

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2003-KA-0301**
VERSUS * **COURT OF APPEAL**
BOBBIE L. CAMPBELL * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 410-122, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE
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Chief Judge William H. Byrnes III
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(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones and Judge Terri F. Love)

Eddie J. Jordan, Jr., District Attorney
Kristen Keller, Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

Kevin V. Boshea

4209 Canal Street
New Orleans, LA 70119

COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE AFFIRMED.

STATEMENT OF THE CASE

On October 12, 1999, the State filed a Bill of Information charging Bobbie Campbell with sexual battery on K.M., a fourteen year old girl, a violation of La. R.S. 14:43.1. At his arraignment on October 26, 1999 he pled not guilty. On November 16, 1999 Campbell did not appear for a motion hearing after previously having been served in open court, and forfeited his bond.

On November 22, 1999 he withdrew his earlier plea and entered a plea of guilty as charged. According to the minute entry, Campbell's attorney was present when the trial judge interrogated Campbell as to his understanding of and waiver of his rights to trial by judge or jury, to confront and cross-examine witnesses in his own behalf, to appeal, to remain silent, not to incriminate himself or to be forced to testify should he go to trial. Campbell stated to the court that he was desirous of pleading guilty to this crime because he was, in fact, guilty of the crime to which he pled. The record contains a certified copy of Campbell's Waiver of Constitutional

Rights/Plea of Guilty form. Following acceptance of the plea, the trial court ordered a pre-sentence investigatory report, and on March 22, 2000, sentenced Campbell to serve five years at hard labor without benefit of parole, probation, or suspension of sentence, with credit for time served. The court noted in a minute entry that the crime was a crime of violence. He was granted an out-of-time appeal on October 22, 2000. The defendant filed a motion for an appeal bond, which was granted on March 14, 2001, and a minute entry from May 4, 2001 indicates that Campbell is out of jail pending this appeal.

STATEMENT OF FACTS

The bill of information charges Campbell, who was sixty-nine years old in December of 1998, with sexual battery over a period of the month of December of a fourteen-year-old girl who gave birth to his child in August of 1999. The assistant district attorney read a letter from the victim to the court in which she said that she had been a victim of his sexual abuse since she was eight or nine years old. She asked that he be “locked up.” The defendant told the court that he had offered to marry the victim, but that she was unwilling to accept his offer.

According to the pre-sentence investigation report, Campbell reported

that he had been sexually active since the late summer of 1997, when K.M. was thirteen years old. Between that summer and Christmas 1998 he had sex with K.M. on four or five different occasions, all at his home. When asked about his paternity of K.M.'s child, he responded that he believed he was the father but could not be "absolutely sure." Campbell said this was the only sexual contact he had had with an underage child and that he turned himself in when he learned of the outstanding warrant for his arrest.

In K.M.'s statement to the investigating officer, she claimed Campbell initiated sexual contact with her in late 1995 or early 1996 when she was eleven years old. For the next three years she and Campbell engaged in sexual intercourse thirty or forty times. The relationship ended when she became pregnant in late 1999. She explained her delay in reporting the sexual battery by claiming she thought Campbell capable of taking revenge upon her or another member of her family, and finally decided to reveal his identity as her child's father when she learned that Campbell had also molested her seventeen year old sister, S.M., about thirteen years before. S.M. confirmed that Campbell had molested her when she was four or five years old.

The pre-sentence report recommends against probation, noting that through interviews and despite Campbell's denial, this may not be the first

time he has sexually victimized members of this family. He intentionally used his position as a trusted family friend to perpetrate the crime and showed no remorse until the truth was discovered and he was confronted. This indicates that Campbell is unconcerned with any needs but his own and is willing to sacrifice the rights of others in order to obtain them.

FIRST AND SECOND ASSIGNMENTS OF ERROR: The sentence is excessive and the trial court erred in failing to consider the sentencing guidelines under La. C.Cr.P. 894.1

Campbell was sentenced to serve five years at hard labor without benefit of parole, probation, or suspension of sentence. La. R.S. 14:43.1 provides for a sentence for this offense of not more than ten years at hard labor without benefits. Campbell argues that the sentence is excessive for an elderly first offender and that the judge did not consider the allegedly mitigating factors prior to imposing the five-year sentence.

Campbell failed to file a motion to reconsider sentence and neither he nor his attorney objected to this sentence at the sentencing hearing on March 22, 2000.

In the absence of such an objection or filing of a written motion for reconsideration of sentence, Campbell is precluded from urging any ground

of objection to the sentence. State v. Robinson, 98-1606 (La. App. 4 Cir. 8/11/99), 744 So. 2d 119, 125; La.C.Cr.P. art. 881.1(D). Thus, the defendant's claims that the sentence is constitutionally excessive and that it was not in compliance with La. C.Cr.P. art. 894.1 are not subject to review on appeal.

These assignments of error are without merit.

THIRD ASSIGNMENT OF ERROR: Campbell's guilty plea is legally infirm in that it violates La. C.Cr.P. art. 556.1.

Campbell claims that the trial court failed to comply with the requirements of La. C.Cr.P. art. 556.1 A (1) in setting out for the defendant the elements of the offense, that the sentence he faced would be imposed without benefit of parole, probation, or suspension and that his eligibility for good time would be affected because sexual battery is a crime of violence.

Article 556.1(E) of the Louisiana Code of Criminal Procedure provides:

E. Any variance from the procedures required by this Article which does not affect substantial rights of the accused shall not invalidate the plea.

Recently this court, citing the Fifth Circuit in *State v. Frickey*, 00-294 (La. App. 5 Cir. 9/26/00), 769 So.2d 791, held that violations of Article 556.1 which do not rise to the level of *Boykin* violations are subject to

harmless error analysis. *State v. Ford*, 2002-1394 (La. App. 4 Cir. 4/16/03), WL 1949023, ___So. 2d ___.

The defendant correctly states that the elements of sexual battery were not explained to him, yet he knew that he had had sexual intercourse with a fourteen year old who was approximately fifty-five years younger than he. Obviously, he was aware of the essentials of the crime to which he pleaded guilty. There is no merit in this argument.

He also complains that while he was told that the maximum sentence was ten years, he was not told that his sentence would be without benefits and probably without good time. He claims that he was not aware that he would have to go to jail.

At the beginning of the November 22, 1999, hearing, the defense attorney stated to the trial court:

I would like to submit to the Court the Waiver of Constitutional Rights and Guilty Plea Form which I have reviewed with my client which he understands.

The trial judge then asked Campbell if he had initialed and signed the document, and Campbell answered, "Yes." The court then asked if he signed after his lawyer had explained the form to him and if he understood he was pleading guilty to sexual battery, and again he answered affirmatively. The court next asked if he realized that the maximum term he

could receive was ten years, and Campbell said he did. The court then went over the *Boykin* rights the defendant was giving up. The defendant answered that he understood his rights. He said he was satisfied with the way his attorney had represented him and that there was nothing that he wanted to discuss with the judge before pleading guilty.

At the sentencing hearing on March 22, 2000, the victim's letter was read, and then the court referred to the pre-sentencing investigatory report and the fact that the defendant is a first offender. After Campbell was sentenced, the defense attorney did not object, nor did the defendant indicate that he wanted to withdraw his guilty plea.

In *State v. Anderson*, 98-2977 (La. 3/19/99), 732 So. 2d 517, the Louisiana Supreme Court considered a case in which the defendant argued that his guilty plea was uninformed because the trial court did not explain the sentencing range of the offense to the defendant. The supreme court concluded that the defendant had notice of what his plea entailed because he was represented by counsel at sentencing and nothing in the record of the guilty plea contradicted the presumption that counsel explained the nature of the charge in sufficient detail. The court stated, "Advice with respect to the defendant's sentencing exposure may facilitate the taking of a voluntary guilty plea, [citations omitted], but it has never formed part of this Court's

core *Boykin* requirements for the entry of a presumptively valid guilty plea in any case.” *State v. Anderson*, 732 So. 2d at 517.

In *State v. Stewart*, 516 So. 2d 205 (La. App. 4 Cir. 1987), the defendant maintained that he “thought” at the time he pleaded guilty that he would be eligible for probation or parole; he was not. This court affirmed the trial court’s denial of the defendant’s motion to withdraw his guilty plea, holding that an accused’s “mere understanding” that he will serve a lesser sentence will not invalidate a guilty plea. Similarly, Campbell knew he faced a maximum sentence of ten years. He received one-half of that term albeit without benefits of parole, probation, or suspension of sentence. Thus, he has not shown sufficient prejudice to support his claim.

As to his complaint that he is not eligible for good time, the procedure for diminution of sentences for good behavior is administered by the Louisiana Department of Public Safety and Corrections. The Secretary of that department establishes regulations for awarding and recording of good time and shall determine when good time has been earned toward diminution of sentence. La. R.S. 15:571.3(B). Similarly, the Board of Parole, created within the department, has the power and duty to determine the time and conditions of release of convicted offenders on parole. See La. R.S. 15:574.2. The trial court does not control that process. Furthermore, there is

no indication that the defendant's attorney suggested to him that he was eligible for good time.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, we find Campbell's guilty plea to have been valid and we affirm his conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.