

STATE OF LOUISIANA

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NO. 2002-KA-2191

VERSUS

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COURT OF APPEAL

DANNY ROGERS

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-341, SECTION "J"
Honorable Leon Cannizzaro, Judge

Judge Charles R. Jones

(Court composed of Judge Charles R. Jones, Judge James F. McKay III,
Judge Max N. Tobias Jr.)

TOBIAS, J. DISSENTS AND ASSIGNS REASONS.

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**SENTENCE VACATED
AND REMANDED**

This appeal concerns a re-sentencing only after a multiple bill adjudication of Danny Rogers. The facts of the case are reported in State v. Rogers, 2002-1206 (La. App. 4 Cir. 10/16/02), 829 So.2d 673 (Table).

After his conviction, the state filed a multiple bill, and Rogers made an oral motion to quash the multiple bill. The district court denied the motion and found Rogers to be a fourth felony offender. The earlier sentence was vacated, and Rogers was re-sentenced to serve twenty years at hard labor. His motion to reconsider the sentence was denied, and his motion for an appeal of the sentence was granted.

Rogers now argues that the district court erred in adjudicating him a multiple offender based on a conviction containing a faulty guilty plea.

At the multiple bill hearing Rogers was charged with three prior offenses: simple burglary of an inhabited dwelling in 2001, and convictions for possession of a firearm by a convicted felon in 1995 and 1997. At sentencing the defense attorney objected that both of Rogers' possession of a firearm by a convicted felon convictions should not be part of the multiple bill because they were based on the same underlying felony, a 1993

conviction for second degree battery. The defense attorney then filed an oral motion to quash, and the district court denied the motion. After being advised of his rights, Rogers admitted his identity as the person who committed the three prior offenses. The district court examined a pre-sentencing investigatory report and noted that the twenty-seven-year-old defendant was in reality a fifth felony offender. He was then sentenced as a fourth felony offender to serve twenty years at hard labor. The defense attorney objected to the sentence and filed a motion to reconsider which was denied.

Rogers argues that the district court erred in sentencing him because his 1995 conviction does not indicate that he was advised of parole eligibility when he pleaded guilty to the offense. However, this appeal of his sentence as excessive is viewed by this Court as a complaint by Rogers that the district court failed to consider both State v. Dorthy, 623 So.2d 1276 (La. 1993), and the most recently passed legislation, which gives the district court broad discretion to sentence notwithstanding the mandatory minimum.

DECREE

Thus, we vacate Danny Rogers' sentence and remand for re-sentencing consistent with this opinion.

**SENTENCE VACATED
AND REMANDED**