STATE OF LOUISIANA	*	**NO. 2018-KA-0421**
VERSUS	*	
		COURT OF APPEAL
TERRELL M. BELVIN	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

*** * * * * * ***

CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
STATE OF LOUISIANA	**NO. 2018-K-0696**
VERSUS	
TERRELL BELVIN	

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 519-617, SECTION "J"
Honorable Darryl A. Derbigny, Judge
* * * * * *

Judge Paula A. Brown
* * * * * *

(Court composed of Judge Terri F. Love, Judge Daniel L. Dysart, Judge Paula A. Brown)

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CONVICTIONAFFIRMED; WRIT GRANTED IN PART; WRIT MOOT IN PART; AND SENTENCE VACATED AND REMANDED.
04/03/2019

Defendant, Terrell Belvin, ("Defendant") appeals his conviction for second degree battery, arguing the evidence was insufficient to convict. Additionally, the State of Louisiana seeks supervisory review of the district court's denial of the State's motion to reconsider sentence and/or correct illegal sentence ("motion to reconsider sentence") and the denial of its motion to continue the hearing on Defendant's motion to reconsider sentence under La. R.S. 15:529.1[1] and/or motion to correct an illegal sentence ("motion to correct illegal sentence"). This Court granted the State's writ application for the limited purpose of considering it with Defendant's timely filed appeal. For the reasons that follow, we affirm Defendant's conviction; the State's writ application is granted in part and denied in part; and the Defendant's sentence is vacated and the matter is remanded for Defendant's resentencing consistent with this opinion.

PROCEDURAL HISTORY

On March 21, 2014, Defendant and Reeshawn Arnold were charged with one count of second degree battery of Douglas Potter (the "victim"), in violation of

[1] The Habitual Offender Law.

La. R.S. 14:34.1[2] and one count of criminal damage to property, in violation of La. R.S. 14:56(B)(2). Defendant pled not guilty to both charges.[3]

After the district court found probable cause only as to the second degree battery charge,[4] Defendant was tried by a jury on that charge on December 9, 2014 and December 10, 2014, and convicted of second degree battery. On January 11, 2016, Defendant filed a motion for appeal.

The State filed a habitual offender bill on April 19, 2016, charging Defendant as a fourth felony offender based on three previous drug convictions. On August 12, 2016, the district court sentenced Defendant to five years at hard labor for his conviction of second degree battery. On September 30, 2016, the district court adjudicated Defendant a fourth felony offender and sentenced Defendant to life imprisonment at hard labor pursuant to La. R.S. 15:529.1(A)(4)(b).[5]

Defendant filed a motion to correct illegal sentence on July, 6, 2018, citing the 2017 Amendments to the Habitual Offender Law ("2017 Amendments") which will be discussed in more detail *infra*. The State moved to continue the hearing. On July 18, 2018, the district court denied the State's motion to continue and granted Defendant's motion to correct illegal sentence, resentencing Defendant to twenty years at hard labor as a fourth felony offender.

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[2] La. R.S. 14:34.1(A) provides, in part, that "[s]econd degree battery is a battery when the offender intentionally inflicts serious bodily injury. . ."

[3] Mr. Arnold pled guilty to both charges and was sentenced to five years.

[4] The State later issued a *nolle prosequi* on the simple criminal damage charge on February 22, 2017.

[5] As will be discussed *infra* the 2014 version of the Habitual Offender Law, which was in effect at the time Defendant committed the second degree battery mandated a life sentence for a fourth felony offender where the underlying offense was a crime of violence and the prior felonies violated the Uniform Controlled Dangerous Substances Law.

The State, on August 1, 2018, filed a motion to reconsider Defendant's sentence which the district court denied on August 7, 2018. The State noticed its intent to seek a writ of review.

ERRORS PATENT

This Court routinely reviews the record on appeal for errors patent. *State v. Lewis*, 2015-0773, p. 9 (La. App. 4 Cir. 2/3/16), 187 So.3d 24, 29. A review of the record reveals no errors patent.

FACTS

On January 21, 2014, Defendant and Mr. Arnold allegedly brutally beat the victim, causing him to suffer a coma and seizures that will necessitate medical treatment for the rest of his life.

At trial, Officer Jacob Lathrop of the New Orleans Police Department ("NOPD") testified that he was called to investigate a battery which occurred in the early morning hours of January 21, 2014 in front of the Last Call Bar, located in the 800 block of Conti Street. Officer Lathrop arrived on the scene with Officer Meghan Constantine, who was in training at the time. Upon his arrival, Officer Lathrop saw the victim on the ground, unresponsive and bleeding from an injury to the head. Officer Lathrop canvassed the area for surveillance video and witnesses. He said Officer Constantine obtained a statement from the bartender at The Last Call Bar, the only identifiable eyewitness to the incident. Neither he nor Officer Constantine was able to obtain a statement from the victim because the victim was in a coma. Officer Lathrop stated Defendant was arrested on February 27, 2014 after NOPD received notice Defendant was at a hotel. At the time of his arrest, Defendant was with Kayla Rogers. Officer Lathrop identified Defendant in court as the man he had arrested.

On cross-examination, Officer Lathrop acknowledged that he did not return to the crime scene to talk to any other persons about the battery. He also stated that outside of the bartender, no other witnesses said that they had seen the battery.

Thomas Perez, the detective assigned to investigate this case, spoke to the bartender, identified as Allison McDonald, less than twenty-four hours after the incident. Based on Ms. McDonald's description, Ms. McDonald and Detective Perez put together a composite sketch of Defendant. Detective Perez also obtained surveillance video from The Famous Door, a bar located next door to The Last Call. He said the surveillance video and the composite sketch were provided to the news media for assistance in identifying the suspects. Detective Perez identified the victim, Defendant, and Mr. Arnold from the surveillance video.

On cross-examination, Detective Perez acknowledged that he did not record or take written notes from his interview with Ms. McDonald.

Brian Jones, a former NOPD officer, assisted Detective Perez in the investigation. Detective Jones testified that on January 22, 2014, he received a Crime Stopper's tip which identified Defendant as one of the subjects/perpetrators seen in the media's broadcast of the surveillance video.[6] Detective Jones located a photograph of Defendant after conducting a records check. A comparison of

[6] Detective Jones also testified that he received a second tip from a "concerned citizen" who identified Mr. Arnold as another subject seen in the video. In conjunction with that tip, Detective Jones received a photograph of Mr. Arnold taken from his Instagram account. Detective Jones observed that Mr. Arnold's Instagram photograph and the clothing worn in the photograph—a very brightly colored shirt with gold-colored pants, blue and white sneakers, and a blue baseball cap—closely matched the description of the assailant wearing the baseball cap in the video. A records check on Mr. Arnold showed he had been arrested the same night as the battery and was being held in Orleans Parish Prison. Mr. Arnold's booking photograph showed that he had on the same clothing worn in the surveillance video taken the night of the attack. A search warrant resulted in the confiscation of Mr. Arnold's clothes—one blue New York baseball cap, one camouflage jacket, one floral print shirt, one pair of gold-colored pants, one pair of Adidas brand shoes and one Kyocera cell phone, which Detective Jones identified at Defendant's trial. The January 23, 2014 arrest register for Mr. Arnold was later introduced into evidence.

Defendant's photograph with the composite sketch previously provided by Ms. McDonald each depicted a tattoo in the center of Defendant's forehead. Detective Jones said Ms. McDonald identified Defendant in the photograph during the recorded interview he conducted with her on January 22, 2014 and signed the photograph. Detective Jones testified that Defendant was arrested about one month after the battery occurred.

Dr. Frank Culicchia, a neurosurgeon, testified that he and other members of his department operated on the victim. Dr. Culicchia identified the victim's medical records which were introduced into evidence. Dr. Culichhia noted that the victim was comatose and diagnosed with traumatic intercerebral hemorrhage—a bleeding of the brain—upon his entry to the emergency room. Dr. Culicchia opined that the nature of the bruising to the brain showed the victim was struck hard, and there were multiple sources of trauma that caused the injuries. The doctor described the victim's recovery as remarkable. However, he cautioned that the victim would never be the same and could suffer seizures requiring medical treatment for the rest of his life.

Mrs. Potter, the victim's wife, reiterated that her husband's injuries required six brain surgeries in 2014, numerous hospital stays, and rehabilitation. When describing her husband's current condition, Mrs. Potter testified that "[h]e has seizures. He has to have 24-7 care. He doesn't remember things. He has trouble putting things in order of how to do things. He's not the same."

Jim Huey, a custodian of inmate telephone call records for the Orleans Parish Sheriff's Department, testified that he supplied a disc containing three jailhouse phone calls made by Defendant on the afternoon of the day following the

attack on the victim.[7] A call to Reeshawn "T-Roc" Arnold was played for the jury. In the call, Defendant tells Mr. Arnold: "Man, you got me f***ed up out here, son." Defendant goes on to say: ". . . people got me wanted for that s**t you did by the bar last night, say they got my picture all over the news and everything - you on Nola.com - you put that man in a coma son -" Mr. Arnold responds: "I did, son?" Defendant responds: "Yeah, - saying you got to clean that s**t up, son." Mr. Arnold responded either, "Why, son, I'm a do that son," or "Why son, I didn't do that."

Ms. McDonald, the bartender on duty at the Last Call on the evening of the battery, described Defendant as a regular at the bar. She said Defendant and Kayla Rogers, Defendant's girlfriend, had been eating in the bar. Another black male, later determined to be Mr. Arnold, entered the bar. Ms. McDonald believed she told Mr. Arnold to leave when he did not produce proof of identification. Ms. McDonald said that Defendant and Ms. Rogers stood in the doorway smoking after they had finished their food. She asked them to step out of the doorway after she noticed that they were blocking the entrance of other potential patrons who wanted to enter the bar. Ms. Rogers and Defendant stepped onto the sidewalk. At that point, the victim walked by carrying an upright bass and a brief case. She said the victim told Defendant and Ms. Rogers "to get the f***[*] out of his way." Words were exchanged, and Mr. Arnold, who was standing on the sidewalk next to Defendant, punched the victim in his face, causing blood to pour down his face.

[7] Corey Parker, an investigator with the Orleans Parish District Attorney's Office and Detective Eddie Williams, assigned to NOPD"s Digital Forensics Unit, also testified on behalf of the State. Mr. Parker testified that he obtained a search warrant for Mr. Arnold's and Defendant's cell phones and submitted the phones for forensic testing. Detective Williams testified he downloaded information contained in Defendant's cell phone and discovered that Mr. Arnold was listed in Defendant's contact information.

The victim dropped his bass instrument and took a "boxer" stance. Mr. Arnold hit the victim again and then Defendant hit him in the face. She described Defendant's blow as not a great hit. Ms. McDonald said the victim was hit again and fell to the ground. When the victim hit the ground, she called 911. She said Defendant, Ms. Rogers, Mr. Arnold, and another female stayed within fifty feet of the bar. The State introduced an audio of the 911 call, which was played for the jury. Ms. McDonald acknowledged her voice on the 911 call. Ms. McDonald identified Defendant in open court and identified Mr. Arnold as the black male in the blue hat and the gold pants that she had instructed to leave the bar.

Ms. McDonald remembered talking to the police on the night of the incident and going to the police station with Detective Perez. She identified the composite photograph of Defendant that she had assisted the police in drafting. She verified that she had signed the photograph. However, she said she did not remember talking to Detective Jones. The State introduced into evidence and played a video of the statement she gave to Detective Jones. Ms. McDonald acknowledged that she has had a lifelong problem with heroin and that she relapsed after the battery incident, stating that witnessing the incident may have been a contributing factor in her relapse. She maintained that she was not on heroin the night of the offense.

On cross-examination, Ms. McDonald testified that the victim was rude and aggressive. She reiterated that she saw Mr. Arnold throw the first punch. She said Mr. Arnold threw another punch before Defendant threw his punch that "barely grazed" the victim. After this "grazing" punch, she said she lost sight of what was happening. She acknowledged that in her 911 call, she told the operator that four people were involved in the fight with the victim—two men and two women. Ms. McDonald could not recall giving a statement to Officer Constantine or any other

officer at the bar on the evening of the incident. She also had no recollection as to whether or not she told an officer that she only heard and did not see the fight or whether or not she had previously denied seeing Defendant strike the victim.

On re-direct examination, Ms. McDonald again confirmed that Mr. Arnold threw the first punch and that Defendant's punch came after Mr. Arnold's first strike. She averred Defendant hit the victim only after the victim swung at Defendant. Ms. McDonald verified the victim had something in both hands when he was first punched. The State re-played the video of Ms. McDonald's statement to Detective Jones and questioned the accuracy of her trial testimony. Ms. McDonald affirmed that her testimony at trial was true.

Detective Joseph Lorenzo, an investigator with the Orleans Parish District Attorney's Office, testified that he sat in on the District Attorney's Office two interviews with Ms. McDonald. He said recordings of the 911 call and the recorded statement she gave Detective Jones were played for Ms. McDonald at those interviews. Detective Lorenzo maintained that Ms. McDonald never said during those interviews that Defendant had acted in self-defense.

Detective Lorenzo testified on cross-examination that Ms. McDonald's statements to the District Attorney's Office were not given under oath. He also acknowledged that Ms. McDonald thought the victim had provoked Mr. Arnold. Nevertheless, Detective Lorenzo reiterated on re-direct examination that Ms. McDonald confirmed in both interviews that her statement to Detective Jones was true.

Tameka Davis, the defense witness, testified that on the night of January 20, 2014, she was smoking a cigarette with Defendant and Mr. Arnold on the sidewalk outside the bar when the victim walked past them and pushed her out of the way.

She said the victim cursed her, and Mr. Arnold told the victim not to be rude to Ms. Davis. Ms. Davis testified the victim then cursed at them again, using racial slurs, and started to walk away. Then, he returned and pushed Mr. Arnold. At that point, she said Mr. Arnold hit the victim in self-defense. Ms. Davis denied that the victim and Defendant ever swung at each other. She said the fight was exclusively between Mr. Arnold and the victim. Ms. Davis admitted that she was currently in jail for a municipal attachment related to simple battery, theft, possession of marijuana, criminal damage to property, and trespassing charges.

On cross-examination, Ms. Davis denied that Ms. Rogers was present at the time of the fight. She testified that the victim pushed her with his right hand. She said he did not have his musical instrument in his hand when he pushed her; instead, she claimed it was strapped on his back. Ms. Davis denied Defendant had anything to do with the fight or that he threw a punch of any kind. Ms. Davis said Mr. Arnold used to date her best friend and that she had been in a relationship with a friend of Defendant who had been killed. Ms. Davis was shown the surveillance video which depicted the victim carrying his bass. She said it looked to her at the time that the bass was strapped behind his back. Ms. Davis then noted that it had been two years since the inciden

t and described herself as a mental patient. She said she had no explanation as to how the victim could push her and Mr. Arnold with the bass in his hand.

The State re-called Ms. Davis as a rebuttal witness. She refused to take the stand. The State moved to hold her in contempt. The State's motion was granted by the district court.

Detective Jones was re-called by the State on rebuttal. Detective Jones testified that Ms. McDonald was the only person he spoke to as part of the

investigation. He confirmed that he did not speak to Ms. Davis or Mr. Arnold and re-affirmed that Defendant refused to give him a statement. Detective Jones asserted that during his entire two-year investigation, neither Defendant nor anyone else, including Ms. McDonald, ever said Defendant had acted in self-defense.

DISCUSSION

Defendant's sole assigned error is that the evidence was insufficient to convict him of second degree battery.

SUFFICIENCY OF THE EVIDENCE

This Court, in *State v. Hickman*, 2015-0817, p. 9 (La. App. 4 Cir. 5/16/16), 194 So.3d 1160, 1165-1166 (citation omitted), discussed the standard for determining a claim of insufficiency of evidence as follows:

> When reviewing the sufficiency of the evidence to support a conviction, Louisiana appellate courts are controlled by the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Under this standard, the appellate court "must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *State v. Neal*, [20]00-0674 (La.6/29/01) 796 So. 2d 649, 657 (citing *State v. Captville*, 448 So. 2d 676, 678 (La.1984)).
>
> When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 requires that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *Neal*, 796 So. 2d at 657. Ultimately, all evidence, both direct and circumstantial must be sufficient under *Jackson* to prove guilt beyond a reasonable doubt to a rational jury. *Id.* (citing *State v. Rosiere*, 488 So.2d 965, 968 (La. 1986)).

"If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all of the evidence most favorable to the prosecution must be adopted." *State v. Green*, 588 So.2d 757, 758 (La. App. 4th Cir. 1991).

To sustain a second-degree battery conviction, the State must prove (1) the intentional use of force or violence upon the person of another,[8] (2) without the consent of the victim, (3) when the offender has the specific intent to inflict serious bodily injury. La. R.S. 14:34.1; *see also State v. Landry*, 2003-1671, p. 7 (La. App. 4 Cir. 3/31/04), 871 So.2d 1235, 1238. La. R.S. 14:34.1(B)(3) defines serious bodily injury as "bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death." As employed in the statute, 'extreme physical pain' references "a condition which most people of common intelligence can understand; the term is considered subjective in nature and susceptible to interpretation." *State v. Legendre*, 522 So.2d 1249, 1251 (La. App. 4th Cir. 1988), quoting *State v. Thompson*, 399 So.2d 1161, 1168 (La.1981).

Defendant argues that the jailhouse conversations with Mr. Arnold, along with the testimony of Ms. Davis and Ms. McDonald, all prove that Mr. Arnold was the sole perpetrator of any serious bodily injury inflicted upon the victim. Defendant highlights his proclamations of innocence during the jailhouse conversations and Mr. Arnold's failure to explicitly refute that Mr. Arnold was the sole perpetrator of the attack on the victim. Defendant also cites to Ms. Davis' testimony that Mr. Arnold was the only person who participated in a fight with the victim. As to Ms. McDonald, the State's lone eyewitness, Defendant argues Ms. McDonald gave differing accounts as to whether he, along with Mr. Arnold, intentionally struck and injured the victim; however, he emphasizes that in her trial

[8] La. R.S. 14:33 defines battery, in relevant part, as "the intentional use of force or violence upon a person of another…"

testimony, she described his punch as a "glancing" blow that did not inflict serious bodily injury. Defendant claims that changes in Ms. McDonald's account of the battery undermines her credibility and raises questions as to whether she initially misidentified Defendant as an active participant in the fight. Defendant contends greater credence should be given to Ms. Davis' unwavering testimony that Mr. Arnold was the sole perpetrator of the victim's injuries. Thus, Defendant argues that based on the foregoing the State failed to prove its case against him. We disagree.

It is not the function of the appellate court to assess the credibility of witnesses or reweigh the evidence. *State v. Scott*, 2012-1603, p. 11 (La. App. 4 Cir. 12/23/13), 131 So.3d 501, 508 (citing *State v. Johnson*, 619 So. 2d 1102, 1109 (La. App. 4 Cir. 1993)). "Credibility determinations, as well as the weight to be attributed to the evidence, are soundly within the province of the trier of fact." *State v. Contreras*, 2017-0735, p. 7 (La. App. 4 Cir. 5/30/18), 247 So.3d 858, 866 (citation omitted). "Moreover, conflicting testimony as to factual matters is a question of weight of the evidence, not sufficiency. Such a determination rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness." *State v. Scott,* 2012-1603, p. 11, 131 So.3d at 508. "Absent internal contradiction or irreconcilable conflict with physical evidence, a single eyewitness' testimony, if believed by the fact finder, is sufficient to support a factual conclusion." *State v. DeGruy*, 2016-0891, p. 11 (La. App. 4 Cir. 4/15/17), 215 So.3d 723-730, *writ denied*, 2017-0952 (La. 1/9/18), 231 So.3d 652 (citations omitted). Accordingly, the fact finder's determination as to a witness' credibility is entitled to great weight and will not be set aside unless it is clearly

contrary to the evidence. *State v. James*, 2009-1188, p. 4 (La. App. 4 Cir. 2/24/10), 32 So.3d 993, 996 (citation omitted).

Our review of the evidence establishes Ms. McDonald knew Defendant as a regular patron of The Last Call Bar. She was at the bar the night of the incident and witnessed Defendant and Mr. Arnold intentionally strike the victim, knocking him to the ground. Ms. McDonald made a 911 call and spoke to police within minutes of the fight. She assisted police in developing a composite sketch of Defendant, which included a distinctive tattoo and identified Defendant from a confirmation tattoo. Ms. McDonald also gave statements to the police and the State where she confirmed Defendant struck the victim. Although Ms. McDonald's trial testimony, as noted by Defendant, conflicted in part with some of her previous statements and the testimony of Ms. Davis, Defendant's witness, the jury evaluated the testimony of these witnesses and saw the evidence presented at trial. Clearly, the jury credited the State's theory of the case—that Ms. McDonald's 911 call, which identified two men as fighting with the victim, her statements to NOPD, as well as her trial testimony established beyond a reasonable doubt that Defendant participated in the victim's beating; and conversely, rejected Ms. Davis' testimony—that Defendant did not strike the victim. Likewise, it is apparent that the jury rejected Defendant's argument that the jailhouse conversations between Defendant and Mr. Arnold were exculpatory evidence that exonerated him; instead, the jury accepted the State's contention that the jailhouse conversations proved Defendant and Mr. Arnold knew one another and acted in concert in the battery.

Defendant does not dispute the State's uncontradicted evidence from Dr. Culichhia and Mrs. Potter that the victim suffered serious bodily injury that meets

the elements of a second-degree battery. Thus, upon viewing all the evidence in the light most favorable to the prosecution, a rational juror could find the State proved beyond a reasonable doubt that Defendant committed second degree battery. Accordingly, Defendant's assignment of error challenging the sufficiency of the evidence to convict lacks merit.

We now turn to review the merits of the State's writ application.

STATE'S WRIT APPLICATION

The State seeks review of the district court's denial of its motion to reconsider Defendant's habitual offender sentence.[9] Additionally, the State seeks review of the district court's denial of its motion to continue the hearing on Defendant's motion to correct illegal sentence and resentencing.[10]

POST-CONVICTION SENTENCING PROCEEDINGS

As discussed *supra*, Defendant was convicted of second degree battery, and the district court imposed a sentence of five years at hard labor. [11] The State filed a habitual offender bill and charged Defendant as a fourth felony offender based on

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[9] La. C.Cr.P. art. 881.1(A)(1) provides that "[i]n felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence."

[10] La. C.Cr.P. art. 882 provides in pertinent part:

> A. An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.
> B. A sentence may be reviewed as to its legality on the application of the defendant or of the state:
> (1) In an appealable case by appeal; or
> (2) In an unappealable case by writs of certiorari and prohibition.

A claim that a sentence is illegal is "primarily restricted to those instances in which the *term* of the prisoner's sentence is not authorized by the statute or statutes which govern the penalty authorized for the crime for which the prisoner has been convicted." *State v. Mead*, 2014-1051, p. 4 (La. App. 4 Cir. 4/22/15), 165 So.3d 1044, 1047.

[11] The applicable penalty for second degree battery was a fine of not more than two thousand dollars or imprisonment, with or without hard labor, for not more than five years, or both. La. R.S. 14:34.1(C).

three previous convictions: one conviction for possession of cocaine and two convictions for possession with intent to distribute cocaine. A hearing on the habitual offender bill was held, and the district court adjudicated Defendant as a fourth felony offender on September 30, 2016.[12] Additionally, the district court imposed Defendant's enhanced sentence. In *State v. Parker*, 2003-0924, p. 17 (La. 4/14/04), 871 So.2d 317, 327, the Supreme Court held that "the punishment to be imposed on defendant, a habitual offender, is that provided by La. R.S. 15:529.1 as it existed on the date he committed the underlying offense." In 2014 the date of the commission of the second degree battery, La. R.S. 15:529.1(A)(4)(b) provided that "[i]f the fourth and two of the prior felonies defined as . . . a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, . . . the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence." Consequently, the district court sentenced Defendant to the enhanced sentence of life imprisonment at hard labor without the benefit of probation or suspension of sentence after vacating Defendant's five-year sentence previously imposed.[13]

2017 Legislative Amendments and Judicial Interpretation to La. R.S. 15:529.1

While Defendant's appeal was pending, the Legislature, effective November 1, 2017, amended La. R.S. 15:529.1 in three ways (1) it adjusted the length of sentences; (2) reduced the number of felonies that counted as a "strike"; and (3)

[12] At the hearing, Mrs. Potter, the victim's wife, gave victim impact testimony. Also, Officer Joseph Pollard, an expert in fingerprint analysis, testified and identified Defendant as the same person who had previously been convicted of possession of cocaine and on two separate occasions, possession with intent to distribute cocaine.

[13] The district court failed to impose the sentence without the benefit of parole as mandated by La. R.S. 15:529.1 (A)4(b)(2014). However, La. R.S. 15:301.1(A) deems that those required statutory restrictions are contained in the sentence and self-activates the correction. *See State v. Shaw*, 2007-1427, p. 15 (La. App. 4 Cir. 6/18/08), 987 So.2d 398, 407. Moreover, the district court vacated the sentence.

reduced the "cleansing period" from ten years to five years for nonviolent offenses. *See* 2017 La. Acts, No. 257, § 1, and No. 282, § 1 (collectively, "Act 282"). Particularly pertinent to Defendant, La. R.S. 15:529.1(A)(4)(a) was revised:

> (4) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then the following sentences apply:
>
> (a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life.

In Section 2 of both Acts 257 and 282, the legislature provided that the provisions "shall become effective November 1, 2017, and shall have prospective application only to offenders whose convictions became final on or after November 1, 2017."

Following the 2017 Amendments, four Louisiana Courts addressed the impact of the amendments on defendants who had committed the underlying offenses before November 1, 2017, but whose convictions had not yet become final as of November 1, 2017. This Court, in *State v. Smith*, 2017-0553, p. 14 (La. App. 4 Cir. 12/13/17), ____ So.3d ____,[14] *writ denied*, 2018-0115 (La. 10/29/18), 254 So.3d 701, rejected the defendant's claim that he should have been sentenced under the 2017 Amendments. This Court held that "[p]ursuant to Section 2, the amended provisions of La. R.S. 15:5[2]9.1(A)(1) are inapplicable to [defendant's] sentence which was imposed on September 8, 2016." *Id*. Likewise, in *State v. Barker*, 2017-0469, p. 64 (La. App. 4 Cir. 5/30/18) ___ So.3d ____,[15] this Court rejected the defendant's assertion that he should have been sentenced under the 2017 Amendments. This Court held that the statute in effect at the time of the

[14] 2017 WL 6350335.

[15] 2018 WL 2426455.

commission of the offense was controlling in sentencing the defendant as an habitual offender. *Id*. However, the Third Circuit in *State v. Purvis*, 17-1013, p. 9 (La. App. 3 Cir. 4/18/18), 244 So.3d 496, 502, held that "the language of Section 2 of Acts 257 and 282, applying the amended provisions of La. R.S. 15:529.1 to convictions that 'became final on or after November 1, 2017,'" was applicable to the defendant, vacated the defendant's sentence, and remanded the matter for resentencing. Moreover, in June 2018, the Supreme Court in *State v. Williams*, 17-1753, p. 1 (La. 6/15/18), 245 So.3d 1042 (per curiam)("*Williams*"), addressed the issue in a supervisory writ application. The Supreme Court, noting that the State conceded that the 2017 Amendments should apply to the defendant, reversed the trial court's denial of the defendant's motion to correct illegal sentence writing:

> Defendant's appeal was pending when the Legislature amended the Habitual Offender law with 2017 La. Acts 282. The amendment substantially reduced the sentencing range for a third-felony offender like defendant and further provided, "This Act shall become effective November 1, 2017, and shall have prospective application only to offenders whose convictions became final on or after November 1, 2017." Defendant seeks to be resentenced under the amendment, and the State concedes defendant is entitled to be resentenced in accordance with it because his conviction will become final after November 1, 2017.

Williams, 17-1753, p. 1, 245 So.3d at 1042.

La. R.S. 15:529.1(K)

On February 23, 2018, 2018 La. Acts No. 542 § 1 ("Act 542"), which added subsection (K) to La. R.S. 15:529.1, was introduced by the legislature, and on May 28, 2018, it was signed into law by the governor. Subsection (K)(1) codified the well settled law that the Habitual Offender Law in effect at the time of the commission of the underlying offense was determinative of the penalty to be

imposed.[16] Subsection (K)(1) provided that "[e]xcept as provided in Paragraph (2) of this Subsection, notwithstanding any provision of law to the contrary, the court shall apply the provisions of this Section that were in effect on the date that the defendant's instant offense was committed." Subsection (K)(2) clarified the effective date of subsection C of La. R.S. 15:529.1:

> (2) The provisions of Subsection C of this Section as amended by Act Nos. 257 and 282 of the 2017 Regular Session of the Legislature, which provides for the amount of time that must elapse between the current and prior offense for the provisions of this Section to apply, shall apply to any bill of information filed pursuant to the provisions of this Section on or after November 1, 2017, accusing the person of a previous conviction.

The effective date of Act 542 was August 1, 2018.

Defendant's motion to correct illegal sentence

Following *Williams,* but before the effective date of Act 542, Defendant, on July 6, 2018, filed a motion to correct illegal sentence asserting that the 2017 Amendments eliminated the mandatory life sentence for fourth felony offenders, such as Defendant, whose previous drug-related offenses were not crimes of violence or sex offenses. Defendant argued that since his conviction had not become final, he was entitled to be resentenced as a multiple offender based on the sentencing guidelines outlined in the 2017 Amendments referencing the language in Section 2 of Acts 257 and 282. In support, Defendant cited *Williams*.

On July 18, 2018, a hearing was held on Defendant's motion to correct illegal sentence. On that same date, the State filed a motion to continue the hearing and orally moved for a continuance at the hearing. In the alternative, the State argued that the legislature had recently enacted Act 542 which added subsection (K)(1) and (2) to La. R.S. 15:529.1. The State explained that subsection (K)(1)

[16] *Parker*, 2003-0924, pp. 9-10, 871 So.2d at 322.

was an interpretive statute and was enacted to clarify the 2017 Amendments and provided that the Habitual Offender Law in effect at the time of the commission of the offense applied. The State asserted that the law was signed by the governor on May 28, 2018 and would become effective August 1, 2018. Notably, the State pointed out that the briefs in *Williams* were most likely filed in the Supreme Court before the signing of Act 542 on May 28, 2018 and that Act 542 was not considered by the *Williams* Court. The State urged since subsection (K) was an interpretive statute, it should be applied retroactively to Defendant.

Defendant countered that *Williams* was decided after the governor signed Act 542, and Act 542 did not become effective until August 1, 2018. Defendant argued subsection (K) was a substantive change in the law and should not be applied retroactively.

The district court denied the State's motion for a continuance and granted Defendant's motion to correct illegal sentence, vacated the previous sentence, and resentenced Defendant, pursuant to the 2017 Amendments, to twenty years at hard labor.

State's motion to reconsider sentence

On August 1, 2018, Act 542 became effective. On that same date, the State filed the motion to reconsider sentence asserting that the district court was required to reconsider Defendant's sentence based upon Act 542. The State asserted that it was "an interpretive statute and is therefore mandatorily retroactive in its applicability." The State urged Act 542 clarified the ambiguity of the language in Section 2 of Acts 257 and 282. A hearing was held and the district court denied the motion.

DISCUSSION

The State raises two assignments of error in support of its writ application: (1) the district court erred when it denied the State's motion to continue "[r]esentencing contrary to La. R.S. 46:1844"; and (2) the district court erred in denying the State's motion to reconsider the Defendant's resentencing "because Act 542/La. R.S. 15:529.1(K)" applied retroactively to Defendant. We will address these errors out of turn.

ACT 542 LEGISLATION

The State urges Act 542 is an interpretive statute, and it should be retroactively applied to Defendant. The State argues Act 542 clarifies the ambiguity of Section 2 of Acts 257 and 282's language that the provisions "shall have prospective application only" and the language that permits the provisions to be applied retroactively "to offenders whose conviction became final on or after November 1, 2017." The State also asserts that Act 542 merely aligns the well-settled jurisprudence that the law in effect at the time of the commission of the offense determines the penalty to be imposed upon the convicted accused. *See Parker*, 871 So.2d at 322. In support of its assertions, the State cites comments from legislators that the proposed revision, the enactment of Act 542, clarifies "the ambiguity in last year's changes to our habitual offender law" and "makes clear . . . what law is in effect when you multiple bill someone."[17]

Defendant counters that Act 542 is a substantive law that cannot be given retroactive effect, and that the Louisiana Supreme Court conclusively resolved in *Williams*, that the 2017 Amendments' sentencing guidelines applied to defendants

[17] The State, in its brief to this Court cites to the comments of Representative Patrick Connick, Louisiana House of Representatives, Video On-Demand, Archived Video from May 1, 2018—House Chamber, at 1:46:35-1:48:05, and of Senator Dan Claitor, Louisiana State Senate, Broadcast Archives, Archived Video from May 16, 2018—Chamber, Part 2, at 0:46:22 - 0:47:22.

whose conviction had not become final by November 1, 2017 such as Defendant. We disagree.

The Supreme Court, in *St. Paul Fire & Marine Ins. Co. v. Smith*, 609 So.2d 809, 817-18 (La. 1992), explained substantive versus interpretive laws:

> Substantive laws either establish new rules, rights, and duties or change existing ones. Interpretive laws, on the other hand, do not create new rules, but merely establish the meaning that the interpretive statute had from the time of its enactment. It is the original statute, not the interpretive one, that establishes the rights and duties. *Ardoin v. Hartford Accident & Indemnity Co.*, 360 So.2d 1331, 1338 (La.1978) (citing 1 M. Planiol, *Civil Law Treatise* Nos. 249-252 (La.St.L.Inst.Transl.1959) ("Planiol"), and A. Yiannopoulos, *Louisiana Civil Law System* 68 (1977) ("*Civil Law System*")).
>
> When an existing law is not clear, a subsequent statute clarifying or explaining the law may be regarded as interpretive, and the interpretive statute may be given retrospective effect because it does not change, but merely clarifies, pre-existing law. *Gulf Oil Corp. v. State Mineral Board,* 317 So.2d 576, 590 (La.1974); *Ardoin, supra*. Planiol explains the exception for interpretive laws as follows:
>
> > Interpretive laws do not establish new rules. What they do is to determine the meaning of existing laws. It follows that they may apply to facts previous to their promulgation. Their retroactivity is but apparent, because it is not the interpretive law, but the original law, which applies.
>
> *Planiol, supra* at § 251.

However, even interpretive legislation "cannot operate retroactively to disturb vested rights" *Id*. at 819. "The Legislature cannot retroactively affect, under the guise of interpretive legislation, substantive rights vested under earlier unambiguous legislation." *Id*. at 820 (citing *Terrebonne v. South Lafourche Tidal Control Levee Dist.*, 445 So.2d 1221, 1225 (La.1984).

As discussed *supra*, it is well-established that a "defendant [adjudicated a habitual offender] should be sentenced in accord with the version of [the Habitual Offender Law] in effect at the time of the commission of the charged offense."

Parker, 2003-0924, p. 16, 871 So.2d at 326.[18] This principle of law was applicable to Defendant when he was initially sentenced as a habitual offender, when the 2017 Amendments were enacted, and after the enactment of Act 542. Thus, Act 542, which merely codified existing law, is regarded as an interpretive statute.

Moreover, Section 2 of Acts 247 and 282 was unmistakably ambiguous as it provided the 2017 Amendments "shall have prospective application only," but based on competing judicial interpretations was retroactively applied "to offenders

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[18] In *Barker*, this Court expounded on the importance of this principle of law:

> In *Parker* [871 So.2d 317], the Supreme Court discussed the public policy behind the issue of ameliorative changes in habitual offender law as asserted in *State v. Dreaux*, 205 La. 387, 17 So.2d 559 (1944):
>
> > We went on to note that if we were to find a defendant's status as a second offender was fixed as of any date other than the commission of the offense, "it would be within the power of the district attorneys and the Attorney General, by delaying the filing of the charges and prosecution of the case, to fix the accused's status as a second offender at practically any time he desired." [*Dreaux*] at 392, 17 So.2d at 560. Thus, we also found public policy dictated that defendant's habitual offender status be fixed as of the date of the commission of the crime since this allows defendant's own act to establish his status rather than leaving the matter in the discretion of government attorneys.
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> > * * *
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> Following *Dreaux*, this court has consistently held that habitual offender proceedings do not charge a separate crime but merely constitute ancillary sentencing proceedings such that the punishment for a new conviction is enhanced. *See State v. Dorthey*, 623 So.2d 1276, 1278-79 (La. 1993); *State v. Walker*, 416 So.2d 534, 536 (La. 1982); *State v. Williams*, 326 So.2d 815, 818 (La. 1976). Additionally, it is generally settled that the law in effect at the time of the commission of the offense is determinative of the penalty which is to be imposed upon the convicted accused. *See State v. Narcisse*, 426 So.2d 118, 130 (La. 1983). *State v. Wright*, 384 So.2d 399, 401 (La. 1980); *State v. Gros*, 205 La. 935, 938, 18 So.2d 507, 507 (1944), cert. denied, 326 U.S. 766, 66 S.Ct. 170, 90 L.Ed. 462 (1945). Finally, "[t]he mere fact that a statute may be subsequently amended, after the commission of the crime, so as to modify or lessen the possible penalty to be imposed, does not extinguish liability for the offense committed under the former statute." *Narcisse*, 426 So.2d at 130.
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> *Parker*, 03-0924, pp. 7-10, 871 So.2d at 321-22.

Id., 2017-0469, pp. 64-65, ___ So.3d at ____.

whose convictions became final on or after November 1, 2017." Act 542 simply clarified the ambiguous language of Section 2 of Acts 247 and 282.

Having found Act 542 to be an interpretive statute, we conclude it should be applied retroactively to Defendant.

This conclusion is in agreement with our sister courts. After *William*s, and the enactment of Act 542, Louisiana appellate courts—first, second, third, and fifth circuits—held that the habitual offender statute in effect at the time of the commission of the underlying offense—not *Williams*—was controlling in cases where defendants sought relief under 2017 Amendments.

In *State v. Bias*, 18-665 (La. App. 3 Cir. 2/6/19), __ So.3d __,[19] in reviewing an excessive sentence claim on appeal, the question arose whether the defendant should be sentenced under the 2017 Amendments of La. R.S. 15:529.1 since his conviction was not yet final as of November 1, 2017. In support, the defendant referenced *Williams* and *Purvis*. The Third Circuit held that La. R.S. 15:529.1(K)(1) applied retroactively to the defendant, and the defendant was properly sentenced under the habitual offender law in effect at the time of the commission of his offense. *Id.* 18-665, p. 6, __ So.3d at __.[20]

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[19] 2019 WL 457320.

[20] In *State v. Record*, 18-614 (La. App. 3 Cir. 2/27/19), __ So.3d ___ (2019 WL 949518), on appeal, the Third Circuit recognized as an error patent that the trial court imposed illegally lenient sentences when it applied the wrong version of La. R.S. 15:529.1 when sentencing the defendant. The crimes for which the defendant were convicted occurred in 2014, but the trial court applied the habitual offender statute as amended by 2017 Amendments. The defendant's conviction had not become final as of November 1, 2017. The court vacated the defendant's sentences and remanded the matter for resentencing the defendant to apply the version of the law in effect at the time of the commission of the offense. The court explained in pertinent part:

> In *State v. Purvis*, 17-1013 (La. App. 3 Cir. 4/18/18), 244 So.3d 496 and *State v. Williams*, 17-1753 (La. 6/15/18), 245 So.3d 1042 (per curiam), the new version of the statute as amended in 2017 was applied to sentences enhanced for crimes occurring before 2017 as convictions not yet final after the effective date of the new law. However, effective August 1, 2018, the legislature amended

In *State v. Edden*, 52,288 (La. App. 2 Cir. 11/14/18), 259 So.3d 1196, on appeal, the defendant asserted his sentence was excessive. In reviewing the excessive sentence claim, the Second Circuit considered the defendant's assertion that he should have been sentenced pursuant to the 2017 Amendments, instead of the habitual offender law in effect in 2014, the date of the underlying offense, because his conviction had not yet become final as of November 1, 2017. The Second Circuit rejected the defendant's argument writing:

> *Williams* [245 So.3d 1042] was decided in June of 2018, before the enactment of La. R.S. 15:529.1(K), a curative provision. . . . Because the 2018 amendments are procedural and this decision is being decided after August 1, 2018, we find that [the defendant] was sentenced under the proper habitual offender law in effect in 2014, the date of the underlying offense.

Id., 52,288, p. 9 (La. App. 2 Cir. 11/14/18), 259 So.3d 1196, 1202.

In *State v. Cagler*, 2018-427 (La App. 1 Cir. 11/7/18)(unpubl.),[21] the defendant argued the trial court erred by sentencing him using an incorrect version

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> the habitual offender statute to specifically state that the habitual offender penalty provision in effect on the commission date of the offense being enhanced is the penalty provision that must be applied. La .R.S. 15:529.1(K). In a recent case, the second circuit found the 2018 amendment was a curative provision. *State v. Edden*, 52,288 (La.App. 2 Cir. 11/14/18), 259 So.3d 1196. . . .
>
> Both the second and first circuits have found the 2018 amendment effectively abrogated *State v. Purvis*, 244 So.3d 496 and *State v. Williams*, 245 So.3d 1042. In *State v. Floyd*, 52,183, p. 7 (La. App. 2 Cir. 8/15/18), 254 So.3d 38, 43, the court stated "the legislature clearly stated its intent to diminish the penalties for certain habitual offenders, but equally clearly stated its intent not to reopen or relitigate cases that arose before the effective date" and that "jurisprudence also holds that the version of the habitual offender law in effect at the time of the crime is the version that applies; amended provisions apply only to offenses committed after their effective dates." Consequently, despite the 2017 ameliorative changes to the habitual offender statute, the first and second circuits have applied the habitual offender penalty provision in effect when the offense was committed, as directed by the 2018 amendment and the Legislative mandate to do so. We agree that the version of La.R.S. 15:529.1 at the time of the commission of the offenses . . . applies to Defendant's convictions and sentences.

Record, 18-614, pp. 10-11, __ So.3d at ___.

[21] 2018 WL 5876878.

of La. R.S. 15:529.1, and his multiple offender sentence was illegally excessive in light of the 2017 legislative amendments to La. R.S. 15:529.1. The First Circuit rejected the defendant's argument finding that the sentence to be imposed following a habitual offender adjudication "is simply an enhanced penalty for the underlying conviction," and the law in effect at the time of the commission of the offense was applicable, citing *Parker*, 871 So.3d 317 and La. R.S. 15:529.1(K)(1). *Id*., 18-0427, pp. 24, 25. The court noted:

> We are aware of *State v. Williams*, 2017-1753 (La. 6/15/18), 245 So.3d 1042 (per curiam) and *State v. Purvis*, 2017-1013 (La. App. 3rd Cir. 4/18/18), 244 So.3d 496, which gave limited retroactive application to the 2017 amendments. However, we consider those decisions effectively abrogated by the 2018 enactment of La. R.S. 15:529.1(K)(1).

Id., 2018-0427, p. 24 n 6 (citation omitted). Additionally, in *State v. Anderson*, 2018-1698 (La. App. 1 Cir. 2/19/19)(unpubl.),[22] the First Circuit, denied the defendant's writ application which sought review of the trial court's denial of his motion to correct illegal sentence. The court opined, citing *Parker*, 871 So.3d at 318, that "[a] defendant should be sentenced pursuant to the version of La. R.S. 15:529.1 in effect at the time of the commission of the charged offense." The Court continued stating that "[t]he Legislature's recent enactment of La. R.S. 15:529.1(K) to the Habitual Offender Law codified the Supreme Court's holding in *Parker* [871 So.3d 317] and may be fairly described as legislatively overruling the decision in *State v. Williams*, 17-1753 (La. 6/15/18)[,] 245 So.3d 1042 (*per curiam*)." *Id*.

[22] 2018 WL 669501.

In *State v. Lyles*, 2018-283 (La. App. 5 Cir. 12/27/18), __ So.3d __,[23] the defendant asserted that the trial court erred in sentencing him as a third felony offender; instead, he should have been sentenced as a second felony offender under the 2017 legislative changes to La. R.S. 15:529.1 because his conviction did not become final until February 2018. The Fifth Circuit found his claim lacked merit writing:

> Upon review, we rely on the well settled jurisprudence that the law in effect at the time of the offense is determinative of a defendant's punishment, including for habitual offender proceedings. . . . Further, we find that by enacting subsection K, the legislature clarified its original intent that the date of commission of the underlying offense be used to determine the sentencing provision applicable to a habitual offender, except as otherwise explicitly provided in the statute.

Id., 18-283, p. 9, __ So.3d.__ (citations omitted).

These post-*Williams* cases are consistent with this Court's opinions in *Smith* and *Barker* discussed *supra*. After reviewing the statutes and jurisprudence set forth above, we again conclude the Habitual Offender Law in effect at the time of the commission of the instant offense is determinative of the penalty to be imposed.

At the time the State requested the district court to reconsider its decision in which Defendant was resentence pursuant to the 2017 Amendments, Act 542 was in effect. We acknowledge that the district court did not have the benefit of the post-*Williams* cases discussed *supra*. Nevertheless, Act 542 was an interpretive statute that retroactively applied to Defendant; thus, the Habitual Offender Law in effect at time of the commission of the instant offense was determinative of the

[23] 2018 WL 6802122.

penalty to be imposed. Consequently, we find that the district court erred in not granting the State's motion to reconsider.

Accordingly, this part of the State's writ application is granted, Defendant's sentence is vacated, and the matter is remanded to the district court for resentencing.[24]

MOTION TO CONTINUE

Because the State's writ application is granted as to the motion to reconsider sentence, whether the district court erred in denying the State's motion to continue the hearing on Defendant's motion to correct illegal sentence is moot.

Accordingly, this part of the State's writ application is moot.

CONCLUSION

For the foregoing reasons, Defendant's conviction is affirmed. Additionally, we grant, in part, the State's writ application, finding that the district court erred in denying the State's motion to reconsider sentence, vacate Defendant's habitual

[24] Defendant asserts in the event this court finds the State's writ application has merit, that retroactive application of (K)(1) of La. R.S. 15:529.1 violates the *ex post facto* clause of the state and federal constitution. Defendant argues he gained a vested right when 2017 Amendments were enacted and affirmed by the Supreme Court in *Williams*, 245 So.3d 1042. We disagree. This Court in *State v. Williams*, 2018-0103, p. 4 (La. App. 4 Cir. 5/16/19, 247 So.3d 129, 132 (citing *Massey v. La. Dept. of Pub. Safety & Corr.*, 2013-2798, p. 5 (La. 10/15/14), 149 So.3d 780, 784) explained that "[t]he focus of the *ex post facto* determination is whether a change in the law alters the definition of criminal conduct or increases punishment for the crime." In *Massey*, 13-2798, p. 6, 149 So.3d at 784 (quoting *Garner v. Jones*, 529 U.S. 244, 251, 120 S.Ct. 1362, 1368 (2000)), the United States Supreme Court opined that "[i]n determining whether retroactive application of a law increases the punishment to which an inmate would be subject, the relevant inquiry is whether the change in the law 'creates a significant risk of prolonging [the inmate's] incarceration.'" Before the effective date of the 2017 Amendments, Defendant was adjudicated a habitual offender and sentence to life imprisonment pursuant to La. R.S. 15:529.1 in effect at the time of the commission of the underlying offense in 2014. The retroactive application of (K)(1) of La. R.S. 15:529.1, which mandates application of the penalty set forth in La. R.S. 15:529.1 in 2014, will not increase the punishment for Defendant.

offender sentence, and remand for resentencing in accordance with this opinion. Furthermore, we find the State's writ application seeking review of the denial of the motion to continue is moot.

CONVICTION AFFIRMED;
WRIT GRANTED IN PART;
WRIT MOOT IN PART.