

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 KA 0757

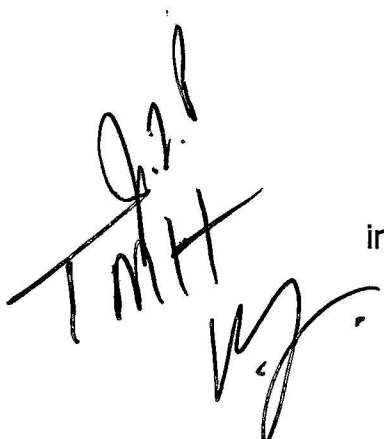
STATE OF LOUISIANA

VERSUS

JEFFERY JONES

Judgment rendered November 9, 2015.

Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 547665
Honorable Allison H. Penzato, Judge


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STATE OF LOUISIANA

ATTORNEY FOR
DEFENDANT-APPELLANT
JEFFERY JONES

BEFORE: PETTIGREW, HIGGINBOTHAM, AND CRAIN, JJ.

PETTIGREW, J.

Defendant, Jeffery Jones, was charged by amended bill of information with second-offense failure to update or renew his sexual offender registration, a violation of La. R.S. 15:542.1.4(A)(2).^{1,2,3} He pled not guilty. Following a jury trial, defendant was found guilty as charged by a unanimous jury. Defendant filed motions for new trial and post verdict judgment of acquittal, which the trial court denied. The state filed an amended habitual offender bill of information, alleging defendant to be a third-felony habitual offender.⁴ Defendant initially denied the allegations of the habitual offender bill of information, but in accordance with a plea agreement, he later admitted the contents of the habitual offender bill. Accordingly, the trial court adjudicated defendant a third-felony habitual offender and sentenced him, pursuant to the plea agreement, to twenty years at hard labor, without the benefit of parole, probation, or suspension of sentence. Defendant filed a motion to reconsider sentence, which the trial court denied. Defendant now appeals, alleging two assignments of error. For the following reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence.

FACTS

Sometime on or around August 7, 2013, defendant was released from prison on good-time parole. Because of his two prior sex offenses, defendant was classified as a "Tier 3" offender, requiring him to register with the St. Tammany Parish Sheriff's Office upon his release and to update his registration every three months for the rest of his life.

¹ The bill of information actually listed the offense statute as La. R.S. 15:542.1.1, which sets forth the guidelines for in-person periodic renewal of registration by sex offenders, but not the offenses or penalties for failure to do so. This error in citation is a nonreversible patent error, discussed more fully below.

² Defendant had previously been convicted of failure to update or renew his sexual offender registration on October 14, 2002, under St. Tammany Parish (22nd JDC) docket number 351434.

³ Defendant's prior sex offenses requiring registration were: 1) a November 26, 1990 conviction for molestation of a juvenile, under St. Tammany Parish (22nd JDC) docket number 190343; and 2) a January 29, 1992 conviction for sexual battery, under St. Tammany Parish (22nd JDC) docket number 199977.

⁴ Defendant's predicate convictions were alleged as: 1) a March 19, 2010 conviction for possession of a firearm or other dangerous instrumentality (La. R.S. 14:95(E)), under St. Tammany Parish (22nd JDC) docket number 450342; and 2) an October 14, 2002 conviction for distribution of a Schedule II controlled dangerous substance under St. Tammany Parish (22nd JDC) docket number 346170.

On August 9, 2013, defendant met with Deputy Denise Porter, a sex offender registry clerk with the St. Tammany Parish Sheriff's Office, at which time defendant completed and signed a registration information form. This form instructed defendant that his next registration date was November 8, 2013. The form also contained a checklist that required defendant to provide certain items: 1) a driver's license with his correct address and "Sex Offender" listed under the photo; 2) a state ID with his correct address and "Sex Offender" listed under the photo; 3) two bills or mail that list defendant's name and current address, or a signed and notarized proof-of-residence affidavit; and 4) vehicle information, including the license plate and vehicle identification number for all vehicles owned or operated. In addition, the checklist required that defendant pay several notification and registration fees via money order. The form clearly indicated that the incompleteness of any of the items of the checklist would constitute noncompliance, resulting in the issuance of an arrest warrant.

Defendant timely provided the required fees, but he failed to return with the items on the checklist. Furthermore, defendant did not return to the Sheriff's Office to update his sex offender registry information on November 8, 2013, as required, or thereafter.

On February 25, 2014, Sergeant Robert Vittitoe, the sergeant supervisor over the sex offender registry unit, secured an arrest warrant for defendant's failure to renew his sex offender registration. Defendant was placed under arrest on March 15, 2014, when he reported to one of the required sex offender treatment classes he attended as part of his parole. At the time of his arrest, defendant had previously been convicted of first-offense failure to register as a sex offender.

PATENT ERROR

Under La. Code Crim. P. art. 920(2), this Court routinely reviews the record for errors discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence. In this case, we note nonreversible patent errors.

Defendant's amended bill of information charged him with second-offense failure to update or renew sex offender registration. The proper citation for the general offense of failure to update or renew sex offender registration is La. R.S. 15:542.1.4. However, the bill of information lists the citation of the offense as La. R.S. 15:542.1.1, which sets forth the requirement that sex offenders complete an in-person periodic renewal of registration, but provides no penalty for a failure to do so. The bill of information also erroneously states that defendant's date of conviction for his first offense for failure to update or renew registration was on November 14, 2002, when the minutes reflect the correct date was October 14, 2002. Additionally, the bill of information lists the date of defendant's conviction for sexual battery as June 18, 1991, but the minutes reflect the actual date of conviction was January 29, 1992, and the date of the offense was June 18, 1991.

The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall state for each count the official or customary citation of the statute which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice. La. Code Crim. P. art. 464. Here, while the statutory citation and dates of previous convictions were clearly erroneous, there is nothing in the record to indicate this error misled defendant to his prejudice. Accordingly, this error is harmless.

MOTION FOR MISTRIAL

In his first assignment of error, defendant argues that the trial court erred in denying his motion for mistrial. Specifically, he argues that the state made a substantive amendment to his bill of information after the commencement of trial, requiring the court to order a mistrial under La. Code Crim. P. art. 487(A).

The state amended the bill of information two times, with both amendments appearing to occur after the beginning of jury selection. A jury trial commences when the

first prospective juror is called for examination. La. Code Crim. P. art. 761. A court may at any time cause the indictment to be amended with respect to any formal defect, imperfection, omission, or uncertainty. However, when the defect is one of substance, an indictment may only be amended prior to trial. After the trial begins, a mistrial shall be ordered on the ground of a defect of substance. See La. Code Crim. P. art. 487(A).

Although only the state's second amendment is at issue in this appeal, it is helpful to review both amendments for the sake of clarity. As originally written, the bill of information charged defendant, in pertinent part, as follows:

COUNT 1

R.S. 15:542.1.1 (2nd) FAILURE TO UPDATE OR RENEW REGISTRATION-2ND

JEFFERY JONES, on or between November 18, 2013 and March 15, 2014, by failing to update or renew sex offender registration with the proper authorities after being convicted of Molestation of a Juvenile and Forcible Rape on (sic) Molestation of Juvenile on November 26, 1990 and Forcible Rape on June 18, 1991 under Molestation of Juvenile Docket Number 190343 and Forcible Rape Docket Number 199977 both cases in the 22nd Judicial District Court in St. Tammany Parish.

And now the District Attorney informs this Honorable Court that this is a SECOND offense, the defendant having previously been convicted of Failure to update or renew registration on November 14, 2002, in Docket Number 351434, in the 22nd Judicial District Court in St. Tammany Parish.

The state's initial amendment to this bill of information, made by handwritten corrections on November 10, 2014, eliminated many of the apparent copy-and-paste errors present in the original document. The first amended bill of information read, in pertinent part, as follows:

COUNT 1

R.S. 15:542.1.1 (2nd) FAILURE TO UPDATE OR RENEW REGISTRATION-2ND

JEFFERY JONES, on or between November 18, 2013 and March 15, 2014, by failing to update or renew sex offender registration with the proper authorities after being convicted of Molestation of a Juvenile ~~and Forcible Rape on Molestation of Juvenile~~ on November 26, 1990 [DK #190343] and Forcible Rape on June 18, 1991 ~~under Molestation of Juvenile~~ Docket Number 190343 and Forcible Rape Docket Number ~~199977~~ [199977] both cases in the 22nd Judicial District Court in St. Tammany Parish.

And now the District Attorney informs this Honorable Court that this is a SECOND offense, the defendant having previously been convicted of Failure to update or renew registration on November 14, 2002, in Docket Number 351434, in the 22nd Judicial District Court in St. Tammany Parish.⁵

On November 12, 2014, the state amended the bill of information for a second time, again using handwritten corrections. The impetus for this amendment was the state's realization that while defendant had been charged with forcible rape in docket number 199977, he actually pled guilty to sexual battery in that case. The second amended bill of information read, in pertinent part, as follows:

COUNT 1

R.S. 15:542.1.1[1] (2nd) FAILURE TO UPDATE OR RENEW REGISTRATION-2ND

JEFFERY JONES, on or between November 18, 2013 and March 15, 2014, by failing to update or renew sex offender registration with the proper authorities after being convicted of Molestation of a Juvenile ~~and Forcible Rape on Molestation of Juvenile~~ on November 26, 1990 [DK #190343] ~~and Forcible Rape on June 18, 1991 under Molestation of Juvenile~~ Docket Number 190343 and ~~Forcible Rape [Sexual Battery]~~ Docket Number ~~199977~~ [199977 on June 18, 1991] both cases in the 22nd Judicial District Court in St. Tammany Parish.

And now the District Attorney informs this Honorable Court that this is a SECOND offense, the defendant having previously been convicted of Failure to update or renew registration on November 14, 2002, in Docket Number 351434, in the 22nd Judicial District Court in St. Tammany Parish.⁶

⁵ Strikethroughs note deletions; brackets note additions.

⁶ Thus, a clean version of the pertinent part of the bill of information would read as follows:

COUNT 1

R.S. 15:542.1.1 (2nd) FAILURE TO UPDATE OR RENEW REGISTRATION-2ND

JEFFERY JONES, on or between November 18, 2013 and March 15, 2014, by failing to update or renew sex offender registration with the proper authorities after being convicted of Molestation of a Juvenile on November 26, 1990 [under] Docket Number 190343 and Sexual Battery [under] Docket Number 199977 on June 18, 1991[,] both cases in the 22nd Judicial District Court in St. Tammany Parish.

And now the District Attorney informs this Honorable Court that this is a SECOND offense, the defendant having previously been convicted of Failure to update or renew registration on November 14, 2002, in Docket Number 351434, in the 22nd Judicial District Court in St. Tammany Parish.

In this clean version of the bill of information, the bracketed additions were made by this Court for grammatical purposes.

Defendant objected to both sets of amendments to the bill of information and requested a mistrial, arguing that these amendments were substantive and occurred after the commencement of trial. The trial court ruled that the first set of amendments (eliminating the copy-and-paste errors) corrected defects of form only. The trial court agreed with defendant that the second set of amendments (changing the forcible rape language to sexual battery) was a substantive change, but it denied defendant's motion for a mistrial on the ground that defendant was not prejudiced by this set of amendments.

Defendant's first assignment of error does not raise any issue with respect to the first set of amendments, but we note that the trial court was correct in declaring these changes to be formal (correcting defects of form), rather than substantive. What we must determine is whether defendant is correct that the second set of amendments constituted substantive changes which, because they occurred after the commencement of trial, warranted a mistrial.

A "defect of substance" as contemplated by La. Code Crim. P. art. 487 is intended to mean a defect which will work to the prejudice of the party accused. **City of Baton Rouge v. Norman**, 290 So.2d 865, 870 (La. 1974); see also **State v. Delandro**, 2001-2514 (La. App. 1 Cir. 5/10/02), 818 So.2d 1011, 1017. In the instant case, the second set of amendments to the bill of information had one primary effect; it changed the title of one of defendant's earlier offenses from "Forcible Rape" to "Sexual Battery." The docket number and date of conviction for this offense were not amended. The state made this correction to clarify the title of one of the sex offenses for which defendant previously had been convicted. The proper name of the sexual battery conviction was listed in two documents – the certified copies of his sexual battery and first-offense failure to register convictions – provided to defendant as part of discovery. The trial court noted this fact in finding that defendant was not prejudiced by this change. Furthermore, one would presume that defendant had independent knowledge of his own prior convictions. Taken together, these facts establish that the defects present in the bill of information

prior to the second set of amendments did not prejudice defendant and, therefore, did not rise to the level of defects of substance. Accordingly, the trial court was correct in denying defendant's motion for a mistrial under La. Code Crim. P. art. 487(A).⁷

This assignment of error is without merit.

EXCESSIVE SENTENCE

In his second and final assignment of error, defendant contends that his sentence of twenty years at hard labor, without the benefit of parole, probation, or suspension of sentence, is unconstitutionally excessive. He argues that his sentence is severe for this offense, which he states resulted from an oversight or honest misunderstanding. He supports this claim by pointing to his continued attendance of sexual offender treatment classes and face-to-face meetings with his parole officer during his period of nonrenewal.

Pursuant to La. Code Crim. P. art. 881.2(A)(2), a defendant is precluded from appealing a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. See State v. Young, 96-0195 (La. 10/15/96), 680 So.2d 1171, 1175. This provision also applies to a defendant who stipulates to the terms of a habitual offender bill in exchange for a sentencing agreement. See State v. Charles, 2000-0664 (La. App. 1 Cir. 12/22/00), 775 So.2d 667, 669-70, writ denied, 2001-1067 (La. 1/4/02), 805 So.2d 1186.

Based on the colloquy from defendant's sentencing, it is unclear whether defendant agreed to stipulate to the habitual offender bill for a specific sentence or for a capped sentence. Nonetheless, defendant unequivocally agreed with the trial court that the imposed sentence complied with his plea agreement. Therefore, defendant is precluded from appealing his sentence.

This assignment of error is without merit.

⁷ We note that the trial court stated that the second set of amendments changed "substantive defects." We acknowledge that, if indeed, they were substantive defects, the trial court was required by La. Code Crim. P. art. 487(A) to declare a mistrial. However, it is clear that while finding these defects to be substantive, but not prejudicial, the trial court came to the correct result, but in a semantically different way.

For all the foregoing reasons, the defendant's conviction, habitual offender adjudication, and sentence are affirmed.

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