTENCE VACATED; REMANDED FOR RESENTENCING.**