STATE OF LOUISIANA	*	**NO. 2001-KA-0332**
VERSUS	*	**COURT OF APPEAL**
RAYMOND FOBBS, A/K/A TERRY BELL	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 386-741, SECTION "L"
HONORABLE TERRY ALARCON, JUDGE
* * * * * *
JAMES F. MCKAY, III
JUDGE
* * * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr.)

PAMELA S. MORAN
LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorney for Defendant/Appellant

AFFIRMED

This appeal concerns a resentencing only.

Raymond Fobbs, also know as Terry Bell, was convicted in 1997 of possession of stolen property worth more than $100 and less than $500, and he was sentenced to two years at hard labor. The state filed a multiple bill, and after a hearing, he was sentenced under La. R.S. 15:929.1 as a fourth felony offender to serve twenty years at hard labor. He appealed and in an unpublished opinion, this court affirmed his conviction but vacated his sentence because the original two-year sentence was not vacated before the twenty-year term was imposed; the case was remanded for resentencing. State v. Raymond Fobbs, 97-KA-1547 (La. App. 4 Cir. 1/18/98).

At a hearing on February 12, 1999, the appellant's original two-year sentence was vacated, and he was resentenced to serve twenty years as a fourth felony offender under La. R.S. 15:529.1.

The facts are not at issue here.

The appellant makes two assignments of error: the trial court erred in failing to correctly advise him of the post-conviction relief provisions, and the sentence imposed is excessive.

The appellant complains that the trial court erred first in stating that the

prescriptive period was three years when the article was amended effective August 15, 1999, to provide for a two year period, and second, he notes that the trial court failed to advise him of when the two year period begins to run. The appellant is correct on both counts. However, this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State ex rel. Glover v. State, 93-2330, 94-2101, 94-2197, p. 21 (La. 9/5/95), 660 So.2d 1189, 1201.

Nevertheless, in the interest of judicial economy, we note for appellant that La. C.Cr.P. art. 930.8 generally requires that applications for post-conviction relief be filed within two years of the finality of a conviction, i.e., from the date the judgment of conviction and sentence become final.

In his second assignment, the appellant argues that his twenty-year sentence is excessive. He concedes this sentence was the mandatory term but argues the sentence is still constitutionally excessive given the nature of his prior convictions. He argues that under State v. Dorthey, 623 So. 2d 1276 (La. 1993), the court should have imposed a sentence below the mandatory minimum.

Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment.

State v. Sepulvado, 367 So. 2d 762 (La. 1979). A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless and needless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. State v. Lobato, 603 So. 2d 739 (La. 1992); State v. Telsee, 425 So. 2d 1251 (La. 1983).

The minimum sentences imposed on multiple offenders by the Habitual Offender Law are presumed to be constitutional. State v. Johnson, 97-1906 (La. 3/4/98), 709 So. 2d 672. The defendant bears the burden of rebutting the presumption that the mandatory minimum sentence is constitutional. State v. Short, 96-2780 (La. App. 4 Cir. 11/18/98), 725 So. 2d 23. A court may only depart from the minimum sentence if it finds that there is clear and convincing evidence in the particular case before it that would rebut the presumption of constitutionality. State v. Johnson, 97-1906 at p. 7, 709 So. 2d at 676. The Louisiana Supreme Court recently reviewed the law on point when the defendant receives the mandatory minimum sentence. Citing Johnson and State v. Young, 94-1636 (La. App. 4 Cir. 1/26/95), 663 So. 2d 525, 529 (J. Plotkin concurring), the court stated:

> To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that:
>
> [he] is exceptional, which in this

> context means that because of unusual circumstances, the defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

State v. Lindsey, 99-3256, p. 5 (La. 10/17/00), 770 So.2d 339, 343.

Here, the appellant argues the mandatory sentence of twenty years at hard labor is excessive because all his convictions were for non-violent offenses. At sentencing on the multiple bill, the appellant did not set forth any argument as to why the minimum sentence would be excessive in his case. Given his four convictions in eleven years and his failure to specify why this sentence would be excessive under Lindsey and Johnson, we find the trial court correctly imposed the mandatory minimum sentence in this case.

Accordingly, we affirm the appellant's sentence.

AFFIRMED