

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2013 KA 0716**

**STATE OF LOUISIANA**

**VERSUS**

**JESSIE MOORE**

**Judgment Rendered: DEC 27 2013**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. 03-09-0161

Honorable Donald R. Johnson, Judge Presiding

\* \* \* \* \*

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Defendant/Appellant  
In Proper Person

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Jessie Moore

\* \* \* \* \*

**BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.**

**McCLENDON, J.**

Defendant, Jessie Moore, was charged by amended bill of information with attempted second degree murder, a violation of LSA-R.S. 14:30.1 and 14:27 (count one), and armed robbery, a violation of LSA-R.S. 14:64 (count two). He entered a plea of not guilty and waived his right to a jury trial. After a bench trial, defendant was found guilty as charged. The State subsequently instituted a habitual offender proceeding, alleging defendant to be a third-felony habitual offender for each of his convictions relating to the instant case.<sup>1</sup> The trial court adjudicated defendant a third-felony habitual offender and imposed a single sentence of life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. In an earlier, unpublished opinion, we vacated defendant's habitual offender sentence and remanded for resentencing, noting that the trial court appeared to be enhancing both of defendant's instant convictions by imposing only a single habitual offender sentence. See State v. Moore, 11-1688 (La.App. 1 Cir. 5/2/12) (unpublished).

On remand, the trial court clarified that it had indeed found defendant to be a third-felony habitual offender for each of his instant convictions. It then sentenced defendant to two concurrent sentences of life imprisonment at hard labor, without benefit of probation or suspension of sentence. For the following reasons, we affirm defendant's convictions, habitual offender adjudications, and sentences. Additionally, we grant defense counsel's motion to withdraw.

**FACTS**

Around 2:30 a.m. on August 12, 2008, Roy Dorty was driving on Scenic Highway in Baton Rouge after visiting a nearby nightclub. He turned down a side street to see if any of the nearby businesses sold plate lunches. Dorty approached a stop sign and saw defendant walking down the street. Dorty and defendant had officially met only once previously, but Dorty had seen defendant

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<sup>1</sup> The State alleged defendant's predicate convictions as follows: 1) a June 13, 1995 conviction for attempted possession with intent to distribute cocaine, under East Baton Rouge Parish docket number 01-95-2025; and 2) a February 9, 1998 conviction for manslaughter, under East Baton Rouge Parish docket number 01-96-0530.

in his neighborhood on many occasions. Defendant flagged Dorthy down and asked Dorthy to bring him downtown, to his girlfriend's house. Dorthy let defendant into his vehicle, and defendant gave Dorthy directions to his intended location.

Defendant eventually directed Dorthy to turn right onto Gracie Street. Dorthy drove his car to the end of Gracie Street, where the nature of the road forced him to make a left turn. After Dorthy completed the left turn, defendant shot Dorthy once in the side of his head and again in his face. Dorthy was instantly paralyzed as a result of the first gunshot wound. Defendant took control of Dorthy's vehicle and steered it to a nearby vacant lot, where he dumped Dorthy's body. Prior to fleeing the scene in Dorthy's vehicle, defendant took money from Dorthy's front pocket. A few hours later, Rodney Wayne Bryan spotted Dorthy's body in the vacant lot. Bryan immediately called 911. While Dorthy and Bryan were waiting for help to arrive, Dorthy told Bryan that "Jessie from CC" shot him.

On August 13, 2008, pursuant to an anonymous complaint about a suspicious vehicle, Baton Rouge Police Department detectives recovered Dorthy's car from an area near defendant's last known address. A search of the car revealed the presence of blood, as well as the fact that expensive stereo equipment had been taken from the vehicle. While he was in the hospital, Dorthy identified defendant as his shooter from a photographic lineup. He unequivocally reiterated that identification at trial. The trial court found defendant guilty of attempted second degree murder and armed robbery.

#### **PRO SE BRIEF**

Defendant filed a pro se brief in the instant matter that, while not clear, appears to allege several different claims for relief.

In his first pro se claim, defendant appears to argue that the trial court erred in enhancing both of his instant convictions under the Habitual Offender Law. Defendant does not cite any law supporting this argument other than a generalized reference to the Due Process Clause. As the Louisiana Supreme Court explained in **State v. Shaw**, 06-2467 (La. 11/27/07), 969 So.2d 1233,

1245, the Habitual Offender Law contains no prohibition against enhancing multiple sentences obtained on the same date arising out of a single criminal act or episode. Therefore, the trial court did not err in enhancing both of defendant's instant sentences after finding him to be a third-felony habitual offender for each of his current convictions.

In his second pro se claim, defendant appears to argue that the trial court failed to have "a probable cause hearing within the 72 hour period." As support for this contention, defendant cites LSA-C.Cr.P. arts. 230.1 and 230.2. Generally, Article 230.1 requires that the period between arrest and arraignment not exceed seventy-two hours. From the record, it is unclear whether defendant was arraigned within this period. However, even assuming the delay exceeded the time limitations provided, it would have no bearing on the outcome of defendant's trial. The remedy for a violation of Article 230.1 is pretrial release, and it has no effect whatsoever on the validity of the proceedings thereafter. See LSA-C.Cr.P. art. 230.1D; **State v. Manning**, 03-1982 (La. 10/19/04), 885 So.2d 1044, 1075, cert. denied, 544 U.S. 967, 125 S.Ct. 1745, 161 L.Ed.2d 612 (2005). Similarly, defendant is not entitled to relief under Article 230.2. That article addresses situations where a person is arrested without a warrant. In the instant case, the investigating detectives procured a warrant for defendant's arrest, and they arrested him pursuant to that warrant once they were able to locate him. This claim lacks merit.

In his final pro se claim, defendant argues that Dorty's identification of him was tainted because it resulted from coaching or coercion. Specifically, defendant argues that the detective and the district attorney indicated defendant was their suspect by making an "X" mark near his picture on the photographic lineup. We note that defendant did file in the trial court a counseled motion to suppress his identification, alleging that the police used a suggestive identification procedure. That motion appears to have been filed with the trial court on February 26, 2010. However, the record does not contain any evidence of a hearing or a ruling on that motion. It is ordinarily incumbent upon the

proponent of a motion to move for a hearing date on that motion. Otherwise, it may be considered that the motion has been abandoned. **State v. Coates**, 509 So.2d 438, 440 (La.App. 1 Cir. 1987). In the instant case, it appears that defendant failed to request a hearing on his motion to suppress his identification. As a result, we are constrained to conclude that defendant abandoned this argument in the trial court. Because defendant did not properly present this claim to the trial court, it is not reviewable on appeal. See LSA-C.Cr.P. art 841A; LSA-C.E. art. 103A(1); see also LSA-C.Cr.P. art. 703F.

#### **ANDERS BRIEF**

The counseled defense brief contains no assignments of error and sets forth that it is filed to conform with **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), wherein the Louisiana Supreme Court approved the procedures outlined in **State v. Benjamin**, 573 So.2d 528 (La.App. 4 Cir. 1990). **Benjamin** set forth a procedure to comply with **Anders v. California**, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), in which the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel found the appeal would be wholly frivolous. **Benjamin** has repeatedly been cited with approval by the Louisiana Supreme Court. See **Jyles**, 704 So.2d at 241; **State v. Mouton**, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam); **State v. Royals**, 600 So.2d 653 (La. 1992).

In the instant case, defense counsel reviewed the procedural history of the case in his brief. He set forth that, after a review of the record in this case, he has found no non-frivolous issues to present on appeal. He noted specifically that he was aware of the Louisiana Supreme Court's decision in **Shaw**, 969 So.2d at 1245, which stated that there is no prohibition against enhancing multiple sentences entered on the same date and arising out of a single criminal act or episode. Accordingly, defense counsel requested that he be relieved from further briefing, and he has filed a motion to withdraw.

This Court has conducted an independent review of the entire record in this case, and we have found no reversible errors under LSA-C.Cr.P. art. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. We do note sentencing errors with respect to each of defendant's habitual offender sentences. However, as explained below, these sentencing errors are automatically corrected by operation of law, and they do not require further briefing, or a remand.

Under the relevant portions of LSA-R.S. 15:529.1A(1)(b)(ii) (prior to 2010 amendments), if the offender's third felony and the two prior felonies are defined as crimes of violence under LSA-R.S. 14:2B, as a violation of the Uniform Controlled Dangerous Substances Law ("UCDSL") punishable by imprisonment for ten years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence. Defendant's instant convictions for attempted second degree murder and armed robbery are defined as crimes of violence under LSA-R.S. 14:2B. His prior convictions for manslaughter and attempted possession with intent to distribute cocaine are, respectively, a crime of violence and a violation of the UCDSL punishable by imprisonment for ten years or more. Therefore, the trial court imposed illegally lenient habitual offender sentences by failing to restrict the benefit of parole on each of defendant's enhanced sentences. However, the self-activating provisions of LSA-R.S. 15:301.1A eliminate the need to remand for a ministerial correction of an illegally lenient sentence. See State v. Williams, 00-1725 (La. 11/28/01), 800 So.2d 790, 799. Accordingly, defendant's habitual offender sentences will be served without the benefit of parole in their entirety.

Defendant's convictions, habitual offender adjudications, and sentences are hereby affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

**CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED; MOTION TO WITHDRAW GRANTED.**