

STATE OF LOUISIANA

\*

NO. 2014-KA-0666

VERSUS

\*

COURT OF APPEAL

ATRESS WILLIAMS

\*

FOURTH CIRCUIT

\*

STATE OF LOUISIANA

\*

\*

\* \* \* \* \*

**BONIN, J., DISSENTS WITH REASONS.**

I respectfully dissent and would order the acquittal of Mr. Williams because the prosecution offered insufficient evidence from which a rational fact-finder could be convinced beyond a reasonable doubt that the *date of completion* of Mr. Williams' sentence was within ten years of the commission of his new offense.

I would follow the fifth circuit's decision in *State v. Knight*, a case in which an acquittal was ordered because of insufficiency of evidence on the element of absence of the ten-year cleansing period. 99-138, p. 5 (La. App. 5 Cir. 6/30/99); 738 So. 2d 1179, 1182. There, the new offense was committed on June 28, 1998. *See id.* p. 2, at 1180. The prosecution introduced evidence that the defendant was convicted of aggravated crime against nature on May 20, 1987 and was sentenced to ten years at hard labor without benefit on August 6, 1987. *See id.* p. 4, at 1181. The fifth circuit, however, found that evidence of ten-year sentence imposed without benefit of parole, probation, or suspension of sentence is "insufficient to prove beyond a reasonable doubt that the ten years has not elapsed since the date of completion of the defendant-appellant's punishment." *Id.* p. 4, at 1181. *Knight* relied upon earlier decisions of the first circuit. *See State v. Miller*, 499 So. 2d 281, 282-283 (La. App. 1<sup>st</sup> Cir. 1986) (not sufficient for the prosecution to prove the initial sentence imposed "for this factor is not the sole criterion to enable

determination of the date when defendant's sentence was completed"); *State v. Dennis*, 569 So. 2d 566, 569 (La. App. 1 Cir. 1990) ("nor was there any other evidence to prove *the actual* date of discharge") (emphasis added).

Thus, in my view, in a *Jackson v. Virginia*<sup>1</sup> sufficiency-of-evidence analysis the introduction of evidence of a conviction more than ten years before the occurrence of the firearm possession offense even when accompanied by information on the sentence imposed from which an inference might be made of a possible date of completion of sentence is insufficient to sustain the prosecution's burden of proof beyond a reasonable doubt.<sup>2</sup> Accordingly, I would order Mr. Williams' acquittal and discharge.

---

<sup>1</sup> 443 U.S. 307 (1979).

<sup>2</sup> Proving the date of completion of sentence is not difficult; an official record of the Department of Public Safety and Corrections introduced through the testimony of a probation or parole agent should easily suffice to provide a basis for any rational fact-finder to determine the *actual* date of completion of a sentence.