

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0705

STATE OF LOUISIANA

VERSUS

BYRON RENDELL JONES

Judgment Rendered: DEC 27 2013

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 487129/30

Honorable Allison H. Penzato, Judge Presiding

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

*TMT
JEK by TMT*

HIGGINBOTHAM, J.

The defendant, Byron R. Jones, was charged by bill of information #487129 with one count of possession of a schedule IV controlled dangerous substance (carisoprodol) (count I), a violation of La. R.S. 40:969(C); one count of possession of a schedule II controlled dangerous substance (oxycodone) (count II), a violation of La. R.S. 40:967(C); and two counts of distribution of a schedule II controlled dangerous substance (cocaine) (counts III and IV), violations of La. R.S. 40:967(A)(1). He was charged by bill of information #487130 with one count of possession of a schedule I controlled dangerous substance (marijuana), a violation of La. R.S. 40:966(C). He initially pled not guilty on all counts. Thereafter, he withdrew his initial pleas, and pled guilty as charged on all counts. The court recognized that the defendant's willingness to plead guilty resulted from prior discussions between defense counsel, the district attorney, and the court. The court stated, "[t]he substance of that plea agreement will be disclosed when I impose your sentence, and if it's not in accordance with [your] understanding, you'll be allowed to withdraw your plea of guilty at that time." Thereafter, the State filed a habitual offender bill of information in regard to bill #487129, counts III and IV, against the defendant.¹ The defendant agreed with the allegations of the habitual offender bill. On counts III and IV, he was sentenced to fifteen years at hard labor, with the first two years of the sentence to be served without benefit of parole, probation, or suspension of sentence.² On bill #487129, counts I and II, he was sentenced to five years at hard labor. On bill of information #487130, he was sentenced to six months in parish jail. The court ordered that all of the sentences would run concurrently with each other. Additionally, defense counsel set forth, "Your Honor, I'd remind the

¹ The predicate was set forth as the defendant's conviction, under Twenty-Second Judicial District Court Docket #299501, for attempted forcible rape.

² The sentencing minutes indicate four separate sentences were imposed on the counts under bill of information #487129. The sentencing transcript, however, does not reflect the imposition of separate sentences on the counts. When there is a discrepancy between the minutes and the transcript, the transcript must prevail. *State v. Lynch*, 441 So.2d 732, 734 (La. 1983).

Court that pursuant to pretrial discussions with both the District Attorney and the Court that the defense has 60 days to bring forward any new information that it feels would be relevant to this matter.” The trial court agreed “that was part of the initial plea agreement.” The defendant now appeals, challenging the voluntariness of his guilty pleas. For the following reasons, we vacate the sentences and remand for resentencing.

FACTS

Due to the defendant’s guilty plea, there was no trial, and thus, no trial testimony concerning the offenses. The State and the defense stipulated that a factual basis existed to support the guilty pleas. Bill of information #487129 charged that counts I and II were committed on January 14, 2010, that count III was committed on December 29, 2009, and count IV was committed on January 8, 2010. Bill of information #487130 charged that the offense thereunder was committed on January 14, 2010.

REVIEW FOR ERROR

Initially, we note that our review for error is pursuant to La. Code Crim. P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and “error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.” La. Code Crim. P. art. 920(2).

The sentences imposed on the counts under bill of information #487129 were illegal. The defendant’s four guilty pleas to four counts required the imposition of four separate sentences. However, rather than imposing a separate sentence on each count, the trial court imposed one sentence on counts I and II, and one sentence on counts III and IV. A defendant can appeal from a final judgment of conviction only where a sentence has been imposed. La. Code Crim. P. art. 912(C)(1). Error under La. Code Crim. P. art. 920(2) occurs when a trial court, in

sentencing on multiple counts, does not impose a separate sentence for each count. In the absence of valid sentences, the defendant's appeal is not properly before this court. See State v. Soco, 94-1099 (La. App. 1st Cir. 6/23/95), 657 So.2d 603.

Accordingly, the sentences imposed by the trial court on bill of information #487129 are vacated, and we remand this matter to the trial court for resentencing consistent with the views expressed herein.³ After resentencing, the defendant may perfect a new appeal.

**SENTENCES ON BILL OF INFORMATION #487129 VACATED;
REMANDED FOR RESENTENCING.**

³ The trial court correctly imposed sentence on the count under bill of information #487130. However, this guilty plea and conviction are not appealable. Review of the misdemeanor conviction and sentence must be by application for writ of review. See La. R.S. 40:966(E)(1), La. Code Crim. P. art. 779, & La. Code Crim. P. art. 912.1(C)(1).