

**STATE OF LOUISIANA**

\*

**NO. 2001-KA-1454**

**VERSUS**

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**COURT OF APPEAL**

**RANDY L. BOYD**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**MURRAY, J., CONCURRING IN PART WITH REASONS.**

Although I agree that it is inappropriate for us to correct Mr. Boyd's illegally lenient sentence resulting from the trial court's failure to impose the mandatory fine, I reach that result for the following additional reasons.

In *State v. Williams*, 00-1725 (La. 11/28/01), 800 So. 2d 790, the Louisiana Supreme Court arguably called into question the jurisprudential rule that it is inappropriate to correct an illegally lenient sentence when the defendant alone has appealed. *State v. Hills*, 626 So. 2d 452, 453 (La. App. 4 Cir. 10/28/93)(citng *State v. Fraser*, 484 So.2d 122 (La. 1986)). I read *Williams* as questioning that jurisprudential rule only with regards to sentencing errors that are subject to automatic correction under La. R.S. 15:301.1 (A). In this case, the sentencing error—the failure to impose the mandatory fine--falls under La. R.S. 15:301.1 (B). *See Williams*, 2000-1725,

pp. 10-11, 800 So.2d at 799(citing, by way of example, failure to impose mandatory fine). Given the state's failure to raise this issue, it is inappropriate for us to correct this type of sentencing error on the defendant's appeal. *See State v. Paoli*, 2001-1733, p. 1 (La. App. 1 Cir. 4/11/02), 818 So. 2d 795, 800-01(Guidry, J., dissenting)(espousing similar view); *See also State v. Esteen*, 2001-879, p. 30 (La. App. 5 Cir. 5/15/02), 821 So. 2d 60, 70 (declining to correct illegally lenient sentence resulting from failure to impose a mandatory fine given the "State did not object to this illegality").