

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0693

STATE OF LOUISIANA

VERSUS

JERRY WAYNE PRICE

**DATE OF JUDGMENT:** 'DEC 27 2013

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
NUMBER 496718, DIV. J, PARISH OF ST. TAMMANY  
STATE OF LOUISIANA

HONORABLE WILLIAM J. KNIGHT, JUDGE

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Jerry Wayne Price

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

**Disposition: AFFIRMED ON COUNT I.**

*Handwritten initials and signatures:*  
CSH  
TMH  
MW

KUHN, J.

Defendant, Jerry Wayne Price, was charged by bill of information with two counts of distribution of cocaine, violations of La. R.S. 40:967(A)(1), and pled not guilty on each count. Following a jury trial, he was found guilty as charged on both counts. He was sentenced, on each count, to twenty-five years at hard labor. He moved for reconsideration of sentence, but the motion was denied. Thereafter, the State filed a habitual offender bill of information against defendant, alleging he was a fourth-felony habitual offender.<sup>1</sup> Following a hearing, he was adjudged a fourth-felony habitual offender on count I. The trial court sentenced defendant, on count I, to thirty-five years at hard labor without benefit of parole, probation, or suspension of sentence. Additionally, the trial court ordered that the sentence imposed on count I run concurrently with the sentence previously imposed on count II.

On appeal, this court affirmed the conviction and habitual offender adjudication on count I; vacated the enhanced sentence on count I; remanded for resentencing on count I; and affirmed the conviction and sentence on count II. See *State v. Price*, 2011-1549 (La. App 1st Cir. 3/23/12) (unpublished).

On remand, on count I, the trial court sentenced defendant to thirty-five years at hard labor, with the first two years without the benefit of parole, probation, or suspension of sentence. Defendant now appeals, filing counseled and pro se briefs. In his counseled brief, he contends that the trial court imposed an unconstitutionally excessive sentence on count I. In his pro se brief, he contends that the jury verdict was contrary to the law and the evidence or that there was insufficient evidence; the trial court imposed a constitutionally excessive sentence; the trial court erred in denying the motion to suppress identification; and the State

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<sup>1</sup> Predicate #1 was set forth as defendant's October 25, 1999 guilty plea, under Twenty-second Judicial District Court Docket #306703, for possession of cocaine. Predicate #2 was set forth as defendant's October 8, 2003 guilty plea, under Twenty-second Judicial District Court Docket #365323, for possession of cocaine. Predicate #3 was set forth as defendant's October 29, 2004 guilty plea, under Twenty-second Judicial District Court Docket #382226, for possession of cocaine.

failed to submit mandatory evidence required to enhance sentence pursuant to La. R.S. 15:529.1. Additionally, defendant requests review for error under La. C.Cr.P. art. 920(2). For the following reasons, we affirm the sentence on count I.

### FACTS

The facts were set forth in our original decision in this matter.

### EXCESSIVE SENTENCE

In his sole counseled assignment of error and in his pro se brief, defendant asserts the sentence was excessive because his three prior felonies were convictions for simple possession of cocaine.

La. C.Cr.P. art. 881.1, in pertinent part, provides:

A. (1) In felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence....

B. The motion shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based....

E. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

Defendant failed to make or file a motion to reconsider sentence following resentencing in this matter. A new motion for reconsideration of sentence must be filed in the trial court in order to preserve appellate review of a new sentence imposed on remand. See *State v. Emerson*, 2004-0156 (La. App. 1st Cir. 10/29/04), 888 So.2d 975, 980, writ denied, 2005-0089 (La. 4/22/05), 899 So.2d 557. Accordingly, review of this assignment of error is procedurally barred. See La. C.Cr.P. art. 881.1(E); *State v. Duncan*, 94-1563 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam).

### **ADDITIONAL PRO SE ARGUMENTS**

This matter was remanded only for resentencing on count I. Accordingly, arguments concerning matters other than the new sentence imposed on count I will not be considered. See *State v. Lewis*, 350 So2d 1197, 1198 (La. 1977) (per curiam).

### **REVIEW FOR ERROR**

Defendant requests that this court examine the record for error under La. C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under La. C.Cr.P. art. 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.

After a careful review of the record in these proceedings concerning the remand for resentencing on count I, we have found no reversible errors. See *State v. Price*, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

### **DECREE**

The trial court's judgment resentencing defendant, Jerry Wayne Price, on count I is affirmed.

**AFFIRMED ON COUNT I.**