

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2009-KA-0747**
VERSUS *
VIRTIS VINCENT * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 473-683, SECTION "G"
Honorable Julian A. Parker, Judge

* * * * *

JUDGE PAUL A. BONIN

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Paul A. Bonin)

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OCTOBER 21, 2009

**MULTIPLE BILL SENTENCE VACATED,
ORIGINAL SENTENCE REINSTATED**

Defendant, Virtis Vincent, was charged by bill of information with theft of used building components (copper pipe), in violation of La. R.S. 14:67.23. His conviction and original sentence of three years were affirmed by this court in *State v. Vincent*, 2008-1432 (La. App. 4 Cir. 3/19/07), 7 So. 3d 1243.¹

The state filed a bill against the defendant as a multiple offender relying on an alleged 1991 conviction. After a hearing, the trial court adjudicated the defendant as a multiple offender, vacated the previous three year sentence and imposed a sentence of five years.

This appeal was filed on June 5, 2009, challenging the multiple bill and the subsequent five year sentence, on two grounds. In its brief, the state concedes the merit of defendant's first assignment of error that there was insufficient proof that fewer than ten years had elapsed between defendant's release date on the predicate conviction and the commission of the present offense. After reviewing the record of this matter, we find merit to the assignment of error, and considering the state's

¹ A writ application on the underlying conviction is pending before the Louisiana Supreme Court, case no. 09-K-876.

concession, we vacate both the adjudication of the defendant as an habitual offender under the provisions of La. R.S. 15:529.1 and the imposition of the sentence of five years pursuant to that adjudication.

On September 25, 2009, the defendant filed a Motion for Priority Treatment and Waiver of Assignment of Error No. 2 in this court, still preserving his rights to challenge the underlying conviction before the Supreme Court. We grant the Motion for Priority Treatment and Waiver of Assignment of Error No. 2.

CONCLUSION

For the foregoing reasons, the adjudication of Virtis Vincent as a multiple offender and the accompanying five year sentence are hereby vacated, and the original sentence of three years is reinstated.

**MULTIPLE BILL SENTENCE VACATED,
ORIGINAL SENTENCE REINSTATED**