

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2019 KW 0119

VERSUS

MICHAEL GERVIN

APR 29 2019

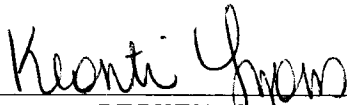
In Re: Michael Gervin, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 01-00-0213.

BEFORE: WELCH, CHUTZ, AND LANIER, JJ.

WRIT GRANTED. The sentence reductions in 2001 La. Acts No. 403 and 2002 La. Acts No. 45, are expressly retroactively applicable to a defendant who committed an offense prior to 2001. See La. R.S. 15:308. Relator committed the instant offense in 1998, and subsequently was sentenced to life imprisonment as a third-felony offender pursuant to La. R.S. 15:529.1(A)(1)(b)(ii). However, applying those amendments to relator's sentence under La. R.S. 15:529(A)(1)(b)(ii), a life sentence is provided for only if the third felony and the two prior felonies were crimes of violence, a sex offense, or violations of the controlled dangerous substance law punishable by imprisonment for more than ten years or any other crime punishable by imprisonment for more than twelve years. Although the instant offense was a crime of violence, relator's two predicate offenses, illegal possession of stolen things and possession of cocaine were not crimes of violence. Thus, sentencing as a third-felony offender for the instant offense of attempted armed robbery provided for a maximum term of imprisonment of forty-nine and one half years. Consequently, relator's life sentence as a third-felony habitual offender is for a term longer than authorized by law. See La. Code Crim. P. art. 881.5; **State ex rel. Esteen v. State**, 2016-0949 (La. 1/30/18), 239 So.3d 233, 238 (per curiam). Moreover, there is no indication by the legislature that in enacting Section K of La. R.S. 15:529.1, it intended to repeal La. R.S. 15:308. The ruling denying the motion to correct an illegal sentence is reversed, the motion is granted, and this matter is remanded for resentencing pursuant to La. R.S. 15:529.1(A)(1)(b)(ii) (as amended by 2001 La. Acts No. 403, § 2).

**JEW
WRC
WIL**

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