

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 0078

STATE OF LOUISIANA

VERSUS

SHEREON HEARD

Judgment Rendered: JUN 05 2015

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 06-13-0522

HONORABLE RICHARD "CHIP" MOORE, JUDGE

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Hillar A. Moore, III
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and
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State of Louisiana

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Attorney for Appellant
Shereon Heard

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

Handwritten signature or initials in the left margin, possibly reading 'MM' and 'WJ'.

McDONALD, J.

The defendant, Shereon M. Heard, was charged by bill of information with possession of a schedule II controlled dangerous substance (oxycodone), a violation of LSA-R.S. 40:967(C). After initially pleading not guilty, the defendant withdrew that plea and pled guilty on February 3, 2014. Pursuant to an agreement with the State, the defendant was to be sentenced to five years imprisonment at hard labor. The agreement also included an agreed-upon term of ten years imprisonment for the defendant's separately charged offense of armed robbery, a violation of LSA-R.S. 14:64. See State v. Heard, 15-0077 (La. App. 1 Cir. 6/3/15), ___ WL ___ (unpublished).

The district court deferred sentencing until April 3, 2014, and informed the defendant that if he did not appear that day, he would be sentenced to fifty years imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence for his armed robbery conviction instead of the ten-year sentence initially agreed upon. The defendant failed to appear on April 3, and a bench warrant was issued for his arrest. The defendant appeared on April 30, 2014, and the warrant for his arrest was recalled. That day, the defendant was sentenced to fifty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for his armed robbery conviction and to five years imprisonment at hard labor for the instant offense, to run consecutive to the fifty-year sentence. He filed a motion to reconsider sentence, which was granted by the district court and, at a hearing held on August 22, 2014, the defendant was resentenced to twenty years imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence for his armed robbery offense consecutive to the original five years imprisonment at hard labor for the instant offense.¹ Defense counsel objected to any sentence in excess of that for which the defendant originally bargained. On appeal, the defendant contends that defense counsel's statement at the conclusion of the hearing constituted a motion to

¹ The district court failed to vacate the defendant's original fifty-year sentence prior to imposing his new twenty-year sentence. Although it was apparent that the district court intended to vacate the original sentence, out of an abundance of caution, this court vacated the original fifty-year sentence. See State v. Heard, 15-0077 (La. App. 1 Cir. 6/3/15), ___ WL ___ (unpublished).

reconsider and that the district court failed to rule on this alleged motion. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

Because the defendant pled guilty, the facts of his offense were not developed at a trial. Based on the factual basis for the plea presented by the State at the defendant's **Boykin**² hearing and the bill of information, during an investigatory stop shortly before midnight on April 22, 2013, on North 13th Street in Baton Rouge, Louisiana, officers discovered that the defendant was in possession of an oxycodone pill for which he did not have a prescription.

MOTION TO RECONSIDER SENTENCE

In his sole assignment of error, the defendant argues that the district court failed to rule on his motion to reconsider sentence, and thus, the matter should be remanded to the district court to supplement the record with the ruling on the outstanding motion or to conduct a hearing on the outstanding motion. See LSA-C.Cr.P. art. 881.4(C). As noted above, the district court initially entered a fifty-year sentence for the defendant's armed robbery conviction due to his failure to appear at the April 3, 2014, sentencing hearing and entered a five-year sentence for the instant offense. The defendant filed a motion to reconsider his sentence, which was granted by the district court. A hearing was held on August 22, 2014, and the district court resentenced the defendant to twenty years imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence for the armed robbery conviction consecutive to the original five years at hard labor for the instant offense. At the conclusion of the hearing, defense counsel stated:

Your honor, just to try to make the record clear, I would like to give notice that I will file a motion for appeal and ask that the appellate project be appointed to represent him from this point forward. Also, just so there won't be . . . any problem with the record, I'm going to object to any sentence that's in excess of what was originally - - he bargained for.

The court responded, "So ordered."

The defendant claims that this statement was a motion to reconsider sentence and that the district court failed to rule on the alleged motion. However, the motion to

² **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

reconsider sentence applied only to the defendant's armed robbery sentence. Therefore, the record does not contain a motion to reconsider the defendant's five-year sentence for the instant offense. Moreover, the defendant's five-year sentence for the instant offense is not in excess of that agreed upon pursuant to the defendant's plea agreement with the State. Accordingly, there is no basis in the record for the defendant's argument. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.