

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KA 0729

STATE OF LOUISIANA

VERSUS

RYAN HARRIS

**Judgment Rendered:**

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NOV 07 2014

On appeal from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket Number 12-07-0330

Honorable Donald Johnson, Judge

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.



## **GUIDRY, J.**

The defendant, Ryan Harris, was charged by grand jury indictment with two counts of armed robbery of Ahmed Alarde (count one) and of Alan Klenke (count two), violations of La. R.S. 14:64; one count of attempted armed robbery of Rob Drue Creekmore (count three), a violation of La. R.S. 14:27 and 14:64; one count of attempted second degree murder of Kirk Snearl (count four), a violation of La. R.S. 14:27 and 14:30.1; and three counts of possession of a firearm by a person convicted of certain felonies (counts five, six, and seven), violations of La. R.S. 14:95.1. The defendant pled not guilty to all charges. The defendant also waived his right to be tried by a jury and elected to proceed with a bench trial. He was found guilty as charged on counts one, two, three, and four, but was acquitted on counts five, six, and seven.

The defendant was sentenced to imprisonment at hard labor for fifteen years on count one, imprisonment at hard labor for fifteen years on count two, imprisonment at hard labor for five years on count three, and imprisonment at hard labor for twenty years on count four, with all sentences to be served without benefit of probation, parole, or suspension of sentence.<sup>1</sup> The court ordered the sentences to be served concurrently with each other and consecutive to any other sentence the defendant was then serving. The State then filed a bill of information seeking to have the defendant adjudged and sentenced as a habitual offender under La. R.S. 15:529.1. Following a hearing, the defendant was adjudged a third-felony

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<sup>1</sup> There is a discrepancy between the sentencing transcript, the court minutes, and the commitment order regarding the sentence on count four. The transcript reflects that the court imposed a twenty-year sentence on this count, but the minutes and commitment order indicate the sentence was fifteen years. It is well settled that in the event of a discrepancy between the minutes and the transcript, the transcript prevails. See State v. Lynch, 441 So. 2d 732, 734 (La. 1983).

habitual offender<sup>2</sup> and was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence.

The defendant subsequently appealed to this Court, assigning error to the trial court's denial of his motion for the appointment of a sanity commission and request to change pleas. In this Court's previous opinion, State v. Harris, 10-1590 (La. App. 1st Cir. 9/14/11) (unpublished opinion), the defendant's convictions and habitual offender adjudication were affirmed. However, the habitual offender sentence was vacated, and this case was remanded, because the trial court failed to vacate any of the previously imposed sentences on counts one, two, three, and four and imposed a single enhanced sentence of life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence for all counts. This Court noted it was unclear whether the lower court intended to enhance one or all of the sentences and remanded the matter for further proceedings. On remand, the trial court imposed individual sentences of life imprisonment at hard labor without benefit of probation or suspension of sentence on counts one, two, three, and four.

The defendant now appeals following remand, claiming the lower court again erred by failing to vacate the original sentences on counts one, two, three, and four, as well as the original habitual offender sentence. The defendant does not challenge the excessiveness of the new sentences. For the following reasons, we affirm the habitual offender enhanced sentences and vacate the original sentences imposed on counts one, two, three, and four.

### **STATEMENT OF FACTS**

The following facts are taken from this Court's previous opinion in Harris, 10-1590 at pp.1-2. On October 30, 2007, the defendant entered the Gameware

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<sup>2</sup> Predicate #1 was set forth as the defendant's May 12, 2000 conviction under Twenty-Fourth Judicial District Court Docket # 99-1071 to Felon in Possession of a Firearm. Predicate #2 was set forth as the defendant's February 5, 1998 conviction under Twenty-Fourth Judicial District Court Docket # 97-00340 to Aggravated Battery.

store on College Drive in Baton Rouge and held Drue Creekmore, a Gameware employee, at gunpoint. The defendant demanded money and Playstation 3 gaming systems. Creekmore was aware that Security Guard Kirk Snearl was in the area and would be coming around shortly, so he stalled the defendant and did not immediately turn over the money. When Snearl arrived at the store, the defendant ran out of the door and fired a shot at him. Snearl returned fire, and the defendant was wounded. Snearl disarmed the defendant and held him at gunpoint until the police arrived. A nylon cap was found at the scene. A white van registered to the defendant was found parked directly behind the Gameware store. The entire robbery attempt was captured on video surveillance.

Inside the defendant's van, the investigating police found a small GameStop bag containing cash and rolled coins. Alan Klenke, an employee at GameStop on Andrea Drive in Baton Rouge, testified that, on the same date, he was also robbed at gunpoint. The perpetrator entered the GameStop store, pointed a gun at Klenke, and demanded money and a Playstation 3 gaming system. Klenke placed the money from the register (cash and rolled coins) inside a small GameStop bag and gave it to the gunman. Klenke later viewed the surveillance footage from the Gameware robbery. The gunman in the Gameware robbery matched the description of the individual who robbed Klenke. Klenke also identified the bag found inside the defendant's van as the same type of bag that he gave to the gunman when he was robbed.

The defendant was also connected with the armed robbery of Ahmed Alarde at Po-Boy Express on Cedarcrest Avenue in Baton Rouge approximately one week earlier, on October 24, 2007. The armed robbery at Po-Boy Express was also captured on video surveillance.

## DISCUSSION

In his sole assignment of error, the defendant claims the trial court again failed to vacate the original sentences imposed on counts one, two, three, and four, as well as the original habitual offender enhanced sentence. As such, he avers that the lower court's failure creates an illegal sentence, and his case should be remanded to the trial court.

As noted above, in the defendant's previous appeal, this Court identified a sentencing error; specifically, that the trial court failed to vacate any of the previously imposed sentences pursuant to La. R.S. 15:529.1(D)(3), and that it erred by failing to designate which count was to be enhanced by the habitual offender adjudication. As such, this Court "vacate[d] [the] defendant's multiple-offender sentence and remand[ed] for resentencing." Harris, 10-1590 at p. 5. Accordingly, contrary to the defendant's assertion, when this case returned to the trial court on remand, the original habitual offender sentence had already been vacated.

Article 882(A) of the Louisiana Code of Criminal Procedure provides that "[a]n illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review." Louisiana Revised Statute 15:529.1(D)(3) provides, in pertinent part, that "[w]hen the judge finds that [a defendant] has been convicted of a prior felony or felonies ... the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed." However, when faced in previous criminal appeals with the failure of a trial court to vacate the original sentence, this court has simply vacated the original sentence to conform to the requirements of the habitual offender statute and has found it unnecessary to vacate the habitual offender sentence or remand for resentencing. Such an approach is consistent with the intent of the trial court, avoids any danger of a double jeopardy violation, and is

in the interest of judicial economy. State v. Jackson, 00-0717, p. 3 (La. App. 1st Cir. 2/16/01), 814 So. 2d 6, 9-11 (en banc), writ denied, 01-0673 (La. 3/15/02), 811 So. 2d 895.

Despite the trial court's failure to vacate the original sentences, its intent was clearly explained:

[B]ased upon a remand order from the First Circuit Court of Appeal noticing the court's error in pronouncing only one life sentence, the court now resentence[s] the defendant as to four counts ... . Having determined that he should be re-sentenced in compliance with the court of appeal, I re-sentence the defendant to a term of life imprisonment at hard labor – count four, count two, count one, and count three.

The proceedings give no indication that the court intended to impose the habitual offender sentences and the original sentences. The court intended for the four life imprisonment sentences to be the sentences in this case. The court simply overlooked its duty to vacate the original sentences. Correction of the trial court's failure to vacate the original sentences does not involve the exercise of sentencing discretion and will eliminate any possibility of confusion as to the terms of the confinement. Jackson, 00-0717 at p. 3, 814 So. 2d at 11.

As the Louisiana Supreme Court explained in State v. Shaw, 06-2467, p. (La. 11/27/07), 969 So. 2d 1233, 1245, there is no statutory bar to applying the habitual offender law in sentencing for more than one conviction obtained on the same date, whether the convictions result from separate felonies committed at separate times or arise out of a single criminal act or episode. Accordingly, we affirm the enhanced sentences of life imprisonment at hard labor without benefit of probation or suspension of sentence on counts one, two, three, and four, and vacate the originally imposed sentences of imprisonment for fifteen years at hard labor on count one, imprisonment for fifteen years at hard labor on count two, imprisonment for five years at hard labor on count three, and imprisonment for

twenty years at hard labor on count four.

**HABITUAL OFFENDER SENTENCES AFFIRMED; ORIGINAL  
SENTENCES ON COUNTS ONE, TWO, THREE, AND FOUR VACATED.**