

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2016 KA 1608

STATE OF LOUISIANA

VERSUS

JRW
CAPRIECE DAWSON

CH
Judgment rendered: JUN 14 2017

WJC.
my GH

On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of Washington
State of Louisiana
No. #15 CR6 127693 Div: C/Criminal

The Honorable Rick Swartz, Judge Presiding

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

HOLDRIDGE, J.

The defendant, Caprice Dawson, was charged by grand jury indictment with theft of \$1,500 or more, a violation of La. R.S. 14:67 (count 1); conspiracy to commit theft of \$1,500 or more, a violation of La. R.S. 14:26 and 14:67 (count 2); and malfeasance in office, a violation of La. R.S. 14:134 (count 3).¹ The defendant pled not guilty to all counts and, following a jury trial, was found guilty on counts 1 and 3, and not guilty on count 2. For the theft of \$1,500 or more conviction, the defendant was sentenced to ten years imprisonment at hard labor; the trial court suspended five years of the sentence and ordered that upon release from incarceration, the defendant is to be placed on five years of supervised probation. For the malfeasance in office conviction, the defendant was sentenced to five years imprisonment at hard labor; the trial court suspended the entire five-year sentence, and ordered that upon release the defendant be placed on five years of supervised probation. A special condition of probation included the defendant's payment of restitution to the Town of Franklinton. The sentences were ordered to run consecutively. The defendant now appeals, designating three assignments of error. We affirm the convictions, vacate the sentences, and remand to the trial court for resentencing, including a restitution hearing to determine the amount the defendant owes in restitution and the manner in which payments will be made.

FACTS

From 2003 to 2014, the defendant worked at the Gas & Water Department for the Town of Franklinton in Washington Parish. As a utility clerk, the defendant worked in the front office, answering the phone and helping customers who went to the department to pay their bills. From late 2010 to 2014, the

¹ The defendant was also charged with first degree injuring public records, a violation of La. R.S. 14:132(A), and conspiracy to commit first degree injuring public records, a violation of La. R.S. 14:26 and 14:132(A). These two counts were severed. It is not clear if these counts were dismissed; in any event, the defendant was charged and tried on three counts.

defendant misappropriated thousands of dollars from customers who paid their bills in cash. The defendant accomplished this misappropriation in different ways. Sometimes, when a cash-paying customer came in to pay a bill, or put some cash toward an outstanding bill, the defendant would overcharge the customer by altering the amount of the bill in the computer system. The defendant would then keep the extra cash. Another way the defendant took money was simply by not posting to a customer's account that he or she had paid. For example, a customer would come in and pay a certain amount of money, in cash, toward his or her account. The defendant would write a handwritten receipt, sign it, and give it to the customer. Instead of taking that amount of cash given to her and adding it to the cash drawer, the defendant kept the cash and never posted this amount to the customer's account. This fraudulent activity by the defendant was confirmed by Jonathan Hudson, senior investigative auditor for the Louisiana Legislative Auditor's Office. The misappropriation and incorrect (or no) postings to accounts led to many angry cash-paying customers going to the department over these several years and demanding to know why they were getting letters from the utility company that they had not paid their bills or had delinquent accounts. According to Hudson, another way the defendant misappropriated money was by inputting into the computer a transaction of the customer, taking the cash, and then voiding that transaction, so it appeared the exchange of cash never took place.

Internal audits were conducted for the relevant years, and it was determined that there were too many delinquent accounts for what the Town considered a "normal" number of such accounts. It was further determined that utility revenues were lower during these years (2011-2014) than it had been during the previous years.

In March of 2014, a meeting was held to address these issues, which included Minda Raybourn, a CPA who did the internal auditing, Mayor Wayne Fleming, and Ellen Creel, an attorney for the Town of Franklinton. The defendant was called into the meeting and asked about the missing funds in the department. The defendant repeatedly stated that she did not know anything. The defendant left the meeting and waited in the lobby. Carmen Freeman, the other clerk who worked with the defendant, was then called into the meeting and was asked about the missing funds from the department. Freeman admitted that she had been “borrowing” money from the customers. She said she had taken about \$15,000. The defendant was then called back into the meeting; she was told that Freeman admitted to taking money from the customers. The defendant then admitted that she, too, had been “borrowing” money from the cash-paying customers.

The defendant testified at trial. She denied that she ever voided amounts in customer accounts or manipulated the accounts in any way. She also denied that she ever stole any money.

ASSIGNMENTS OF ERROR NOS. 1, 2 AND 3

In these related assignments of error, the defendant argues that the sentences imposed are excessive, and defense counsel’s failure to file a motion to reconsider sentence constitutes ineffective assistance of counsel. In her third assignment of error, the defendant argues the trial court failed to state a determinate amount of restitution and further failed to state the mode and manner of payment, as required by La. Code Crim. P. art. 895.1. Because this third assignment of error has merit and requires that the matter be remanded to the trial court for resentencing, we pretermit addressing any sentencing errors raised in the first two assignments of error.

Upon sentencing the defendant, the trial court stated as a special condition of her probation that she is to make restitution to the Town of Franklinton for the loss that it sustained. The trial court stated nothing more regarding restitution to the Town.

If a defendant who has been convicted of an offense is sentenced to imprisonment, the court shall impose a determinate sentence. La. Code Crim. P. art. 879. Louisiana Code of Criminal Procedure article 895.1(A)(1) provides that the court shall order restitution in a reasonable sum not to exceed the actual pecuniary loss to the victim in an amount certain, and that the restitution payment shall be made, in discretion of the court, either in a lump sum or in monthly installments based on the earning capacity and assets of the defendant. The trial court in the instant matter failed to specify the amount of restitution that the defendant would be required to pay. Further, there was no determination by the trial court of the defendant's earning capacity and assets, and there was no payment schedule set for restitution.

Due to the nonspecific restitution order, the sentences imposed upon the defendant by the trial court were indeterminate and, thus, invalid. See State v. Fussell, 2006-2595 (La. 1/16/08), 974 So.2d 1223, 1237. An indeterminate and thus illegal sentence necessitates that the sentence be vacated and the case remanded for resentencing. State v. Mingo, 2015-0435 (La. App. 1st Cir. 9/18/15), 2015WL5516277, p.4, writ denied, 2015-1896 (La. 3/14/16), 189 So.3d 1072; see also State v. Fussell, 2006-2595 (La. 1/16/08), 974 So.2d 1223, 1238; State v. Baxley, 2014-48 (La. App. 3rd Cir. 5/7/14), 139 So.3d 556, 557-58. Accordingly, the sentences are vacated and this matter is remanded for resentencing. Mingo, 2015WL5516277 at p.4.

Accordingly, we vacate the sentences and remand the case for resentencing. Following an evidentiary hearing, the trial court is instructed that if restitution is ordered it must specify the amount of restitution owed and manner of payments. We affirm the defendant's convictions, vacate the sentences, and remand for resentencing.

**CONVICTIONS AFFIRMED; SENTENCES VACATED;
REMANDED FOR RESENTENCING.**