STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 KA 0766

STATE OF LOUISIANA

VERSUS

EDWARD CALDWELL

Judgment Rendered: NOV 0 1 2017

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On Appeal from the
23rd Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Trial Court No. 32,288

Honorable Thomas Kliebert, Jr., Judge Presiding

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BEFORE: HIGGINBOTHAM, HOLDRIDGE, AND PENZATO, JJ.

PENZATO, J.

The defendant, Edward Caldwell, was charged by grand jury indictment with two counts of aggravated rape (victims under thirteen years of age), violations of La. R.S. 14:42 (prior to amendment by 2015 La. Acts Nos. 184, §1 and 256, §1) (counts one and two); and molestation of a juvenile, a violation of La. R.S. 14:81.2 (count three).[1] He entered a plea of not guilty and, following a jury trial, was found guilty as charged on all three counts. As to counts one and two, on each count he was sentenced to a term of life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. On count three, the defendant was sentenced to twenty years at hard labor. The district court ordered that the sentences on counts one and two run consecutively with each other and concurrently with that imposed on count three. The defendant now appeals, challenging the sentences imposed by the district court. For the following reasons, we affirm the defendant's convictions and sentences.

FACTS

While attending a family birthday party on July 4, 2013, at the home of her half-sister, Leslie Cooper, the victim, A.K., disclosed that her father, the defendant, had been molesting her.[2] Investigations revealed that the defendant had also been molesting A.K.'s younger sister, C.K. Both girls were taken to the Audrey Hepburn Care Center for examinations and tested positive for chlamydia. The defendant tested positive for the same species of chlamydia as A.K. and C.K.

At trial, A.K. testified that the defendant began touching her private area with his hand when she was six years old. When she was twelve years old and living in an R.V. park in Gonzales, Louisiana, the defendant forced her to engage

[1] A.K., the victim of counts one and three, was born on November 19, 1999. C.K., the victim of count two, was born on March 11, 2001.

[2] The victims herein will be referred to by initials only. See La. R.S. 46:1844W.

in vaginal sexual intercourse multiple times per week. A.K. testified that the defendant raped her more than twenty times. The defendant also forced A.K. to perform oral sex on him, which she testified occurred less than ten times. The abuse continued until A.K. was removed from the home after the July 4, 2013, disclosure. A.K. also testified that she witnessed the defendant touch C.K.'s private area when C.K. was ten or eleven years old.

C.K. testified that the defendant touched her private area with his hand more than one time. When she turned twelve years old, the defendant began raping her. C.K. testified that the sexual vaginal intercourse happened more than twenty times. The defendant also forced her to perform oral sex on him.

The victims' mother testified that she and the defendant began dating when she was fourteen years old and he was thirty-four years old and that they had been together for over fifteen years. She stated that she did not witness the defendant rape her daughters, but that it was a "possibility." The defendant testified at trial and denied abusing A.K. and C.K. as well as testing positive for chlamydia.

EXCESSIVE SENTENCE

In his sole assignment of error, the defendant contends that the district court imposed excessive sentences. Specifically, he argues that the district court erred by ordering the sentences on counts one and two to run consecutively. According to the defendant, "there is nothing [indicated] in the facts of this case that justify the [district] court's consecutive sentence."

A thorough review of the record indicates that the defendant did not make or file a motion to reconsider sentence following the district court's imposition of the sentences. Under La. Code Crim. P. art. 881.1E, 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. See **State v. Duncan**, 94-1563 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam). Accordingly, this assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.