

STATE OF LOUISIANA

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NO. 2004-KA-1144

VERSUS

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COURT OF APPEAL

ROCHELLE COLLINS

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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. 427-091, SECTION "I"

Honorable Raymond C. Bigelow, Judge

Judge Edwin A. Lombard

(Court composed of Judge Terri F. Love, Judge Edwin A. Lombard, Judge
Roland L. Belsome)

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**CONVICTION AFFIRMED;
REMANDED**

In this appeal, the defendant/appellant Rochelle Collins, proceeding *pro se*, argues that the trial court erred in concluding that it had no discretion to reconsider her sentence. After review of the record, we affirm defendant/appellant's conviction and remand to the district court for a hearing on the timeliness of the motion for reconsideration of sentence, reserving to the defendant her right to seek review of the trial court's ruling.

Procedural History and Facts

On January 3, 2002, the State filed a bill of information charging Rochelle Collins with possession of cocaine, in violation of La. Rev. Stat. 40:967(C). She pleaded not guilty at her arraignment on January 9th. After being advised of her right to a jury, the defendant elected a bench trial. On January 25, 2002, she was found to be guilty of attempted possession of cocaine. The State filed a multiple bill, and after a hearing on March 22nd, she was found to be a third felony offender and sentenced to serve forty months at hard labor. Her *pro se* motion for reconsideration of sentence was

denied on June 19th.

At trial Officers Wayne Terry and Jason White testified that they were on patrol about 5 p.m. on December 6, 2001, at the intersection of South Rampart and Erato Streets when they observed the defendant and another person sitting on the steps of the house at 2015 Erato Street. The defendant had her right hand over her mouth and her left hand under her right. She was leaning over and down. She was sitting next to a man dressed as a woman. When the man noticed the police car, he alerted the defendant by nudging her. The defendant immediately put an object into her bra with her right hand; she had a cigarette lighter in her left hand. As the officers approached her, they could see that she had a crack pipe in her bra. A female officer was called in to remove the pipe that was found to be burned on one end. The officers observed a white residue on the inside of the pipe.

Rochelle Collins told the court that she was sitting on the steps on Erato Street when the police stopped and accused her of having a crack pipe. The officer cursed her and threatened to “stick . . . many charges on me.” She admitted having the pipe in her bra, but she said she had not been smoking the pipe outside. Although she had smoked the pipe, she claimed that she had come outside to throw the pipe away and put herself in a rehabilitation program. She stated that she was drinking a cup of wine when

she was sitting on the steps.

The parties stipulated that the residue within the pipe was tested and proved positive for cocaine.

Discussion

In a single assignment of error, the defendant argues that the trial court erred in concluding that it had no discretion to reconsider her sentence. The court found that her sentence could not be amended once she began serving it.

Under La. Code Crim. Proc. art. 881(A), a sentence may be changed only prior to the beginning of the execution of the sentence. However, under La. Code Crim. Proc. art. 881.1 (A)(1) the State or defendant have thirty days in which to file a motion to reconsider the sentence in a felony case. The defendant in this case filed a *pro se* motion for reconsideration of sentence; however, the motion appears to have been filed more than thirty days after she was sentenced.

The transcript of sentencing indicates that she was sentenced on March 22, 2002. Yet the minute entry and docket master reveal that only the multiple bill hearing occurred that day, and the sentencing hearing was held on April 5, 2002. Ms Collins dated her *pro se* motion for reconsideration April 20, 2002, and her cover letter, April 24, 2002. In her application for

post conviction relief, she lists the date of judgment of conviction as April 5, 2002. Additionally in a letter dated June 6, 2002, the defendant wrote to the judge, she states that she was sentenced on April 5th.

Attached to the State's brief is her *pro se* motion for reconsideration on which the barely legible date of May 10, 2002, is stamped as the date the motion was filed. However, the State concedes that case should be remanded for a hearing on the timeliness of the motion for reconsideration of sentence.

Accordingly, the defendant's conviction is affirmed and the case is remanded to the district court for a hearing on the timeliness of the motion for reconsideration of sentence, reserving to the defendant her right to seek review of the trial court's ruling.

CONVICTION AFFIRMED;

REMANDED.