

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2007-KA-0479**
VERSUS * **COURT OF APPEAL**
GARY SIMMONS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 462-658, SECTION "D"
Honorable Frank A. Marullo, Judge

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Judge Terri F. Love

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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Terri F. Love)

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REMANDED

STATEMENT OF CASE

The appellant was charged on November 22, 2005, with one count of being a convicted felon in possession of a firearm. He entered a not guilty plea and the district court found no probable cause and issued a release. The district court denied the motion to suppress the evidence. The appellant selected a bench trial and was found guilty as charged. After waiving delays, he was sentenced to serve ten years at hard labor, to run concurrently. A motion for appeal and motion to reconsider sentence were filed. The motion for appeal was granted. The record does not indicate that a ruling was rendered on the motion to reconsider sentence.

The facts are not relevant to the disposition of this appeal.

The record contains a copy of a motion to reconsider sentence, and the minute entry of sentencing and sentencing transcript show that it was filed on the day of sentencing. There is no indication that the district court ever acted on the motion.

It is procedurally incorrect to review a defendant's sentence prior to the district court's ruling on a motion to reconsider sentence. See *State v. Ferrand*, 03-1746 (La. App. 4 Cir. 1/14/04), 866 So. 2d 322; *State v. McQun*, 02-0259 (La. App. 4 Cir. 6/19/02), 828 So. 2d 598; *State v. Allen*, 99-2579 (La. App. 4 Cir. 1/24/01), 781 So. 2d 88. Given that, we decline to exercise our appellate jurisdiction on this matter until the district court issues a ruling on the motion.

Accordingly, we remand this case to the district court for a ruling on the motion for reconsideration of sentence, reserving the defendant's right to appeal his conviction and sentence once the district court has ruled on the motion.

REMANDED