STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA NO. 2017 KW 1501

VERSUS

CLIFFORD JOSEPH ETIENNE NOV 28 2017

In Re: State of Louisiana, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 09-05-0506.

BEFORE: HIGGINBOTHAM, HOLDRIDGE, AND PENZATO, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. The language of the habitual offender law must be strictly construed. In this regard, an implicit and integral aspect of the requirements of La. R.S. 15:529.1 is the court's duty to inform the defendant of his right to remain silent. See **State v. Fox**, 98-1547 (La. App. 1st Cir. 6/25/99), 740 So.2d 758, 760. Before accepting a defendant's admission that he is a multiple offender, the trial judge must specifically advise the defendant of his right to a formal hearing, his right to require the State to prove his identity as a multiple offender, and his right to remain silent. See **State v. Grimble**, 51,446 (La. App. 2d Cir. 7/5/17), 224 So.3d 498, 504. A trial court's failure to properly advise a defendant of his rights under the habitual offender law constitutes patent error on the face of the record and requires that the habitual offender adjudication and sentence be vacated. **Fox**, 740 So.2d at 760. There is no record in the 2013 transcript of the habitual offender proceedings showing that the sentencing court advised the defendant of his right to remain silent. The sentencing court also failed to advise the defendant of his rights to a hearing and to have the State prove his identity as a multiple offender before the defendant waived those rights. Accordingly, the habitual offender adjudication and the sentence on count two (only) are vacated, and this matter is remanded to the district court with instructions for the trial court to first fully and specifically advise the defendant of his rights relative to the habitual offender proceedings before obtaining a waiver of those rights. Relative to the State's claim the motion to reconsider is untimely, the writ is denied. An accused has the right to the assistance of counsel at every stage of criminal proceedings, including sentencing, unless this right is intelligently waived. U.S. Const. amend. VI; La. Const. art. I, § 13; **McConnell v. Rhay**, 393 U.S. 2, 3-4, 89 S.Ct. 32, 33-34, 21 L.Ed.2d 2 (1968) (*per curiam*); **State v. White**, 325 So.2d 584, 585 (La. 1976). There are some circumstances in which, although counsel is present, "the performance of counsel may be so inadequate that, in effect, no assistance of counsel is provided." **United States v. Cronic**, 466 U.S. 648, 654 n.11, 104 S.Ct. 2039, 2044, 80 L.Ed.2d 657 (1984). Actual or constructive denial of assistance of counsel is presumed as a matter of law to have resulted in prejudice. See **Strickland v. Washington**, 466 U.S. 668, 692, 104 S.Ct. 2052, 2067, 80 L.Ed.2d 674 (1984). The court should take

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

up the motion to reconsider the sentences immediately following the habitual offender proceedings and resentencing on count two.

GH
AHP
TMH

COURT OF APPEAL, FIRST CIRCUIT

Elizabeth D. Nantz
DEPUTY CLERK OF COURT
FOR THE COURT