STATE OF LOUISIANA	*	**NO. 2018-KA-0432**
VERSUS	*	
		COURT OF APPEAL
DESMOND C. PARKER	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

*** * * * * * ***

CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
STATE OF LOUISIANA	**NO. 2016-K-1166**
VERSUS	
DESMOND C. PARKER	
CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
STATE OF LOUISIANA	**NO. 2017-KA-0141**
VERSUS	
DESMOND C. PARKER	

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 523-312, SECTION "H"
Honorable Camille Buras, Judge
* * * * * *
Judge Roland L. Belsome
* * * * * *

(Court composed of Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge Regina Bartholomew-Woods)

LOBRANO, J., CONCURS IN PART, DISSENTS IN PART, AND ASSIGNS REASONS

Leon Cannizzaro
District Attorney
Donna Andrieu
Michael Danon
Assistant District Attorney
Orleans Parish
619 S. White Street
New Orleans, LA 70119

COUNSEL FOR APPELLEE/ STATE OF LOUISIANA

Holli Herrle-Castillo
LOUISIANA APPELLATE PROJECT
P. O. Box 2333
Marrero, LA 70073-2333

COUNSEL FOR DEFENDANT/APPELLANT

Desmond Parker #569648
Dixon Correctional Center
P. O. Box 788
Jackson, LA 70748

PRO SE DEFENDANT/APPELLANT

AFFIRMED; WRIT DENIED

DECEMBER 12, 2018

Procedural History

Defendant, Desmond Parker, appeals his convictions and sentences for simple robbery, in violation of La. R.S. 14:65, and intimidating a witness, in violation of La. R.S. 14:129.1. He also appeals the district court's ruling denying his motion for new trial. Consolidated with this appeal is the writ application filed by the State; the State contends that the district court erred in its adjudication of Defendant's habitual offender status.

After reviewing the appellate record and applicable law, we affirm Defendant's convictions.[1] This Court further finds that the district court did not err when it found that Defendant was a third-felony offender rather than a fourth-felony offender. Thus, the State's writ application is denied.

[1] A review of the record on appeal for errors patent revealed one with respect to Defendant's sentence. This error, however, does not require corrective action. When sentencing Defendant as a third-felony habitual offender, the district court imposed an illegally lenient sentence by failing to restrict the sentence as to probation and suspension of sentence. *See* La. R.S. 15:529.1 G (providing that "[a]ny sentence imposed under the provision of this Section shall be at hard labor without benefit of probation or suspension of sentence"); *see also State v. Sterling*, 2011-1837 (La. 3/9/12), 84 So. 3d 557 (providing that sentencing restrictions imposed on habitual offenders are those stipulated for the present felony, as well as, those in the applicable portions of the Habitual Offender Law, La. R.S. 15:529.1). The sentencing restrictions for Defendant's present felonies are that the sentences be served at hard labor without the benefit of probation and suspension of sentence. Pursuant to La. R.S. 15:301.1 A and *State v. Williams*, 2000-1725 (La.

On January 29, 2015, Defendant was charged with simple robbery, in violation of La. R.S. 14:65 (count one), intimidating a witness in violation of La. R.S. 14:129.1 (count two), and aggravated assault, in violation of La. R.S. 14:37(A) (count three).[2] Defendant pled not guilty to all charges.

He proceeded to trial by jury. On January 26, 2016, the jury found Defendant guilty as charged on counts one and two. Subsequently, Defendant filed motions for new trial and for post-verdict judgment of acquittal, which were denied. Following the denials, there was a multiple bill hearing and the district court adjudicated Defendant a third, rather than a fourth, offender as sought by the State. He was sentenced pursuant to La. R.S. 15:529.1 to fourteen (14) years at hard labor on count one and ten (10) years at hard labor on count two. The trial court denied Defendant's motion to reconsider sentence. The State sought supervisory review of Defendant's habitual offender adjudication. Defendant appealed.

Assignments of Error

On appeal, Defendant, through counsel and *pro se*, maintains that there was insufficient evidence to support his conviction, and the trial court erred in not granting his motion for new trial. In addition, Defendant's *pro se* brief also argues that the State's attorney engaged in prosecutorial misconduct. Defendant further

---

11/28/01), 800 So. 2d 790, 798–99, a sentence is deemed to have been imposed with statutorily mandated restrictions of benefits, even in the absence of the district court delineating them. Therefore, no action is necessary by the court.

[2] Defendant was found guilty of the aggravated assault charge after a bench trial and sentenced to six months in Orleans Parish Prison.

maintains that he received ineffective assistance of counsel. Lastly, he challenges the evidence submitted to the jury at trial.

Sufficiency of the Evidence[3]

In accordance with the well-settled jurisprudence that "[w]hen issues are raised on appeal as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should first determine the sufficiency of the evidence."[4] In reviewing whether the evidence presented in a case is sufficient to support a conviction, we are governed by the standard set forth in the United States Supreme Court decision of *Jackson v. Virginia*.[5]

The standard is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. "The *Jackson* doctrine involves more than simply applying a fixed standard to measure the simple quantum of the evidence produced in a case."[6] A sufficiency of evidence review does not require a court to "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt."[7] "The inquiry requires the reviewing court to ask whether the trier of fact interpreting all of the evidence in this manner could have found the essential elements of the crime beyond a reasonable doubt."[8]

---

[3] This assignment of error was raised in counsel's brief and in the *pro se* brief filed by Defendant.
[4] *State v. Marcantel*, 2000-1629 (La. 4/3/02), 815 So. 2d 50, 55 (citations omitted).
[5] 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).
[6] *State v. Mussall*, 523 So.2d 1305, 1309 (La.1988).
[7] *Id.* (citing *Jackson*, 443 U.S. at 337 (Stevens, J. concurring)).
[8] *Id.* at 1309-10 (citing *Jackson*, 443 U.S. at 319).

The reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence.[9] A reviewing court is neither permitted to second guess the rational credibility determinations of the fact finder at trial, nor is it to consider the rationality of the thought processes employed by a particular fact finder in reaching a verdict.[10] It is not the function of an appellate court to assess credibility or reweigh the evidence.[11]

Simple Robbery

In order to convict Defendant of simple robbery, the State had to prove that he: (1) took something of value; (2) belonging to another; (3) from the person of another; (4) by use of force or intimidation.[12]

At trial, Reed Sutton (the victim) testified that on September 2, 2014, he was drinking and socializing with Defendant and "Cody" in the French Quarter in New Orleans; he had known both men for a few months. He later accompanied Defendant and "Cody" to a French Quarter hotel to complete a pre-arranged narcotics purchase.[13] When the three men arrived at their destination, the victim decided that the price of the drugs was more than he was willing to pay; consequently, he refused to make the purchase and attempted to walk away.

---

[9] *State v. Rosiere*, 488 So.2d 965, 968 (La. 1986).
[10] *State v. Kelly*, 2015-0484, p. 3 (La. 6/29/16), 195 So.3d 449, 451.
[11] *Id.*, 2015-0484, pp. 3-4, 195 So.3d at 451 (citing *State v. Stowe*, 635 So.2d 168, 171 (La. 1994)).
[12] *State v. Williams*,2011-1547, p. 4 (La.App. 4 Cir. 9/26/12), 101 So.3d 104, 108.
[13] Initially, the victim reported to the police that he and the defendant planned to purchase marijuana. However, at trial he admitted that they were actually going to purchase methamphetamine.

However, "Cody" placed him in a choke hold while Defendant stole his cash and wrist watch.

The testimony elicited at trial further established that the victim reported the incident to NOPD Officer Thomas Perez (Officer Perez) at the Eighth District Police Station. Officer Perez's investigation revealed that "Cody" was Cody Bergeron ("Bergeron"), a known associate of Defendant. When Officer Perez showed the victim booking photos of Defendant and Bergeron, the victim confirmed they were the men who robbed him thirty (30) minutes earlier. Further investigation failed to reveal any witnesses or surveillance video of the incident. Officer Perez obtained arrest warrants for Defendant and Bergeron.

Additionally, the State called Richard Traube ("Traube"), who testified relative to the State's *Prieur* notice concerning Defendant's and Bergeron's[14] guilty pleas to the second degree robbery of Traube in 2009. The State's purpose in introducing the 2010 conviction was to show the proximity of the crime scenes, the targeting of vulnerable victims, and the forceful taking of property from the victims.

Traube testified that he was drinking and talking with Bergeron in the Roundup Bar in the French Quarter in 2009. Traube and Bergeron agreed that in exchange for payment, Bergeron would engage in a sexual act with Traube. After the act, Traube refused to pay Bergeron. When Traube left the bar, Bergeron and Defendant beat and robbed him.

[14] Cody Bergeron was also charged with simple robbery arising out of the same events at issue here, but is not a part of this appeal.

Under the *Jackson* standard, we find there was sufficient evidence for the jury to return a verdict of guilty on the simple robbery charge.

Intimidating a Witness

To uphold a conviction for intimidating a witness, the State was required to prove that Defendant intimidated or impeded, by threat of force or force, or attempted to intimidate or impede, by threat of force or force, a witness with intent to influence his testimony, his reporting of criminal conduct or his appearance at a judicial proceeding. La. R.S. 14:129.1 defines the term "witness" to include a person who is a victim of criminal conduct, a person who has testified in court under oath, a person who has reported a crime, and a person who has been served with a court subpoena.

The victim also testified that on the night of September 27, 2014, he and "Katy," Defendant's ex-girlfriend, were in the Roundup Bar in the French Quarter. Defendant was in the bar as well and confronted the victim with a knife and threatened to kill him. The victim ran to a friend's apartment and was driven to the Eighth District Police Station.

The victim reported to NOPD Detective Steve Nolan ("Detective Nolan") at the Eighth District Police Station that Defendant had pulled a knife on him and threatened him at the Roundup Bar. The victim said Defendant threatened to kill him if he did not drop the robbery complaint he filed. Detective Nolan was unable to locate any witnesses to the knife incident, but did obtain a warrant for

Defendant's arrest, which Officer Jason Collins executed after receiving a tip that Defendant was at the Old Town Inn.

Anthony Henry ("Henry"), the manager/bartender on duty at the Roundup Bar on the night of September 27, 2014, testified that the victim and Defendant had an altercation in the bar. He claimed that he did not see any physical contact or a weapon, but he ejected the victim from the bar due to safety concerns. Although Henry did not witness certain details of the interaction between the men, his testimony supports the confrontation and ensuing argument.

Also, at trial, the jury heard the testimony of Jim Huey ("Huey") of the Orleans Parish Sheriff's Department. Huey is the custodian of the records of inmate telephones calls. Huey explained that inmate phone calls are recorded by an internet-based system and stored on a secure database. One of Huey's duties is to provide law enforcement agencies copies of those jailhouse telephone calls. Huey further explained that when an inmate makes a call from the Orleans Parish Prison, the inmate is issued a warning that the call will be monitored and recorded. Huey testified that a call detail sheet, which lists the specifics of an inmate call, accompanies the recording of jailhouse calls.

Pursuant to the State's request, Huey supplied a disc containing a recording of a jailhouse call made by Defendant, which was played for the jury. In the call, Defendant tells the victim he will not be arrested if he fails to appear at trial. Moreover, Defendant stresses that the only way the charges against him "will go away" is if the victim fails to testify.

Again, reviewing the evidence under the *Jackson* standard we find the jury had sufficient evidence to return a guilty verdict for the crime of intimidating a witness.

Motion for New Trial[15]

In this assignment, Defendant maintains that a motion for new trial should have been granted based on newly discovered evidence. More specifically, that Veronica Smith's statement warranted the granting of a new trial.

Here, the motion for new trial is based primarily on the defense's inability to present the statement of Veronica Smith ("Smith"). Smith was the girlfriend of Bergeron. She claimed that she witnessed the robbery and Defendant was not involved. The trial court visited this issue during trial. At that time, Defendant contended that Smith, who had not been served and was not present to testify, should be declared an unavailable witness. As an unavailable witness, Defendant sought to have a statement by Smith that had been given to defense counsel's investigator admitted into evidence through the investigator's testimony.

[15] Just as in the previous assignment of error, this assignment was raised in counsel's brief and in the *pro se* brief filed by Defendant.

The trial court first found that Smith did not qualify as an unavailable witness.[16] Next, the trial court determined that even if the witness was unavailable the statement would not be admissible evidence because the statement was not written by Smith. Rather, it was a narrative representing Smith's statement written by the investigator. Additionally, Smith was not under oath, there was no video or audio recording of the statement, and although it was signed by Smith, it was not notarized. Considering those aspects of the document, the trial court concluded that the statement would not be covered under any of the hearsay exceptions in La.

[16] La. C. E. art. 804(A) reads:

> Definition of unavailability. Except as otherwise provided by this Code, a declarant is "unavailable as a witness" when the declarant cannot or will not appear in court and testify to the substance of his statement made outside of court. This includes situations in which the declarant:
>
> (1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement;
>
> (2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so;
>
> (3) Testifies to a lack of memory of the subject matter of his statement;
>
> (4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness, infirmity, or other sufficient cause; or
>
> (5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrong-doing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

C. E. art. 804(B) and therefore would not be admissible.[17]

At the hearing on the motion for new trial, Defendant presented evidence to prove that Smith was, in fact, an unavailable witness at the time of trial. That evidence included Smith's affidavit that stated she was kidnapped by Bergeron and taken to Mississippi where they were detained by police and arrested for various charges unrelated to this case. Once she was released from jail Smith returned home. Smith also recounted the night of the incident and claimed that Defendant was not involved and Bergeron acted alone. Further, Smith provided testimony

[17] La. C. E. Art. 804(B) reads in pertinent part:

> B. Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
>
> (1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a party with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. Testimony given in another proceeding by an expert witness in the form of opinions or inferences, however, is not admissible under this exception.
>
> (2) Statement under belief of impending death. A statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.
>
> (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
>
> ****
>
> (7)(a) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.
>
> (b) A party seeking to introduce statements under the forfeiture by wrongdoing hearsay exception shall establish, by a preponderance of the evidence, that the party against whom the statement is offered, engaged or acquiesced in the wrongdoing.
> La. C. E. art. 804

and was cross-examined at the hearing. The trial court denied the motion for new trial.

Smith's affidavit and testimony were similar to the statement she had given to the investigator. The newly discovered information was the allegations of kidnapping and the subsequent arrest, which resulted in her being unavailable.[18] In sum, defendant seeks a new trial so that Smith can testify.

To obtain a new trial based on newly discovered evidence, defendant must show "(1) the new evidence was discovered after trial; (2) the failure to discover the evidence at the time of trial was not caused by lack of diligence; (3) the evidence is material to the issues at trial; and (4) the evidence is of such a nature it would probably have produced a different verdict."[19] In evaluating whether newly discovered evidence warrants a new trial, the test is not simply whether another jury might bring in a different verdict, but whether the new evidence is so material it ought to produce a different verdict. A district court's decision on a motion for new trial based on newly discovered evidence, although a question of law, is entitled to great weight and should not be disturbed on review if reasonable persons could differ as to the propriety of the decision.[20]

Although defendant characterizes Smith as a witness to the robbery, it is clear that even taking her testimony as true she never entered the hotel where the robbery occurred. Smith has no knowledge of whether defendant was present inside the building. For that reason, Smith's testimony cannot be considered "of

---

[18] Smith admitted that she did not contact the police or pursue any charges against Bergeron for the alleged kidnapping.

[19] *State v. Tucker*, 2013-1631, p. 50 (La. 9/1/15), 181 So.3d 590, 626, *cert. denied, Tucker v. Louisiana*, -- U.S. --, 136 S.Ct. 1801, 195 L.Ed.2d 774 (2016)(citations omitted); *see also* La. C.C.P. art. 851.

[20] La. C.Cr.P. art. 851; *State v. Prudholm*, 446 So. 2d 729 (La. 1984).

such a nature that would produce a different verdict." This Court finds no error in the denial of the motion for new trial.

Prosecutorial Misconduct[21]

In this assignment of error, Defendant alleges that the State was aware that the victim gave perjured testimony at trial, and the State misrepresented facts in closing argument.

First, Defendant contends that while testifying the victim failed to disclose numerous crimes that he was not prosecuted for. Thus, his testimony was so tainted it should not have been presented to the jury. No evidence exists in the record to support this assignment of error. The victim was cross-examined and admitted to his prior drug use, that he lied to the police that he was buying marijuana rather than methamphetamine, and his criminal history as a convicted felon. The jury heard this evidence.

Next Defendant complains of facts that were not in evidence being presented to the jury in closing argument. Specifically, the State told the jury: "Mr. Traube, at the time, seventy-three years old, was beaten bloody-his own words-by Cody Bergeron and Desmond Parker both of whom pled guilty to the crime."

The record reveals that the *Prieur* witness, Traube, testified that he was beat up and robbed by Defendant. Traube specifically stated at trial: "[H]e followed me up to my car and beat the tar out of me and robbed me, took my wallet."

In *State v. Smith*, 11-0092, p. 28 (La.App. 4 Cir. 7/11/12), 96 So.3d 678, 694-95, *writ denied*, 12-2069 (La. 3/15/13), 109 So.3d 375, we stated:

> Louisiana jurisprudence on prosecutorial misconduct allows prosecutors wide latitude in choosing closing argument tactics. Even assuming that remarks were

[21] This assignment of error is raised in Defendant's *pro se* brief.

> inappropriate, a conviction will not be reversed due to an improper remark during closing argument unless the court is thoroughly convinced that the remark influenced the jury and contributed to the verdict. Much credit should be accorded to the good sense and fair-mindedness of jurors who have seen the evidence and heard the arguments, and have been instructed by the trial judge that arguments of counsel are not evidence.[22]

This Court recognizes that the State did not quote Traube's words verbatim. However, we also note, that the defense counsel did not object to the State's statement. The record fails to contain any evidence of prosecutorial misconduct.

Ineffective Assistance of Counsel[23]

Defendant's next assignment of error is that he received ineffective assistance of counsel.

An ineffective assistance of counsel claim is often most appropriately addressed through an application for post-conviction relief filed in the trial court where a full evidentiary hearing can be conducted.[24] However, "an evidentiary hearing is not necessary where the record on appeal is sufficient to permit a determination of counsel's effectiveness at trial."[25] In the instant matter, the record contains no evidence to rule on Defendant's ineffective of assistance claim. Accordingly, we decline to consider this assignment of error. Defendant may raise this argument should he file an application for post-conviction relief.

State's Writ Application

At the multiple-bill and sentencing hearing, Defendant challenged a previous guilty plea from Jefferson County, Alabama. Defendant argued that the evidence

---

[22] *State v. Kyles*, 513 So.2d 265, 275-76 (La.1987) (internal citations omitted).
[23] This assignment of error is raised in Defendant's *pro se* brief.
[24] *State v. Laneheart*, 12-1580, p. 9 (La. App. 4 Cir. 2/26/14), 135 So.3d 1221, 1229 (citing *State v. Howard*, 98-0064, p. 15 (La. 4/23/99), 751 So.2d 783, 802).
[25] *State v. McGee*, 98-1508, p. 4 (La. App. 4 Cir. 3/15/00), 758 So.2d 338, 341 (citing *State v. Seiss*, 428 So.2d 444 (La. 1983)).

provided by the State was insufficient to establish that Defendant's prior guilty plea was knowing, voluntary, and made with an express waiver of his rights. The trial court determined that the State failed to prove that the guilty plea was in accordance with *Boykin v. Alabama*.[26] We agree.

It is well established that the validity of a guilty plea turns on whether Defendant was informed of three fundamental constitutional rights (*Boykin* rights): 1) his privilege against compulsory self-incrimination, 2) his right to trial by jury, and 3) his right to confront his accusers. Additionally, the record must also show that after being informed of those *Boykin* rights, Defendant knowingly and voluntarily waived them.[27]

The Supreme Court adopted a scheme for burdens of proof in habitual offender proceedings in *State v. Shelton,* which it summarized as follows:

> If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that defendant was represented by counsel when they were taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one which reflects a colloquy between judge and the defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than a "perfect" transcript, for example, a guilty plea form, a minute entry, an "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to

[26] 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed2d 274 (1969)
[27] *State v. Granier*, 2015-0608 (La. App. 4 Cir. 10/28/15), 178 So. 3d 1106, 1108 (citing *State v. Juniors*, 2003-2425 (La. 6/29/05), 915 So.2d 291).

> determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three *Boykin* rights.[28]

In *Shelton*, the State submitted into evidence a minute entry that stated the judge "gave the defendant his rights" and a "Waiver of Constitutional Rights/Plea of Guilty Form" ("the form"). The form listed the *Boykin* rights with Defendant's initials behind each indicating that he waived the right. The form had additional statements providing that Defendant was well informed of the consequences of his plea. The form was signed by Defendant, the attorney for Defendant, and the trial judge. Considering that evidence, the Supreme Court found that the State met its burden of proving the guilty plea was informed, free and voluntary, and made with an articulated waiver of constitutional rights.[29]

In the instant case, the record is void of any indication that Defendant knowingly and voluntarily waived each of his *Boykin* rights. The Alabama Judicial Information System Case Action Summary submitted to the trial court contains entries signed by the Alabama Circuit Judge of the Tenth Judicial Circuit of Alabama. One of the entries states that Defendant waives a jury trial. There is no other reference to Defendant waiving rights and nowhere does he sign or initial any statement of waiver or waiver form. The State cannot overcome the lack of an articulated waiver of Defendant's constitutional rights without a transcript.

As the Louisiana Supreme Court discussed in *Shelton,* when the State introduces anything less than a "perfect transcript" to prove the validity of a previous guilty plea, the trial judge must weigh the evidence to determine whether the State met its burden. In this case, the trial judge reviewed the evidence

[28] 621 So.2d 769, 779-80 (La. 1993).
[29] *Id.* at 777.

presented by the State and found it was deficient. Given the record before this Court, that ruling should be affirmed. For that reason, the State's writ application seeking to adjudge Defendant as a fourth felony offender is denied.

Conclusion

For the reasons discussed, Desmond Parker's convictions and sentences are affirmed and the State's writ application is denied.

AFFIRMED; WRIT DENIED