

STATE OF LOUISIANA * NO. 2012-KA-0789
VERSUS * COURT OF APPEAL
DAVID R. EPPERLEY * FOURTH CIRCUIT
* STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 501-105, SECTION "I"
Honorable Karen K. Herman, Judge

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James F. McKay, III
Chief Judge

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(Court composed of Chief Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., Judge Terri F. Love)

LEON A. CANNIZZARO, JR., DISTRICT ATTORNEY
KYLE DALY, ASSISTANT DISTRICT ATTORNEY
619 South White Street
New Orleans, LA 70119

COUNSEL FOR STATE OF LOUISIANA

Sherry Watters
LOUISIANA APPELLATE PROJECT
P. O. Box 58769
New Orleans, LA 70158-8769

COUNSEL FOR DEFENDANT/APPELLANT

June 19, 2013

APPEAL DISMISSED; REMANDED FOR RESENTENCING

A review of the record reveals a patent error which is fatal to this appeal. While the minute entry for January 27, 2012 states that the trial court imposed a sentence of five years incarceration in the Louisiana Department of Corrections (“D.O.C.”) upon the defendant, the transcripts in this case reveal that the trial court failed to actually impose sentence. The record reflects that the appellant pled guilty in several other cases involving charges of theft and misappropriation; that all pleas were tendered and accepted on November 30, 2011; and that the court reset sentencing in all of the cases until after it had conducted the restitution hearing. A status conference was held on December 15, 2011. A restitution hearing was held on January 20, 2012, and a final restitution and sentencing hearing held on January 27, 2012. In none of these transcripts is there a record of an actual sentencing in this case. In simultaneously arriving at sentences in all of the cases, the trial court inadvertently failed to impose sentence in the instant matter, although it ordered the sentences in other cases to be served either concurrently or consecutively with the sentence in this case.¹

In the event of a discrepancy between the minutes of a hearing and the transcript, the transcript prevails. See *State v. Watson*, 2000–1580, p. 3 n. 4 (La. 5/14/02), 817 So.2d 81, 83 n. 4; *State v. Maten*, 2004-1718 (La. App. 1 Cir. 3/24/05), 899 So.2d 711, 725. Therefore, this Court must conclude that although the trial court imposed the amount of restitution that the appellant must pay, it did not actually impose sentence in this case. La. C.Cr.P. art. 912C (1) provides that a defendant may appeal from a “judgment which imposes sentence.” See *State v. Baxter*, 343 So.2d 733 (La. 1977). Thus, the appeal was taken prematurely. As per *Baxter*, we dismiss this appeal and remand the case for the imposition of sentences.

APPEAL DISMISSED; REMANDED FOR RESENTENCING

¹ The trial court failed to impose sentences in CDC Cases Nos. 500-897, 501-105 and 503-758; the applicable companion cases are as follows: Nos. 500-897, 503-758, 508-897, 501-105, 500-898, 508-935 and 508-788.