

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

11-229

STATE OF LOUISIANA

VERSUS

MICHAEL J. BENJAMIN

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. 118530
HONORABLE KRISTIAN DENNIS EARLES, DISTRICT JUDGE**

**SHANNON J. GREMILLION
JUDGE**

Court composed of Jimmie C. Peters, James T. Genovese, and Shannon J. Gremillion, Judges.

**APPEAL DISMISSED. DEFENDANT-APPELLANT
IS PERMITTED TO FILE AN APPLICATION FOR
SUPERVISORY WRITS WITHIN THIRTY DAYS
FROM THE DATE OF THIS DECISION.**

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Gremillion, Judge.

On March 16, 2009, Defendant Michael Benjamin was sentenced to eight years at hard labor as part of an agreement related to his plea of guilty to possession of cocaine, a violation of La.R.S. 40:967. On the same date, he admitted to being a second habitual offender pursuant to La.R.S. 15:529.1. At the same hearing, the trial court vacated his original sentence and resentenced him to eight years at hard labor without benefit of parole, probation, or suspension of sentence.

Apparently, no appeal was taken, but Defendant began filing pro se motions. On September 7, 2010, Defendant filed a “Motion to Correct an Illegally/Excessive [sic] Sentence,” which the court denied without reasons on September 13. On October 28, Defendant filed a “Motion for Notice of Appeal and Certificate of Appealability,” but the trial court took no action since he neglected to provide an order. At some point, Defendant provided the necessary order, and the trial court signed it on November 8, granting him leave to appeal.

On March 3, 2011, this court issued a rule to show cause why the appeal in this case should not be dismissed as the judgment at issue is not appealable. On March 18, Defendant replied with a brief that discusses the merits of his claim without addressing whether the matter is appealable.

As Defendant has failed to address the issue presented to him, the appeal is hereby dismissed. Defendant-Appellant, Michael J. Benjamin, is hereby permitted to file a proper application for supervisory writs, in compliance with Uniform Rules—Courts of Appeal, Rule 4, no later than thirty days from the date of this decision. Defendant is not required to file a notice of intent to seek writs nor obtain an order setting return date pursuant to Uniform Rules—Courts of Appeal, Rule 4-3

as we hereby construe the motion for appeal as a timely filed notice of intent to seek a supervisory writ.

APPEAL DISMISSED. DEFENDANT-APPELLANT IS PERMITTED TO FILE AN APPLICATION FOR SUPERVISORY WRITS WITHIN THIRTY DAYS FROM THE DATE OF THIS DECISION.