

STATE OF LOUISIANA

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NO. 2000-KA-0665

VERSUS

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COURT OF APPEAL

REGINALD R. LONDON

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 363-034, SECTION "I"
HONORABLE RAYMOND C. BIGELOW, JUDGE

JOAN BERNARD ARMSTRONG

JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones
and Judge Terri F. Love)

HON. HARRY F. CONNICK

DISTRICT ATTORNEY, ORLEANS PARISH

JULIET CLARK

ASSISTANT DISTRICT ATTORNEY, ORLEANS PARISH

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LOUISIANA APPELLATE PROJECT

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AFFIRMED

STATEMENT OF CASE

On April 23, 1993, the defendant, Reginald London, was charged by bill of information with theft of a vehicle valued over five hundred dollars in violation of La. R.S. 14:67. The defendant entered a plea of not guilty at his arraignment on April 27, 1993. At a motion hearing on May 14, 1993, the trial court found probable cause and denied the defendant's motion to suppress evidence. On July 7, 1993, the defendant withdrew his plea of not guilty and pled guilty to a reduced charge of unauthorized use of a vehicle valued over five hundred dollars. The defendant waived delays and was sentenced to two years at hard labor. When the State filed a multiple bill of information, the trial court allowed the defendant to withdraw his guilty plea and vacated the sentence. After a jury trial on December 4, 1993, the defendant was found guilty as charged of theft of a vehicle over five hundred dollars. On December 22, 1993, the defendant was sentenced to serve five years at hard labor. On the same date, the State filed a multiple bill of information. At the multiple bill hearing on January 24, 1994, the defendant was adjudicated a fourth felony offender and sentenced to twenty-five years

at hard labor. Defendant's conviction and sentence were affirmed by this Court. State v. Reginald London, unpub., 94-KA-1113 (La. App. 4 Cir. 12/15/94). The defendant subsequently filed an application for post conviction relief alleging that his sentence was illegal. This Court granted the writ, finding that the trial court failed to vacate the original sentence of five years at hard labor before it sentenced the defendant under the multiple offender statute. This Court reversed the sentence of twenty-five years and remanded the matter for resentencing. State v. Reginald London, unpub., 98-K-0874 (La. App. 4 Cir. 5/20/98). On December 11, 1998, the trial court vacated the five-year sentence and resented defendant under the multiple offender statute to twenty years at hard labor. The trial court denied the defendant's oral motion to reconsider sentence. Defendant's motion for appeal was granted.

STATEMENT OF FACT

On April 3, 1993, Patrice Conway drove to a home on Rocheblave Street near Erato Street for a card game. There she saw the defendant, whom she had dated; he asked to borrow her 1990 Jeep Cherokee. According to Ms Conway, when she refused to give him the keys, he "snatched" them from her, took the Jeep, and left with his friend, Kendrick Hall. Ms. Conway waited about twenty minutes for his return, and then she

went to his mother's house where he lived. The defendant's mother begged Patrice Conway not to call the police immediately, and so she waited until the next morning. On April 4, 1993, about an hour after she reported the theft, Officer Petty called her to say that he had found a Jeep matching the description she gave. Ms Conway went to Seminole Place where she found her automobile but the tires and rims, the stereo system, and the lights were missing. The steering column was not broken. Three days after the car was found, the defendant called Conway; he told her he was sorry that he had stripped her vehicle and that he would help her get it fixed. Conway immediately called the police. She then went to the defendant's mother's house and was talking to him when the police arrived. She said the defendant's mother told him to give the police the car keys which he did.

Patrice Conway testified that she paid \$9,000 for the Jeep; at trial the State presented evidence that it was worth \$7,500 after being stripped.

The defendant gave a different version of the facts: on April 3, 1993, he met Patrice Conway before the card game and gave her \$13; she willingly let him borrow her car so that he and his friend, Kendrick Hall, could go to eat at Taco Bell; however, the defendant dropped Kendrick Hall off and picked up a woman; the two parked the Jeep, went to a motel about 11 p.m. and stayed there until after noon the next day. When he went to get the Jeep,

it was missing. The defendant denied stripping the vehicle. He admitted having prior convictions for simple robbery and simple kidnapping, theft, and aggravated battery. He also acknowledged that he gave the car keys to the police when they came to his house.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1

In this assignment, the defendant contends that the trial court was without authority to sentence him under the multiple bill because he had served his full original sentence by the date of the resentencing.

La. R.S. 15:529.1(D) provides that a defendant may be charged as a multiple offender if at any time after either conviction or sentence, it appears that a person convicted of a felony has previously been convicted of another felony. The statute does not contain a prescriptive period; but, in State v. Broussard, 416 So.2d 109 (La. 1982), the Supreme Court held that a multiple bill must be filed within a reasonable time after the State becomes aware of the defendant's prior felony record. The court stated that upon conviction, a defendant was entitled to know the full consequences of the verdict within a reasonable time, and proceedings to sentence a defendant as a habitual offender should not be unduly delayed.

In State ex rel. Williams v. Henderson, 289 So.2d 74 (La. 1974), the

court held that the proceeding to have an accused sentenced as a multiple offender must be completed before the accused serves the sentence which is to be enhanced; and that where a petitioner has served his entire sentence before he is resentenced as a multiple offender, the proceeding is untimely.

In State v. Dominick, 94-1368 (La. App. 4 Cir. 4/26/95) 658 So.2d 1, writ denied, 666 So.2d 1091 (La. 1996), reconsideration denied, 669 So.2d 1225 (La. 1996), this court distinguished its facts from Williams, concluding that where the multiple bill was filed immediately after the defendant's sentencing, and where there was no dilatory action attributable to the State which delayed the actual hearing on the bill until after the defendant had reached the actual release date, the defendant's sentence is still subject to enhancement if the defendant is still under supervision for the sentence to be enhanced.

In the present case, the State initially filed the multiple bill of information on the same day the trial court imposed sentence on the original conviction, December 22, 1993. One month later, the defendant was adjudicated a multiple offender and sentenced under the multiple offender statute. On May 20, 1998, this Court vacated the sentence under the multiple bill and remanded for resentencing. The Court did not reverse the defendant's adjudication as a multiple offender. The defendant was still

incarcerated when the trial court, on December 22, 1998, resentenced the defendant under the multiple offender statute to twenty years at hard labor. As in Dominick, the State filed the multiple bill immediately after sentencing, and the delay in the resentencing was not attributable to the State. The error in the sentencing under the multiple bill was not recognized until the defendant filed an application for post conviction relief. Further, the defendant knew that, while the appellate court reversed the sentence under the multiple bill, the appellate court ordered the trial court to resentence the defendant. The defendant knew that he was going to be resentenced under the multiple bill. Accordingly, the trial court did have authority to resentence the defendant under the multiple bill of information.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

The defendant also argues that the trial court erred by not granting him a continuance to obtain retained counsel to represent him at the resentencing. The defendant informed the trial court at the hearing on December 11, 1998, that he wished to delay his sentencing as his family was in the process of hiring private counsel. The trial court denied the defendant's request and proceeded to resentence the defendant under the multiple bill.

Generally, “[a] trial court's decision to deny or grant a continuance is within its broad discretion and will not be disturbed absent a clear showing of abuse. The decision turns on the circumstances of each case and should not be disturbed absent a showing of specific prejudice.” State v. Randle, 98-1670, p. 8 (La. App. 4 Cir. 12/22/99), 750 So.2d 353, 358. “As a general proposition a person accused in a criminal trial has the right to counsel of his choice.” State v. Jones, 707 So.2d 975, 977 (La. 1998), quoting State v. Harper, 381 So. 2d 468, 470-71 (La. 1980); La. Const. art. I, § 13 (at every stage of a criminal proceeding a defendant “is entitled to assistance of counsel of his choice”). However, the right is not absolute, and it must “be exercised at a reasonable time, in a reasonable manner, and at an appropriate stage within the procedural framework of the criminal justice system.” State v. Trepagnier, 97-2427, p. 8 (La. App. 4 Cir. 9/15/99), 744 So.2d 181, 188, quoting State v. Leggett, 363 So.2d 434, 436 (La. 1978). The Louisiana Supreme Court has frequently upheld the trial court's denial of motions for a continuance made on the day of trial when the defendant is dissatisfied with his present attorney but had ample opportunity to retain private counsel. State v. Leggett, 363 So.2d 434, 436 (La.1978).

In the case at bar, this Court, on May 28, 1998, ordered the trial court to resentence the defendant. The defendant apparently obtained notice of

the order because the defendant subsequently filed another application for supervisory writs with this Court complaining that the trial court had not held a resentencing hearing pursuant to this Court's order. This Court denied the subsequent writ application noting that the defendant's resentencing hearing was scheduled for November 16, 1998. See State v. Reginald London, unpub., 98-K-2301 (La. App. 4 Cir. 11/2/98). On November 16, 1998, the hearing was continued and rescheduled for December 2, 1998. The resentencing was continued on December 2, 1998 and ultimately conducted on December 11, 1998. Thus, it is apparent that the defendant had at least two months notice that the trial court would be resentencing him. Two months was ample time to obtain private counsel if the defendant so desired. The trial court did not abuse its discretion when it denied the defendant's motion for continuance.

This assignment of error is without merit.

For the foregoing reasons, the defendant's sentence is affirmed.

AFFIRMED