STATE OF LOUISIANA	*	**NO. 2004-KA-0685**
VERSUS	*	**COURT OF APPEAL**
JEFF D. RIDEAUX	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 02-0368-I, DIVISION "A"
HONORABLE ANTHONY D. RAGUSA, JUDGE
* * * * * *
JAMES F. MCKAY III
JUDGE
* * * * * *

(Court composed of Judge Charles R. Jones, Judge James F. McKay III, Judge Roland L. Belsome)

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AFFIRMED

STATEMENT OF THE CASE

The defendant-appellant Jeff Rideaux was indicted on February 20, 2002, for one count of aggravated rape, a violation of La. R.S. 14:42, one count of attempted first degree murder, a violation of La. R.S. 14:27(30), and one count of attempted armed robbery, a violation of La. R.S. 14:27(64). He was arraigned and entered not guilty pleas on March 18, 2002. On October 9, 2002, upon motion of the defense the trial court ordered a sanity commission to evaluate the defendant. On December 20, 2002, the court found the defendant competent to proceed. On March 6, 2003, the defendant withdrew his prior not guilty pleas. The State amended the indictment as to count one to charge attempted forcible rape; the defendant entered a qualified "best interest" Alford plea to that charge. The State further amended the indictment as to count two to charge aggravated battery, to which amended charge the defendant entered an unqualified plea of guilty. Finally, as to the third count, attempted armed robbery, the defendant entered an unqualified plea of guilty as charged. The pleas were entered without any agreement as to the sentences. The court ordered a presentence

investigation report. The court further ordered a Sexually Violent Predator Commission pursuant to La. R.S. 15:451.

The defendant appeared for sentencing on July 16, 2003. The court imposed a sentence of twenty years at hard labor on count one, La. R.S. 14:27(42.1), ten years at hard labor on count two, La. R.S. 14:34, and forty-nine and one-half years at hard labor on count three, La. R.S. 14:27(64). The court directed that the sentences run concurrently. The court further found that the defendant is a sexually violent predator. On January 14, 2004, the court denied the defense motion to reconsider sentence. The defendant moved for an appeal, which was granted.

STATEMENT OF THE FACTS

There was no trial in this matter because of the defendant's guilty pleas. Furthermore, no pretrial motion hearings were held. Thus, the only evidence of the underlying facts of the case are those indicated in the police report and the victim's statement. Those facts will be discussed in connection with the appellant's sole assignment of error.

ERRORS PATENT

A review of the record for errors patent reveals one. The trial court failed to state that the defendant's sentences for attempted armed robbery and attempted forcible rape must be served without the benefit of probation,

parole, or suspension of sentence. However, the legislature enacted La. R.S. 15:301.1 to address those instances where offenses contain statutory restrictions on parole, probation or suspension of sentence but the courts may have failed to include them. Paragraph A of La. R.S. 15:301.1 provides that in instances where the statutory restrictions are not recited at sentencing, they are included in the sentence given, regardless of whether or not they are imposed by the sentencing court. Furthermore, in State v. Williams, 2000-1725 (La. 11/28/01), 800 So.2d 790, the Louisiana Supreme Court ruled that section A of the statute self-activates the correction and eliminates the need to remand for a ministerial correction of an illegally lenient sentence, which may result from the failure of the sentencing court to impose punishment in conformity with that provided in the statute. Hence, this Court need take no action to correct the trial court's failure to specify that the defendant's sentences be served without benefit of parole, probation or suspension of sentence. The correction is statutorily effected. (La. R.S. 15:301.1A).

DISCUSSION

In the sole assignment of error, the appellant argues that his Alford plea was not supported by sufficient facts in the record, and thus the trial court should not have accepted it. This Court discussed this type of plea in State v. Jackson, 01-1268 (La. App. 4 Cir. 2/6/02), 809 So.2d 1127:

> In *Alford*, the court resolved the issue of whether a guilty

> plea can be accepted when it is accompanied by protestations of innocence. Finding no new test for determining the validity of guilty pleas, the court stated that "[t]he standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *See Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969)..." *Id.*, 91 S.Ct. at 164 (additional citations omitted). The *Alford* court found that because of the strong factual basis for the plea and "Alford's clearly expressed desire to enter it despite his professed belief in his innocence," the trial judge did not commit constitutional error in accepting the plea. *Id.*, 91 S.Ct. at 168. A defendant's decision to plead guilty when confronted with the choice between a trial, knowing that the evidence substantially negates his claim of innocence, and a plea of guilty, which limits the maximum penalty he may receive, has been called a "best interests plea," or simply an "*Alford* plea." An appellate court's responsibility in judging the validity of an "*Alford* plea" is to assess whether the plea was intelligently entered based on how strongly the record evidences guilt.

Jackson, pp. 5-6, 809 So. 2d at 1130-31.

In the instant case, prior to the defendant pleading guilty, the court explained the elements of the offenses to which the pleas would be tendered. Acknowledging that the plea to attempted forcible rape was being tendered under Alford, the court asked the defendant to explain what were the facts to which he was admitting in connection with the aggravated battery and attempted armed robbery. The defendant stated, “I jumped on a person, attacked her” at a store. He further admitted that, in addition to jumping her, he beat her with needle nose pliers. He admitted that he tried to take something from her as well. Following these admissions, the court asked the

prosecutor to recount the facts which the State believed supported the attempted forcible rape charge. The prosecutor stated the following:

> The attempted forcible rape was committed upon a victim, . . ., who was the cashier, sole person working at the store at that time. And she was operating the cash register, in fact the whole store. She was drug into the, forced into the stock room, where she was thrown down on the floor, her top was taken off, her pants down and the medical records show that she had some abrasions to the vaginal area.
>
> In addition the victim called 911 right afterwards and told the police operator what happened and using the words, "That she was raped."
>
> And after that particular point in time due to the trauma, the victim some what blacked out as to the remembrance now of what happened back then. But the 911 tape has the information on it about that.
>
> In addition, she has blood on her thighs, in those areas, she was also very bloody around the head from the aggravated battery around one of the eyes, left or right eye. So the question of where the blood came from may be in question.
>
> * * *
>
> No seminal fluid of any type, rape kits were negative on both. Nothing found in that particular area, and that's why we had a charge of attempted forcible rape.

Based on this statement from the prosecutor, and the defendant's express admission that he was entering the plea to attempted forcible rape because it was in his best interests to do so, the court accepted the plea.

Now, in his brief, the appellant argues that the record as a whole does

not support the prosecutor's recitation of the facts. He avers that the reference to the victim's report to the 911 operator that she was raped was "technically true but seriously misleading" because during the same call she also said that she did not know if she had been raped, that she could not remember, and that she had blacked out. He further notes that the victim initially told the dispatcher that she was in Boothville when actually she was working at a convenience store in Buras.

For an unknown reason, the transcript of the victim's 911 call is split up in the record. The first four pages are at record pages 361 through 364; the remaining portion is at record pages 272 through 279. A review of the transcript shows that the victim twice told the 911 dispatcher that she had been raped. Initially, B.R. told the dispatcher she was at the Circle K in Boothville and had been robbed and beaten. As the dispatcher was trying to ascertain the victim's exact location, whether the perpetrator was still there and armed, and whether the victim was alone, B.R. indicated that she could not answer many of the questions because she had been beaten. As the dispatcher continued to question B.R. about her condition, including asking if she needed an ambulance, B.R. said that she was bleeding everywhere and was swollen, and then, without prompting and not in response to the preceding questions, she stated that, "He raped me. He beat me." B.R.

repeated this statement later during the 911 call, after giving the dispatcher her mother's name and phone number so that the dispatcher could call her. The second time B.R. said she had been raped, like the first time, was not in response to any particular question posed by the dispatcher. However, after she said it the second time, when the dispatcher repeated the statement as a question, B.R. said she did not know, she could not remember, that her head hurt and that she had a headache. Also, a day and one-half after the crime, the victim gave an audio taped statement to Detective Picou of the Plaquemines Parish Sheriff's office in which she made no mention of a rape.

The medical records from Charity Hospital tend to support the rape allegation. The history at intake reflects that the patient "does not remember event" and was found with her "pants/underwear around her ankles." Another section of the hospital records entitled "Description of the Incident" reflects that the victim was at work when the assailant grabbed her from behind and dragged her into the stockroom. The victim recounted that the perpetrator pulled her shirt over her head; she further stated she could not breathe and "passed out.". The victim recounted that she could not remember anything after that until she "woke up later" and the police were already at the scene. The medical records further reflect that the patient was given a full sexual assault exam. That examination showed a linear abrasion

between the labia major and minor and bruising in the same area.

The appellant argues that the narrative of the police report indicates that the victim was wearing her pants when she was found, but her shirt was off. He argues that this is more consistent with the victim's subsequent audio taped statement in which she indicated that the defendant pulled her shirt over her head because she was fighting him as he beat her around the head. He suggests that, absent hard evidence that the victim's other clothing had been removed, there is simply no evidence to support a finding that he intended to rape the victim.

Notably, although not mentioned by the prosecutor at the time of the pleas, the record indicates that the defendant's boxer shorts were examined and showed both seminal fluid and spermatozoa. Also, not mentioned by the appellant in the brief, is the fact that the State filed a notice of intent to use other crimes at trial; the other crime was a 1987 forcible rape conviction from Jefferson Parish. The State provided the case file from that conviction, reflecting that the defendant attacked a sleeping woman whom he knew, beat her about the face, strangled her, and then raped her.

Contrary to the appellant's argument, the record does contain evidence that B.R. was the victim of an attempted forcible rape. She twice reported the rape during the 911 call; the report resulted in a rape

examination which reflected some injury to the vaginal area. She was brutally beaten around the face, and the defendant was armed with pliers which he used during the attack. She apparently later was unable to remember some of the details of the incident, possibly due to head trauma; she told the 911 dispatcher more than once that her head hurt. Considering the defendant's prior conviction for rape, the overwhelming evidence that he was the perpetrator of the attack on B.R., and the State's agreement to reduce the charges of attempted murder and aggravated rape, his pleas were obviously in his best interests.

The appellant further argues however that the record contains substantial evidence to indicate that he may have marginal competency to enter the Alford plea. The bulk of this evidence comes from the file from the Jefferson Parish rape case in which the defendant was found incompetent and was remanded to Feliciana Forensic Facility for approximately three years. Those records show he was diagnosed as psychotic and placed on anti-psychotic medicine. The records also show that he has an I.Q. of only 54, making him moderately retarded, although the trial court in this case stated that later examinations indicated he might have been malingering. In 1987 he was found competent to stand trial, and the expert opinion was that he was legally sane at the time he committed the offense in 1984. The

defendant entered a plea in that case to forcible rape, reduced from the original indictment of aggravated rape, for which he received a twenty-year sentence, just as he did in the instant one. The record contains no evidence, such as Department of Corrections records, which shows that the defendant's mental condition deteriorated during his incarceration in subsequent years. Furthermore, the appellant does not contend that he was incompetent to enter the unqualified pleas of guilty which he entered in the instant case.

The trial court in this case elicited from the prosecutor a statement of the facts which supported the defendant's decision to enter a plea in which would be in his best interests. This Court's responsibility is to assess whether the plea was intelligently entered based on how strongly the record evidences guilt. While there was minimal evidence of the attempted forcible rape, there was evidence of a sexual assault. The trial court clearly and fully discussed the charges to which the defendant was pleading and every indication is that the defendant made a voluntary and intelligent choice.

This finding is further supported by the fact that the maximum sentence for the attempted forcible rape was only twenty years, while the maximum sentence for attempted armed robbery, to which charge the defendant entered an unqualified plea of guilty as charged, was forty-nine

years and one-half. Furthermore, at the time of the plea, much of the proceedings focused on the State's agreement not to file a multiple bill if the defendant's sentence were at least thirty years, or more than the maximum he could receive for the attempted forcible rape. However, the trial court sentenced the defendant to forty-nine and one-half years, the maximum for the attempted armed robbery, and the defendant later sought to have that sentence reduced as being outside his understanding of the plea bargain as to the sentence he would receive on the robbery charge. The defendant acknowledged that the court imposed the maximum sentence because the presentence investigation report reflected he had a felony conviction in California for punching and choking an elderly woman as well as a parole revocation for beating and strangling his wife. He argued however that the sentence on the robbery charge should not exceed the range of thirty to forty years and made no argument that any of his pleas, including the Alford plea, should be vacated. Thus, the record in this matter demonstrates that the Alford plea to attempted forcible rape was an intelligent and voluntary decision and, to the extent that the defendant did not receive the sentence he hoped for, the attempted armed robbery sentence was the problem.

This assignment of error lacks merit.

CONCLUSION

Accordingly, we affirm the appellant's convictions and sentences.

AFFIRMED