NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-0839**
VERSUS	*	**COURT OF APPEAL**
BRYAN HARPER AND JOHN SPOTVILLE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 387-655, SECTION "A"
Honorable Charles L. Elloie, Judge
* * * * * *
Judge David S. Gorbaty
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge David S. Gorbaty)

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AFFIRMED

On February 7, 1997, Bryan Harper and John Spotville were each charged by bill of information with two counts of armed robbery, violations of La. R.S. 14:64. On February 14, 1997, Bryan Harper appeared before the court for arraignment; however, counsel filed a motion for the appointment of a sanity commission. The court continued arraignment and granted the defendant's motion. John Spotville was arraigned and pleaded not guilty on February 14, 1997. On March 27, 1997, Bryan Harper was arraigned and

pleaded not guilty. On April 1, 1997, a lunacy hearing was held, and Bryan Harper was found to be sane and able to stand trial. After a hearing on June 6, 1997, the trial court found probable cause to bind the defendants over for trial and denied the motion to suppress the identifications. After a jury trial on November 6, 1997, a twelve-member jury found the defendants guilty as charged on both offenses.

Bryan Harper was sentenced on January 8, 1998, to serve thirty years on each count without benefits. The state filed a multiple bill charging Harper as a second offender, and after he pleaded guilty to the bill, the trial court resentenced the defendant to thirty years at hard labor without benefits of parole, probation, or suspension of sentence under La. R.S. 15:529.1 and State v. Dorthey, 623 So. 2d 1276 (La. 1993). The sentences are to run concurrently. The state objected and announced an intent to seek writs from this court. On April 18, 1998, this court granted the state's writ and remanded the case for resentencing in accordance with guidelines announced in State v. Johnson, 97-1906 (La. 3/4/98), 709 So. 2d 672. Harper was resentenced on May 27th to serve forty-nine and one-half years on each count without benefits. The trial court stated that the sentences were under La. R.S. 15:529.1, and they were to be served concurrently.

John Spotville was also sentenced on January 8, 1998. He received two

twenty-five year sentences imposed without benefit of parole, probation, or suspension of sentence and to run concurrently.

Defendants subsequently filed this appeal.

FACTSAt trial, Mr. Neil Taylor testified that on January 2, 1997, he drove to Andre Warren's house to watch the Sugar Bowl game. Once there, he left to pick up beer at a nearby store. As he was going back into Warren's house, two men approached him and pushed him into the house screaming, "Put your head down," and "Get on the sofa." One of the men put a gun to Taylor's head, and, as he "clicked" the gun, he said, "Give me your wallet. Give me your keys." Taylor handed over his wallet and the keys to his white 1994 Honda Accord. The man who had been holding the gun gave it to the second man and left him to guard Warren and Taylor. Meanwhile, the first man went into the back of the shotgun house and ransacked the bedroom. The second man demanded that Warren and Taylor go into the kitchen, the last room of the house, and then asked them for "something to tie you all up." Taylor said he heard the outside gate slam at that point, and the gunman walked out of the kitchen and returned several times. Finally after the house became quiet, they found that the telephone was ripped out of the wall and Taylor's Honda was gone. The men were not wearing masks, and

Taylor got a good look at them. Within the next few days, Taylor learned that his car had been recovered. However, the license plate had been removed from the car, and the Honda had been involved in a collision. Detective Claudia Neal set up a photographic lineup, and Taylor selected the photos of the defendants and named them as the men who robbed him at gunpoint. On cross-examination, Taylor was asked if he kept his head down during the ordeal, and he answered that he would "duck up and look and swerve" so as to get a look at the two men. Taylor acknowledged that he did not describe his assailants as having tattoos, and at trial both defendants showed several tattoos to the jury.

Andre Warren testified that he was living at 3802 North Johnson Street in January of 1997 when his friend Neil Taylor came by to watch a football game. Taylor left to get beer, and when he returned, two men forced their way into the house and held them at gunpoint. The men took Warren's car keys, his wallet, and his cellular phone. When presented with a photographic lineup, Warren picked the defendants' pictures and named them as the men who robbed him.

Officer Jerry Jones of the Orleans Levy Police Department testified that on January 3, 1997, he attempted to stop a white Honda Accord because it had no license plate. At Pineridge Street, the car slowed and a man

jumped out and ran; the driver and the two other men in the car sped away. The officer followed the Honda until it collided with a dump truck. Then the three men in the car jumped out; one ran into the neighborhood, and the other two ran toward a wooded area and the canal. Officer Jones pursued the two who stayed together. Both men jumped into the canal and began swimming. Officer Jones pointed his gun at them and ordered them to freeze. When Bryan Harper got to the other side of the canal, he surrendered. However, John Spotville ran into the woods, and after a backup unit arrived to help Officer Jones, Spotville was apprehended.

Detective Claudia Neal investigated the armed robbery at 3802 Johnson Street where she interviewed the victims and got descriptions of the two assailants. On January 7, 1997, when she showed a photographic lineup to Warren and Taylor individually, each man selected the pictures of Harper and Spotville.

ASSIGNMENTS OF ERROR

The defendants make two assignments of error on appeal: first, that the trial court erred in failing to advise them of post-conviction relief provisions, and second, that their sentences are excessive.

The defendants are correct that the trial court did not give the defendants

information as to post-conviction relief time limitations under La. C.Cr.P. art. 930.8. 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.

In the interest of judicial economy, we note for defendants 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.

This assignment of error lacks merit.

Both defendants complain that their sentences are excessive. In 1997, La. R.S. 14:64 provided for a sentencing range of five to ninety-nine years without benefits of parole, probation, or suspension of sentence. John Spotville was sentenced to twenty-five years without benefits at hard labor on each count, the sentences to run concurrently. Bryan Harper, who was sentenced as a second offender under La. R.S. 15:529.1 and La. R.S. 14:64, faced a sentencing range of forty-nine and one-half years to one hundred ninety-eight years.

John Spotville's Sentence

Spotville did not file a motion to reconsider sentence, nor was there an objection to his sentence at the hearing on January 8, 1998.

La. C.Cr.P. art. 881.1(D) provides:

> Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

Because defense counsel failed to file a written motion for reconsideration of sentence or to object to the sentence at the time of sentencing, the defendant is precluded from raising the claim of excessive sentence. State v. Robinson, 98-1606 (La. App. 4 Cir. 8/11/99), 744 So. 2d 119, 125; State v. Martin, 97-0319, p. 1 (La. App. 4 Cir. 10/1/97), 700 So. 2d 1322, 1323; State v. Green, 93-1432, pp. 5-6 (La. App. 4 Cir. 4/17/96), 673 So. 2d 262, 265; State v. Salone, 93-1635, p. 4 (La. App. 4 Cir. 12/28/94), 648 So. 2d 494, 495-96. Thus, this claim that the sentence is constitutionally excessive is not subject to review, by appeal or otherwise.

Bryan Harper's Sentence

In this assignment of error, defendant acknowledges he received the minimum mandatory sentence but avers that the sentence is unconstitutionally excessive.

However, this assignment suffers the same defect as the seen in Spotville's argument. At sentencing on May 27, 1999, after the trial court announced the sentence, the defense attorney said, "Note our objection for

the record." No motion for reconsideration of sentence was filed and no particular grounds for the objection were stated. This court has held that failure to object to sentences as excessive at sentencing or to file a motion to reconsider the sentence precludes appellate review of the claim of excessiveness. State v. Robinson, 98-1606 (La. App. 4 Cir. 8/11/99), 744 So. 2d 119, 125; State v. Martin, 97-0319, p. 1 (La. App. 4 Cir. 10/1/97), 700 So. 2d 1322, 1323; State v. Green, 93-1432, pp. 5-6 (La. App. 4 Cir. 4/17/96), 673 So. 2d 262, 265; State v. Salone, 93-1635, p. 4 (La. App. 4 Cir. 12/28/94), 648 So. 2d 494, 495-96. Thus, this claim that the sentence is constitutionally excessive is not subject to review, by appeal or otherwise.

There is no merit in this assignment of error.

FACTS

Accordingly, for the foregoing reasons, the convictions and sentences of John Spotville and Bryan Harper are affirmed.

AFFIRMED