

**NOT DESIGNATED FOR PUBLICATION**

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

**19-410**

**STATE OF LOUISIANA**

**VERSUS**

**KENNETH WAYNE MONTGOMERY**

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**APPEAL FROM THE  
FOURTEENTH JUDICIAL DISTRICT COURT  
PARISH OF CALCASIEU, NO. 26952-12  
HONORABLE CLAYTON DAVIS, DISTRICT JUDGE**

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**D. KENT SAVOIE  
JUDGE**

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Court composed of D. Kent Savoie, Van H. Kyzar and Candyce G. Perret, Judges.

**APPEAL DISMISSED.**

**Mr. Brett Gaspard  
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COUNSEL FOR APPELLANT:  
Kenneth Wayne Montgomery**

**Savoie, Judge.**

On January 11, 2013, Defendant-Appellant, Kenneth Wayne Montgomery, was convicted by a jury of two counts of distribution of CDS II, a violation of La.R.S. 40:967(A)(1). On April 1, 2013, Defendant-Appellant was sentenced to thirty years imprisonment on each count, to run concurrently with each other. On April 1, 2013, the State filed a bill of information charging Defendant-Appellant as a second offense habitual offender under a separate docket number. On July 26, 2013, Defendant-Appellant was adjudicated as a second offense habitual offender and resentenced to the same sentence previously imposed for the underlying offenses. On appeal, Defendant-Appellant's convictions and second offense habitual offender adjudication were affirmed. *See State v. Montgomery*, 14-390 (La.App. 3 Cir. 12/17/14), 158 So.3d 87, *writ denied*, 15-88 (La. 11/16/15), 184 So.3d 23; *State v. Montgomery*, 14-389 (La.App. 3 Cir. 12/17/14), 158 So.3d 78, *writ denied*, 15-88 (La. 11/16/15), 184 So.3d 23.

On April 12, 2019, Defendant filed a "Motion to Correct Illegal Excessive Sentence And Proportionality Review" with the trial court. On April 26, 2019, the trial court denied Defendant's motion.

On May 14, 2019, Defendant filed a "Notice of Appeal" with the trial court. On May 16, 2019, the trial court granted Defendant's notice with a return date of June 17, 2019.

On June 4, 2019, this court lodged the appeal record. On June 7, 2019, this court issued a rule to show cause why the appeal should not be dismissed, as the judgement at issue is not an appealable judgment. La.Code Crim.P. art. 912.1.

On June 28, 2019, Defendant-Appellant's counsel filed "APPELLANT'S COMPLIANCE WITH ORDER TO SHOW CAUSE" with this court. Defendant's counsel stated in his brief:

Although Defendant-Appellant has no right to an appeal as the judgment at issue is not an appealable judgment in accordance with La.Code Crim.P. art. 912.1, he should still be allowed to seek supervisory writs from the trial court's denial of his motion, in compliance with Uniform Rules-Courts of Appeal, Rule 4, no later than thirty days from the date of this court's decision.

On August 12, 2019, Defendant-Appellant filed a writ application with this court in response to the rule to show cause.

Accordingly, we hereby dismiss Defendant-Appellant's appeal.

**APPEAL DISMISSED.**