

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0262**
VERSUS * **COURT OF APPEAL**
KEO THOMAS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 422-350, SECTION "J"
Honorable Leon Cannizzaro, Judge
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Judge Dennis R. Bagneris, Sr.
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(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr.,
and Judge David S. Gorbaty)

Harry F. Connick
District Attorney
Leslie Parker Tullier
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Laura Pavy
LOUISIANA APPELLATE PROJECT
P.O. Box 750602
New Orleans, LA 70175-0602

COUNSEL FOR DEFENDANT/APPELLANT

REMANDED

On June 20, 2001, Keo Thomas was charged by bill of information with distribution of cocaine in violation of La. R.S. 40:967(A). The defendant was arraigned on June 25th and pleaded not guilty. However, after trial on July 24th a twelve-member jury found the defendant guilty as charged. The defendant was sentenced on September 24, 2001, to serve seven years at hard labor, the first five without benefit of parole, probation, or suspension of sentence. Thomas was sentenced under La. R.S. 15:574.5, The About Face Program in Orleans Parish. The trial court filed a motion for reconsideration of sentence on the defendant's behalf but did not rule on the motion. The motion for an appeal was granted.

FACTS

At trial Officers Joseph Belisle and Tommy Felix testified that they were working undercover about 11 p.m. on April 19, 2001, in a housing complex in the 5500 block of Bundy Road. The officers, who were wearing plain clothes and driving an unmarked car, drove into the complex, parked and approached two young men who were sitting nearby. Keo Thomas asked, "What are y'all looking for?" and Officer

Belisle said marijuana and heroin. The defendant answered that they did not have any of those drugs, but his companion volunteered that he knew where to get cocaine. Thomas and his companion appeared nervous and wanted to see Officer Felix's sunglasses to be sure they were not wired. Thomas stated, "Y'all the police," but the officers assured him they were not. At that point the second man left and the officers smoked a cigarette with Thomas. When the second man returned, he threw a small piece of white paper to the ground and Officer Felix handed Thomas twenty dollars. Officer Belisle retrieved the small object from the ground, and the two young men walked away together. As the officers left, they gave a description of the drug salesman to their backup team. The tape of the entire encounter between the officers and Thomas and his companion was played for the jury. Officers Felix and Belisle returned to the Seventh District Police Station and remained there until they were called to return to the apartment complex to identify the man who sold them drugs. The officers identified Keo Thomas. Officer Korey Keaton testified that he worked as part of the surveillance team for Officers Felix and Belisle, and he arrested Keo Thomas. Officer Keaton was positioned so that he could watch the officers during the transaction, but he could not

hear what they were saying. After the two officers left the area, Officer Keaton followed the defendant into the apartment complex where he was detained.

The parties stipulated that the rock the defendant sold to the officers was tested and proved to be crack cocaine.

Keo Thomas, the nineteen-year-old defendant, testified that he lived in the apartment complex in which he was arrested. Travis Jordan, the man arrested with Thomas, lived nearby and was a friend. The two were “chillin” in front of the apartments at 11:30 p.m. when the officers approached them. Thomas said he suspected from the beginning that the men were police officers. After the transaction, Thomas walked with Jordan into his apartment where he stayed for a few minutes. Thomas left because he heard police sirens and thought he should separate from Jordan. Thomas denied offering to sell drugs to the officers. However, under cross-examination, Thomas admitted saying first that he had no cocaine, and then admitting, “We got something, we’re just trying to figure y’all out.”

In a single assignment of error, the defendant argues that his seven-year sentence is excessive.

Recently in State v. Roberts, 2001-0283, p. 2 (La. App. 4 Cir. 1/23/02), 807So. 2d 1072, this court considered a similar situation and

stated:

C.Cr.P. art. 881.1A reads as follows:

- A. 1) Within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence.
- 2) The motion shall be oral at the time of sentencing or in writing thereafter and shall set forth the specific grounds on which the motion is based.

A motion to reconsider sentence under C.Cr.P. art. 881.1 must be made by the defendant or the state. It cannot be made by the court on the defendant's behalf. The statute specifically lets the court extend the time for filing a motion to reconsider. Thus, if, as in the case at bar, the trial judge was trying to let the convicted defendant complete the now illegal About Face Program in order to reduce his sentence, he should have extended the period of time for the defendant to file his motion to reconsider to a date certain or within a specific period of time. No provision of law authorizes a trial court to defer ruling on a defendant's motion to reconsider sentence. In State v. Temple, 2000-2183, p. 9 (La. App. 4 Cir. 5/16/01), 789 So.2d 639, 646, we stated:

If the trial court granted an indefinite period within which to file a motion to reconsider the sentence, until the motion is filed *and acted upon*, a defendant would be precluded from appealing his conviction and sentence because a conviction without a final sentence is a non-appealable judgment. (Italics added.)

Moreover, in cases where the defendant has argued that his sentence was excessive, this Court has held that it is not

procedurally correct to review a sentence prior to the trial court's ruling on the motion. State v. Allen, 99-2579 (La.App. 4 Cir. 1/24/01), 781 So.2d 88; State v. Boyd, 2000-0274 (La.App. 4 Cir. 7/19/00), 775 So.2d 463.

In the case at bar, as in State v. Roberts, the record indicates that the trial court did not rule on its motion to reconsider the sentence at the time of filing, but rather deferred ruling until Thomas completed The About Face Program. Furthermore, the defendant argues that his sentence is excessive, and this Court is precluded from such a review because without a final sentence the conviction is not appealable. State v. Allen, 99-2579 (La. App. 4 Cir. 1/24/01), 781 So.2d 88; State v. Boyd, 00-0274 (La. App. 4 Cir. 7/19/00), 775 So.2d 463.

Accordingly, the case is remanded to the trial court for a ruling on the motion to reconsider the sentence, reserving the defendant's right to appeal his conviction and sentence once the court has ruled on the motion to reconsider the sentence.

REMANDED