

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2000-KA-0768**  
**VERSUS** \* **COURT OF APPEAL**  
**JULIAN GONZALEZ** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 392-148, SECTION "B"**  
**Honorable Patrick G. Quinlan, Judge**  
\* \* \* \* \*  
**Judge Dennis R. Bagneris, Sr.**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr.)

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## **COUNSEL FOR DEFENDANT/APPELLANT**

### **CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RE-SENTENCING; COUNSEL'S MOTION TO WITHDRAW GRANTED**

#### ***STATEMENT OF THE CASE***

Julian Gonzalez (alternately, “the defendant” and “Gonzalez”) was charged by bill of indictment on September 25, 1997, with second degree murder, a violation of La. R.S. 14:30.1. At his arraignment on September 30<sup>th</sup>, he pled not guilty. Probable cause was found and the motion to suppress the identification was denied on January 12, 1998. The defendant, who waived his right to a jury, was found to be guilty of manslaughter after a bench trial on April 13, 1999. He was sentenced on April 16<sup>th</sup> to serve eighteen years at hard labor. The defendant’s motion for an appeal was granted.

#### ***FACTS***

Sergeant Michael David Fejka testified that he investigated a homicide on March 28, 1990, at a bar on St. Claude Avenue. Through interviews with Ms. Evie Duvernay, Ms. Wanda Jones, and Mr. Paul Sylvester, the sergeant developed Julian Gonzalez as a suspect. An arrest warrant was obtained, but it was not until 1997 that Gonzales was found in Florida and arrested.

Ms Evie Duvernay (“Ms. Duvernay”), a friend of the defendant, testified that she worked at Lorraine’s Dugout on St.Claude Avenue during the early evening of March 28, 1990. During her shift, Leonardo Jober (alternately, “Jober”, “Koreanna” and “the victim”), known as Koreanna, asked if he could talk with her. She told him she would speak with him after her shift, and he walked to the back of the bar. Ms. Duvernay testified that when she finished working, she sat at one end of the bar, waiting for Jober. Ms. Duvernay saw the defendant enter the bar and walk to the back. Then she heard gunshots. Ms. Duvernay stated that she had no idea what Jober wanted to talk to her about.

Ms. Wanda Jones (“Ms. Jones”), a customer at Lorraine’s Dugout, testified that she and her sister were sitting near the jukebox on March 28<sup>th</sup>. Ms Jones first saw the victim enter the bar. Ms. Jones testified that she later saw the defendant also enter the bar. When she heard the shots, she looked toward the back of the bar to see the defendant standing up, and the victim “bucking up” in his chair. Ms. Jones dropped down to the floor, and, from that position, she watched the defendant walk by her. Ms. Jones testified that the defendant had a gun in his hand.

Mr. Paul Sylvester, Jr. (“Mr. Sylvester”), the owner of Lorraine’s Dugout Lounge, testified that he was in the bar at about 4:30 a.m. on the

morning of the shooting when an altercation occurred between Koreanna Jober and the defendant. The men were arguing and then began scuffling, but because they were not speaking English, Mr. Sylvester did not understand the subject of their argument. Mr. Sylvester testified that he ordered them out of the bar. Mr. Sylvester further testified that he noticed that they were still arguing when he closed the bar and drove away. Later that day, at about 6 p.m., Koreanna entered the bar and told Mr. Sylvester he wanted to apologize for what had happened that morning. The two men sat down in the back of the bar and began to talk. Mr. Sylvester testified that he suddenly heard gun shots, and he realized that the defendant, who was standing behind and to the left side of Koreanna, had shot Koreanna several times. Mr. Sylvester testified that no conversation had occurred between the defendant and the victim. Mr. Sylvester was hit by a bullet that passed completely through Koreanna and then pierced Sylvester's forehead above his eye. Mr. Sylvester was hospitalized in critical condition. After fatally wounding Koreanna, the defendant turned and walked out of the bar.

Dr. Michael B. DeFatta, an expert in the field of forensic pathology, testified that he had reviewed the victim's autopsy report and found that the victim suffered five gunshot wounds. Three bullet wounds entered the victim's back, one entered his shoulder, and another entered his chest. The

entry wounds were marked with soot, which indicated that the gun was held twelve inches or closer to the victim. Blood and bile samples from the victim revealed the presence of cocaine and a blood alcohol level of .08.

### ***LAW AND DISCUSSION***

Counsel filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So.2d 528 (La.App. 4th Cir. 1990). Counsel filed a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So.2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed him that he had the right to file a brief in his own behalf. He has not done so.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. The defendant was properly charged by bill

of indictment with a violation of La. R.S. 14:30.1, and the bill was signed by a foreman of the Grand Jury. The defendant was present and represented by counsel at arraignment, motion hearings, jury selection, trial, and sentencing. A review of the trial transcript reveals that the State proved the offense beyond a reasonable doubt.

### ***ERRORS PATENT***

Our review of the record reveals one error patent. The record here reflects that the defendant was convicted on April 13, 1999, and sentenced on April 16, 1999. La. C.Cr.P. art. 873 provides that at least three days shall elapse between conviction and sentence when a defendant is convicted of a felony. The three-day delay begins to run on the day after conviction. State v. Johnson, 275 So.2d 405 (La. 1973); State v. Florant, 602 So.2d 338 (La.App. 4th Cir. 1992).

The purpose of the delay is to allow the defendant time to file post-trial motions. If the defendant does not expressly waive the delay, a sentence imposed within the three-day period is void. State v. Barra, 572 So.2d 1187 (La.App. 4th Cir. 1990); State v. Dickerson, 538 So.2d 1063 (La.App. 4th Cir. 1989). Here, only two days elapsed, and the record does not reflect that defendant waived the required time delay. Thus, the sentence

imposed on April 16, 1999, is void.

*CONCLUSION*

For the foregoing reasons, the defendant's conviction is affirmed. The defendant's sentence is vacated, and this case is remanded for resentencing.

Further, appellate counsel's motion to withdraw is granted.

**CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED  
FOR RE-SENTENCING; COUNSEL'S MOTION TO WITHDRAW  
GRANTED**