

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0921

STATE OF LOUISIANA

VERSUS

DERICK JOHNEL JORDAN

Judgment Rendered: December 23, 2014

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 531730

The Honorable August J. Hand, Judge Presiding

Bertha M. Hillman
Thibodaux, Louisiana

Counsel for Defendant/Appellant
Derick Johnel Jordan

Walter P. Reed
District Attorney
Covington, Louisiana

Counsel for Plaintiff/Appellee
State of Louisiana

Kathryn W. Landry
Baton Rouge, Louisiana

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

*Guidry, J. Dissents. I do not find
Peterson distinguishable.*

THERIOT, J.

The defendant, Derick J. Jordan, was charged by bill of information with armed robbery with use of a firearm, violations of Louisiana Revised Statutes sections 14:64 and 14:64.3A.¹ He pled not guilty and, following a jury trial, was found guilty as charged. He filed motions for new trial and post-verdict judgment of acquittal, both of which were denied. He was then sentenced to twenty-five years at hard labor without benefit of parole, probation, or suspension of sentence. He was also sentenced to an additional five years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, pursuant to La. R.S. 14:64.3, the firearm enhancement statute. The sentences were ordered to run consecutively. Defendant filed a motion to reconsider sentence, which was denied. The State subsequently filed a multiple offender bill of information.² After a hearing, the defendant was adjudicated a second-felony habitual offender. The district court vacated its previously imposed sentences and sentenced the defendant to fifty years at hard labor without the benefit of probation, parole, or suspension of sentence. He was also sentenced to an additional five years at hard labor without the benefit of probation, parole, or suspension of sentence under the firearm enhancement statute, and the district court ordered that the sentences run consecutively. The defendant objected to the habitual offender sentence. He now appeals, arguing that the sentences imposed by the district court are excessive. For the following

¹ Co-defendant Dale Shonne Square was charged by the same bill of information with armed robbery with use of a firearm (count 1), aggravated flight from an officer (count 2), and illegal carrying of a weapon (count 3). The State entered a nolle prosequi on count 3, and Square entered a guilty plea prior to the defendant's trial.

² The predicate offense listed on the multiple offender bill of information is the defendant's August 30, 2010, guilty plea to possession of marijuana, second offense, a violation of Louisiana Revised Statutes section 40:966C, in the 22nd Judicial District Court, Parish of St. Tammany, docket number 482,000.

reasons, we affirm the defendant's conviction, habitual offender adjudication, and sentences.

FACTS

On January 27, 2013, around 8:45 p.m., the defendant drove a vehicle belonging to Dale Square into the Kingspoint subdivision in Slidell, Louisiana. As Domino's employee Dale Trapani, the victim, attempted to make a U-turn in order to exit the subdivision after delivering a pizza, the defendant blocked her vehicle with his vehicle. Square then exited the passenger side of his vehicle and approached the victim's vehicle. He held a gun to the victim's head and demanded that she give him money. She gave him the money that she had, which included one check and less than \$20.00 in cash. Square demanded that the victim give him the keys to her vehicle. She initially hesitated, but when she saw the driver's side door of the vehicle open and a foot come out, she handed over her keys. Square and the defendant were arrested and gave taped statements. The defendant confirmed that he was the driver, blocked the victim's vehicle, and watched Square approach the victim with a gun. Square received \$10.00 for his participation in the robbery.

EXCESSIVE SENTENCE

In his sole assignment of error, the defendant argues that the district court imposed an excessive sentence. Specifically, the defendant contends that his fifty-five year sentence makes no meaningful contribution to acceptable goals of punishment and is nothing more than a purposeless and needless imposition of pain and suffering. Citing multiple statistics and imprisonment rates from other countries and states, the defendant argues that his sentence is a "waste of scant economic and human resources." He also claims that his sentence is grossly out of proportion to the severity of the

crime and solidifies “Louisiana’s unflattering position as the poster child for imprisonment and as the incarceration capital of the world.”

The defendant filed a motion to reconsider sentence after the district court imposed the original sentences. However, a thorough review of the record indicates that the defendant did not make or file a second motion to reconsider after the original sentences were vacated and the new fifty-five-year sentence was imposed at the habitual offender hearing. Under Louisiana Code of Criminal Procedure articles 881.1E and 881.2A(1), the failure to make or file a motion to reconsider sentence shall preclude the defendant from raising an objection to the sentence on appeal, including a claim of excessiveness. See *State v. Mims*, 619 So.2d 1059 (La. 1993) (per curiam). The defendant, therefore, is procedurally barred from having this assignment of error reviewed because he failed to file a new motion to reconsider sentence after the district court resentenced him as a habitual offender. See *State v. Emerson*, 2004-0156 (La. App. 1st Cir. 10/29/04), 888 So.2d 975, 979-80, writ denied, 2005-0089 (La. 4/22/05), 899 So.2d 557; *State v. Chisolm*, 99-1055 (La. App. 4th Cir. 9/27/00), 771 So.2d 205, 212, writs denied, 2000-2965, 2000-3077 (La. 9/28/01), 798 So.2d 106, 108.

We are aware of the decision in *State v. Peterson*, 2012-1620 (La. 3/1/13), 108 So.3d 781, 782, wherein the Louisiana Supreme Court remanded the matter to this court for consideration of the defendant’s excessive sentence claim despite the defendant’s failure to make or file a second motion to reconsider sentence after his original sentence was vacated and his new habitual offender sentence was imposed. However, we find that *Peterson* is distinguishable from the instant case. In *Peterson*, defense counsel objected to the “harsh” sentence after the habitual offender sentence was imposed, and the court found that counsel’s objection to the “harsh”

sentence, which significantly increased the term of imprisonment, adequately preserved a bare claim of excessiveness for review. *Peterson*, 108 So.3d at 782. In the instant case, when the defendant was resentenced, defense counsel simply stated that the defendant “objects to the sentence as imposed.” Defense counsel’s objection did not constitute an oral motion to reconsider sentence. Moreover, a general objection to a sentence without stating specific grounds, including excessiveness, preserves nothing for appellate review. See *State v. Bickham*, 98-1839 (La. App. 1st Cir. 6/25/99), 739 So.2d 887, 891. Accordingly, this assignment of error lacks merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION,
AND SENTENCES AFFIRMED.**