

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2001-KA-0832**
VERSUS * **COURT OF APPEAL**
CLARENCE FLUKER * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 405-199, SECTION "F"
Honorable Dennis J. Waldron, Judge
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Judge David S. Gorbaty
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(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty)

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AFFIRMED

Clarence Fluker was convicted of attempted aggravated burglary in violation of La. R.S. 14:27(60). On December 17, 1999, he was sentenced to serve twelve years at hard labor as a second offender pursuant to La. R.S. 15:529.1. He appealed, and in an unpublished opinion, this court affirmed his conviction and vacated his multiple offender sentence, remanding the case for completion of the multiple bill hearing. State v. Fluker, 2000-0617 (La. App. 4 Cir. 11/15/00).

At the resentencing hearing on December 8, 2000, the same judge presided who had originally sentenced the appellant, and he said he remembered the case. The judge examined the documents evidencing the appellant's prior conviction. The State introduced into evidence as exhibit one the defendant's fingerprints taken in court the day of the original multiple bill hearing, and as exhibit two, the defendant's fingerprints on the back of the arrest register from 1982. The State also introduced as exhibit three a set of documents composed of the bill of information, the docket master, the minute entry of sentencing and the arrest register. The defense attorney asked if the prior conviction resulted from a guilty plea or a trial,

and after learning that it was a trial, made no objection to the documents as proof of the prior conviction. The appellant was then resentenced to twelve years at hard labor as a second offender. Defendant subsequently filed this appeal as to his resentencing only.

ASSIGNMENT OF ERROR NUMBER ONE

In his sole assignment of error, the appellant complains that there was insufficient evidence to demonstrate that the cleansing period had not elapsed.

The State has the burden of proving that the cleansing period has not expired. State v. Brown, 598 So.2d 565 (La. App. 4 Cir. 1992). However, in the present case, the defendant's failure to object contemporaneously or file a motion for reconsideration of sentence concerning the lack of a discharge date for the prior offense that was used to enhance his sentence as a multiple offender precludes review of his claim on appeal. La. C.Cr.P. art. 841; State v. Martin, 427 So.2d 1182 (La. 1983); State v. Carter, 589 So.2d 1212 (La. App. 4 Cir. 1991); La. C.Cr.P. art. 881.1; State v. Alford, 99-0299, p. 11 (La. App. 4th Cir. 6/14/00), 765 So.2d 1120, 1127; State v. Washington, 98-0583, pp. 16-17 (La. App. 4th Cir. 11/17/99), 747 So.2d 1191, 1200.

The appellant concedes that the issue has not been preserved for appeal, but contends that the state's failure to prove the cleansing period has not expired is an error patent on the face of the record. The appellant points out that other circuits have treated this issue as an error patent. However, this court has not considered the State's failure to prove the defendant's date of discharge (and thereby document the expiration of the cleansing period) as an error patent. Under La. C.Cr.P. art. 920, such an error must be discoverable without an inspection of the evidence, and the date a defendant was released from custody is part of the evidence.

This assignment of error is without merit.

CONCLUSION

Accordingly, for the foregoing reasons, the defendant's sentence is affirmed.

AFFIRMED