

APPENDIX A

State v. Anderson, 2017 La. App. Unpub. LEXIS 47,
2016-1191 (La. App. 1 Cir. 02/17/17)



State v. Anderson

Court of Appeal of Louisiana, First Circuit

February 17, 2017, Judgment Rendered

2016 KA 1191

Reporter

2017 La. App. Unpub. LEXIS 47 *: 2016 1191 (La.App. 1 Cir. 02/17/17);; 2017 WL 658782

STATE OF LOUISIANA VERSUS MAURICE
ANDERSON

Maurice Anderson, Angola, LA, Pro se.

Notice: NOT DESIGNATED FOR PUBLICATION.**Judges:** BEFORE: WHIPPLE, C.J., GUIDRY, AND
McCLENDON, JJ.PLEASE CONSULT THE LOUISIANA RULES OF
APPELLATE PROCEDURE FOR CITATION OF
UNPUBLISHED OPINIONS.**Opinion by:** WHIPPLE

Opinion

Subsequent History: Writ denied by [State v. Anderson, 2018 La. LEXIS 352 \(La., Feb. 2, 2018\)](#)**Prior History:** [*1] Appealed from the Twenty-First Judicial District Court. In and for the Parish of Tangipahoa, State of Louisiana. Trial Court Number 1202751. Honorable Charlotte H. Foster, Judge Presiding.[Pg 2] **WHIPPLE, C.J.**[State v. Anderson, 2013 La. App. LEXIS 2409 \(La.App. 1 Cir., Nov. 21, 2013\)](#)**Disposition:** HABITUAL OFFENDER ADJUDICATION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.

Defendant, Maurice J. Anderson, was previously convicted of theft over \$1500.00 and simple battery, violations of [LSA-R.S. 14:67\(B\)\(1\)](#)¹ and [14:35](#), respectively. For the theft offense, defendant was sentenced to ten years at hard labor; for the simple battery offense, he was sentenced to six months in the parish jail. This Court previously affirmed those convictions and sentences in an unpublished opinion. See [State v. Anderson, 2015-1043 \(La. App. 1st Cir. 2/24/16\)](#), [2016 La. App. Unpub. LEXIS 47, 2016 WL 759166](#) (unpublished).

Following these convictions, the state filed a habitual offender bill of information, alleging defendant to be a fourth-felony habitual offender based on the above theft conviction.² Defendant pled not guilty to the contents of

Core Terms

sentence, habitual offender, convictions, trial court, assigned error, pro se, docket number, theft, guilty plea, fourth-felony, offenses, felony, proceedings, probation, reflects, rights, predicate conviction, predicate offense, minutes, defendant argues, hard labor, fingerprints, continuance, offender, represented by counsel, set forth, burglary, withdraw, enhance, reasons

Counsel: Scott M. Perrilloux, Patricia Parker Amos, Amite, LA, Counsel for Appellee State of Louisiana.

Bertha M. Hillman, Covington, LA, Counsel for Defendant/Appellant Maurice Anderson.

¹ Prior to amendment by [2014 La. Acts, No. 255, § 1](#).

² The alleged predicate convictions were set forth as: (1) two July 12, 1989 convictions for felony theft under 21st JDC docket numbers 55231 and 57296; (2) three March 29, 1999 convictions - one for simple burglary of an inhabited dwelling under 21st JDC docket number 79726, one for unauthorized entry of an inhabited dwelling under 21st JDC docket number 83332, and one for simple burglary under 21st JDC docket number 87213; (3) a May 12, 2003 conviction for possession or introduction of contraband into a penal institution under 22nd JDC docket number 85028; and (4) a November 5, 2004

the habitual [*2] offender bill. The trial court held a hearing on the habitual offender bill and subsequently adjudicated defendant to be a fourth-felony habitual offender. The trial court vacated defendant's prior ten-year sentence for theft over \$1500.00 and imposed a habitual offender sentence of sixty years at hard labor, without the benefit of probation or suspension of sentence.³ Defendant filed a pro se motion to reconsider sentence, which the trial court denied. Defendant now appeals, asserting no counseled and five pro se assignments of error. Defense counsel has also filed a [Pg 3] motion to withdraw. For the following reasons, we affirm defendant's habitual offender adjudication and sentence. We also grant the motion to withdraw.

FACTS

The facts of defendant's most recent conviction for simple burglary were set forth in the opinion rendered in the previous appeal and are not relevant to the instant appeal.

HABITUAL OFFENDER ADJUDICATION

In his pro se brief, defendant asserts three assignments of error with respect to his habitual offender adjudication. In his fourth pro se assignment of error, which we address first, defendant contends that the state's evidence was insufficient to support [*3] the trial court's adjudication of defendant as a fourth-felony habitual offender. In the first pro se assignment of error, defendant argues that the trial court failed to specify which predicate convictions were being used to enhance the instant theft conviction. In his second pro se assignment of error, defendant asserts that the state failed to file the habitual offender bill of information in a timely manner.

Sufficiency of Evidence for Habitual Offender

conviction for possession or introduction of contraband into a penal institution under 22nd JDC docket number 87690.

³While the minutes state that defendant's habitual offender sentence was imposed without the benefit of probation or parole, the transcript reflects that the trial court correctly restricted only the benefits of probation and suspension of sentence, not parole. Where there is a discrepancy between the minutes and the transcript, the transcript prevails. See [State v. Lynch, 441 So. 2d 732, 734 \(La. 1983\)](#).

Adjudication

In his fourth pro se assignment of error, defendant contends that the state did not present sufficient evidence to support the trial court's finding that defendant was a fourth-felony habitual offender.

If the defendant denies the allegations of the habitual offender bill of information, the burden is on the state to prove the existence of the prior guilty pleas and that the defendant was represented by counsel when the pleas were taken. [State v. Shelton, 621 So. 2d 769, 779 \(La. 1993\)](#). 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 shifts back to the state. The state will [*4] meet its burden if it introduces a "perfect" transcript of the taking of the guilty plea, [Pg 4] one that reflects a colloquy between the 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, [Shelton, 621 So. 2d at 779-780](#); see [Boykin v. Alabama, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 1712, 23 L. Ed. 2d 274 \(1969\)](#). 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 the state to 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. [Shelton, 621 So. 2d at 780](#); [State v. Douglas, 2010-2039 \(La. App. 1st Cir. 7/26/11\), 72 So. 3d 392, 399-400](#), writs denied, 2011-2307 (La. 5/25/12), 90 So. 3d 406 & 2012-2508 (La. 5/3/13), 115 So. 3d 474.

The purpose of the rule of [Shelton](#) is to demarcate sharply the differences between direct review of a conviction resulting from a guilty plea, in which the appellate court may not presume a valid waiver of rights from a silent record, and a collateral attack on a final conviction used in a subsequent recidivist proceeding, as to which a presumption of regularity attaches to promote [*5] the interests of finality. See [State v. Deville, 2004-1401 \(La. 7/2/04\), 879 So. 2d 689, 691](#) (per curiam). In attempting to establish both the prior felony conviction and that the defendant is the same person convicted of that felony, the state may present: (1) testimony from witnesses; (2) expert opinion regarding the fingerprints of the defendant when

compared with those in the prior record; (3) photographs in the duly authenticated record; or (4) evidence of identical driver's license number, sex, race, and date of birth. The Habitual Offender Law, *LSA-R.S. 15:529.1*, does not require the state to use a specific type of evidence, including fingerprints, to carry its burden at a habitual offender hearing, and prior convictions may be proved by any competent [Pg 5] evidence. *State v. Payton*, 2000-2899 (La. 3/15/02), 810 So. 2d 1127, 1130-32; see *State v. Lindsey*, 99-3256, 99-3302 (La. 10/17/00), 770 So. 2d 339, 344 n.3, cert. denied, 532 U.S. 1010, 121 S. Ct. 1739, 149 L. Ed. 2d 663 (2001).

In the instant case, defendant denied the contents of the habitual offender bill of information. At the hearing to establish defendant's status as a fourth-felony habitual offender, the state introduced various types of documentary and testimonial evidence.

With respect to defendant's instant theft conviction, the state introduced into the record a copy of the bill of information and the entire record of the proceedings leading to defendant's conviction. To establish [*6] defendant's identity as the person convicted of this offense, the state called the assistant district attorney, Le'ann Malnar, who prosecuted defendant. She identified defendant as the individual convicted in the instant matter.

Next, the state presented evidence that defendant was convicted of felony theft under 21st JDC docket numbers 55231 and 57296 on July 12, 1989. To establish the existence of these convictions, the state introduced certified copies of both bills of information and the minutes, as well as a plea transcript from the proceedings where these pleas were accepted. The transcript indicates that defendant was represented by counsel and advised of his Boykin rights. To identify defendant as the person who committed these offenses, the state called probation and parole officer Vincent Thibodaux, who testified that he supervised defendant in connection with his probation for these offenses.

The state then presented evidence that defendant was convicted of simple burglary of an inhabited dwelling under 21st JDC docket number 79726, unauthorized entry of an inhabited dwelling under 21st JDC docket number 83332, and simple burglary under 21st JDC docket number 87213, all on [*7] March 29, 1999. To prove these convictions, the state introduced certified copies of the bills of [Pg 6] information, minutes, and the guilty plea transcript. The transcript reflects that defendant was represented by counsel and advised of

his Boykin rights prior to his pleas. To identify defendant as the person who committed these offenses, the state called probation and parole officer Doug Wingo, who testified that he supervised defendant in connection with his probation on these convictions.

Thereafter, the state presented evidence that defendant was convicted on May 12, 2003 of possession or introduction of contraband into a penal institution under 22nd JDC docket number 85028. To prove this conviction, the state introduced copies of the bill of information, minutes, and guilty plea transcript. The transcript reflects that defendant was represented by counsel and advised of his Boykin rights. To identify defendant as the person who committed these offenses, the state relied upon the expert testimony of fingerprint analyst Amanda Collins, who positively identified the fingerprints on the bill of information as matching a known sample taken from defendant.

Finally, the state presented [*8] evidence that defendant was convicted on November 5, 2004, of another instance of possession or introduction of contraband into a penal institution under 22nd JDC docket number 87690. To prove this conviction, the state introduced copies of the bill of information, minutes, and guilty plea transcript. The transcript reflects that defendant was represented by counsel and advised of his Boykin rights. To identify defendant as the person who committed these offenses, the state relied upon the expert testimony of fingerprint analyst Amanda Collins, who positively identified the fingerprints on the bill of information as matching a known sample taken from defendant.

In sum, the state produced "perfect" transcripts for each alleged predicate offense, and defendant was identified, in one form or another, as the individual who committed each predicate offense. Further, the state adequately demonstrated that none of the predicate offenses has been "cleansed" by the elapsing of ten years [Pg 7] between them. See *LSA-R.S. 15:529.1(C)*. Defendant did not introduce any evidence to controvert the evidence presented by the state. Thus, we find no error with respect to the sufficiency of evidence used by the state to support [*9] defendant's adjudication as a fourth-felony habitual offender.

Defendant's fourth pro se assignment of error lacks merit.

Failure to Specify Predicate Convictions Used to

Enhance

In his first pro se assignment of error, defendant argues that it was reversible error for the trial court simply to adjudicate him as a fourth-felony habitual offender, without specifying which predicate convictions it found to support this adjudication.

As detailed above, the state alleged four separate sets of predicate convictions and provided adequate proof of all of them. The state did not allege in the habitual offender bill of information that any combination of defendant's prior offenses and the instant offense qualified him for a mandatory life sentence under LSA-R.S. 15:529.1(A)(4)(b). Therefore, in adjudicating defendant as a fourth-felony habitual offender, the trial court was not required to state specifically which of these offenses were being used to enhance defendant's underlying sentence. See [State v. Johnson, 99-2371 \(La. App. 1st Cir. 9/22/00\), 768 So. 2d 234, 237](#); but see [State v. Johnson, 97-0317 \(La. App. 4th Cir. 8/19/98\), 718 So. 2d 553, 558](#) (specification of predicate offenses found to be necessary where "violent, offender" provision applies). Further, defendant has shown no prejudice as a result of the trial court's failure to specify the [*10] predicate offenses used to enhance the underlying sentence. See [LSA-C.Cr.P. art. 921](#); see also [Johnson, 768 So. 2d at 237](#).

Thus, defendant's first pro se assignment of error is without merit.

Timely Filing of Habitual Offender Bill

In his second pro se assignment of error, defendant argues that the state failed to act timely in filing and prosecuting the habitual offender bill of information.

[Pg 8] In his pro se brief, defendant sets forth that he "objected to the fact that [the] District Attorney filed a habitual offender bill of information charging him to be a fourth felony offender over a one (1) year delay on January 7, 2015." However, the record does not appear to reflect any clear objection to the timeliness of the filing of the habitual offender bill. Accordingly, we are entitled to find that defendant failed to preserve this issue for review. See [LSA-C.Cr.P. art. 841\(A\)](#). However, to the extent that defendant's objection to a continuance — entered at a July 28, 2015 hearing — can be construed as an objection to the timeliness of the prosecution of the habitual offender bill, we will address this assignment of error.

Defendant was convicted of the underlying theft offense on October 22, 2014. His sentencing on the same occurred on November 25, 2014. [*11] The state filed the original habitual offender bill of information on January 7, 2015.⁴ Defendant was arraigned on the habitual offender bill on February 3, 2015, at which time he entered a plea of not guilty. The record reflects that the proceedings were continued several times between the arraignment and the adjudication hearing, which took place on May 9, 2016. On some occasions, the continuances were requested by the state and granted by the trial court, including a continuance granted over defendant's objection on July 28, 2015. In other instances, the continuances can be attributed to issues related to defendant's desire to represent himself and the attendant consequences for his counsel's status. For example, on October 21, 2015, defense counsel Albert Bensabat was allowed to withdraw. On February 24, 2016, defendant was represented by new counsel, who requested a continuance in order to better prepare for the adjudication hearing.⁵

[Pg 9] [Louisiana Code of Criminal Procedure article 874](#) provides that a sentence shall be imposed without unreasonable delay. Under LSA-R.S. 15:529.1(D)(1)(a), a multiple bill may be filed against a defendant who has been convicted of a felony "at any time, either after conviction or sentence." While LSA-R.S. 15:529.1 does not establish a [*12] time limit for habitual offender proceedings, the jurisprudence holds that a habitual offender bill must be filed within a reasonable time after the state learns the defendant has prior felony convictions. [State v. Muhammad, 2003-2991 \(La. 5/25/04\), 875 So. 2d 45, 54](#). This rationale is based upon a defendant's constitutional right to a speedy trial and to know the full consequences of the verdict within a reasonable time. See [State v. Broussard, 416 So. 2d 109, 110-11 \(La. 1982\)](#).

The [Muhammad](#) Court held that an evaluation of the circumstances surrounding the multiple offender proceedings should be conducted on a case-by-case basis. [Muhammad, 875 So. 2d at 54](#). In [Muhammad](#), the Court recognized that "[t]here are two concepts at issue

⁴ A handwritten amendment of the bill was made on May 9, 2016 to correct some details relating to the predicate offenses. No alleged predicate offenses were added or deleted as a result of this amendment.

⁵ Defendant ultimately represented himself at the habitual offender hearing, with counsel available for consultation at the defense table.

in this case — the timely *filing* of a multiple offender bill of information and the timely *hearing or completion* of the proceeding." [Muhammad, 875 So. 2d at 56](#) (emphasis in original). In [Muhammad](#), the original habitual offender bill of information was filed on the date of the defendant's sentencing, which was before he was released from custody. Due to a series of events, including remands following two appeals, the defendant was not finally adjudicated a habitual offender until four months after his sentence completion date. The issue was whether the habitual offender adjudication was timely completed. The Court found that [*13] the state did not unduly or unreasonably delay in completing the multiple offender proceedings, noting the "[d]efendant was never released from prison only to have the State thereafter file enhancement proceedings." [Muhammad, 875 So. 2d at 56](#).

As a general matter, the United States Supreme Court has set forth four factors for courts to consider in determining whether a defendant's right to a speedy trial has [Pg 10] been violated. Those factors are the length of the delay, the reasons for the delay, the accused's assertion of his right to a speedy trial, and the prejudice to the accused resulting from the delay. [Barker v. Wingo, 407 U.S. 514, 530-33, 92 S. Ct. 2182, 2192-93, 33 L. Ed. 2d 101 \(1972\)](#). While these factors are neither definitive nor dispositive in the context of a habitual offender proceeding, they are instructive. See [Muhammad, 875 So. 2d at 55](#); see also [State v. Reeves, 376 So. 2d 136, 138 \(La. 1979\)](#).

In the instant case, there was only a short delay between defendant's sentencing on the underlying offense (November 25, 2014) and the state's filing of the habitual offender bill of information (January 7, 2015). While the delay between the filing of the bill and the adjudication hearing was appreciably longer, it was not so long as to be inherently prejudicial to the defense. Cf. [State v. Neathery, 2012-0162 \(La. App. 1st Cir. 12/21/12\), 2012 La. App. Unpub. LEXIS 839, 2012 WL 6681803](#) (unpublished, writ denied, 2013-0218 (La. 9/13/13), 120 So. 3d 278 (delay of approximately three years between defendant's [*14] second appeal and filing of habitual offender bill, which was filed one day before defendant was scheduled for release for completion of sentence, not prejudicial). Further, a good portion of this secondary delay was attributable to defendant's own actions. Outside of one objection to a request for a continuance by the state, defendant does not appear to have asserted his right to a speedy trial, and he has made no showing of, nor do we find, any prejudice resulting from the delay. Finally, there is

nothing in the record before us that indicates any abusive or vindictive behavior by the state. Thus, defendant's due process rights were not violated.

Defendant's second pro se assignment of error is without merit.

[Pg 11] **EXCESSIVE SENTENCE**

In his third pro se assignment of error, defendant argues that the sixty-year habitual offender sentence imposed on the theft offense by the trial court is unconstitutionally excessive.

[Article I, Section 20 of the Louisiana Constitution](#) prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. [State v. Sepulvado, 367 So. 2d 762, 767 \(La. 1979\)](#). A sentence is constitutionally excessive if it is [*15] grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. See [State v. Hurst, 99-2868 \(La. App. 1st Cir. 10/3/00\), 797 So. 2d 75, 83, writ denied, 2000-3053 \(La. 10/5/01\), 798 So. 2d 962](#). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. [State v. Hogan, 480 So. 2d 288, 291 \(La. 1985\)](#). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. [State v. Lobato, 603 So. 2d 739, 751 \(La. 1992\)](#).

The sentencing range for defendant's underlying conviction of theft over \$1500.00 was imprisonment, with or without hard labor, for not more than ten years, or a fine not more than three thousand dollars, or both. See [LSA-R.S. 14:67\(B\)\(1\)](#) (Prior to amendment by [2014 La. Acts, No. 255, § 1](#)). The trial court initially sentenced defendant to ten years at hard labor.

As a fourth-felony habitual offender without specially qualifying offenses, defendant was subject to a sentence of imprisonment for a determinate term not less than the longest prescribed for a first conviction, but in no event less than twenty years nor more than his natural life. See [LSA-R.S. 15:529.1\(A\)\(4\)\(a\)](#); The trial [Pg 12] court imposed a habitual [*16] offender sentence of sixty years at hard labor, without benefit of probation or suspension of sentence. Defendant argues in his brief that this sentence "just doesn't make sense"

and reflects a lack of interest in the proceedings.

The goal of LSA-C.[Cr.P. art. 894.1](#) is to have the sentencing court articulate a factual basis for the sentence, not rigid or mechanical compliance with the article's provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with [Article 894.1](#). See [State v. Lanclos, 419 So. 2d 475, 478 \(La. 1982\)](#). The trial court should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement, See [State v. Jones, 398 So. 2d 1049, 1051-52 \(La. 1981\)](#). On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. [State v. Thomas, 98-1144 \(La. 10/9/98\), 719 So. 2d 49, 50](#) (per curiam).

In the instant case, the trial court filed written reasons for its habitual offender sentence, echoing those given at the time defendant's sentence was imposed. The trial court [*17] based its sentence in part on the fact that defendant has an extensive criminal history dating back to at least 1987, including convictions for twelve felony offenses and fifteen misdemeanor offenses. Further, the trial court noted that its review of the transcripts indicated defendant's lack of remorse for his crimes. Finally, the court took into account the fact that defendant had no felony convictions for a crime of violence, which it cited as a factor in not imposing a life sentence.

Considering the trial court's stated reasons and the record as a whole, we find that the trial court did not err or abuse its discretion in imposing a habitual offender sentence of sixty years at hard labor, without benefit of probation or suspension of [Pg 13] sentence. In contrast to defendant's contention that the trial court's sentence reflects a lack of interest in the proceedings, the reasons for sentencing evince an understanding of the relevant factors in this case.

This assignment of error is without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL/INCOMPLETE RECORD

In his final pro se assignment of error, defendant asserts

that his appellate counsel is ineffective because she prepared an appeal brief [*18] without a full appellate record. Specifically, he argues that appellate counsel did not have the benefit of reviewing the guilty plea transcripts used to support his predicate convictions.

A defendant is entitled to effective assistance of counsel under the *Sixth Amendment to the United States Constitution* and [Article I, § 13 of the Louisiana Constitution](#). In assessing a claim of ineffectiveness, a two-pronged test is employed. The defendant must show that (1) his attorney's performance was deficient, and (2) the deficiency prejudiced him. [Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 \(1984\)](#). Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. [State v. Serigny, 610 So. 2d 857, 860 \(La. App. 1st Cir. 1992\)](#), writ denied, 614 So. 2d 1263 (La. 1993).

While defendant argues that appellate counsel did not have access to the guilty plea transcripts used as evidence of his predicate convictions, each of these transcripts was made part of the record in the state's response to defendant's discovery request. Thus, defendant's claim that his appeal counsel did not have access to the complete record when preparing the instant appeal is incorrect, See [Douglas, 72 So. 3d at 397-98](#),

This assignment of error lacks merit.

[Pg 14] ANDERS BRIEF

The counseled defense brief contains no assignments of error and sets forth that it is filed to [*19] conform with [State v. Jyles, 96-2669 \(La. 12/12/97\), 704 So. 2d 241](#) (per curiam), wherein the Louisiana Supreme Court approved the procedures outlined in [State v. Benjamin, 573 So. 2d 528 \(La. App. 4th Cir. 1990\)](#). Benjamin set forth a procedure to comply with [Anders v. California, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400, 18 L. Ed. 2d 493 \(1967\)](#), in which the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel finds an appeal would be wholly frivolous. Benjamin has repeatedly been cited with approval by the Louisiana Supreme Court. See [Jyles, 704 So. 2d at 241](#); [State v. Mouton, 95-0981 \(La. 4/28/95\), 653 So. 2d 1176, 1177](#) (per curiam); [State v. Royals, 600 So. 2d 653 \(La. 1992\)](#).

Defense counsel stated that she reviewed the

procedural history of the case in her brief. She set forth that, after a review of the record in this case, she has found no nonfrivolous errors to present on appeal. She noted that there were no relevant pretrial hearings or rulings in this case, that the evidence was sufficient to support the trial court's adjudication of defendant as a fourth-felony habitual offender, and that the trial court used its discretion to craft a non-life sentence in light of the fact that defendant has no felony convictions for crimes of violence.

We have conducted an independent review of the record and have found no reversible errors under LSA-Cr.P. [art. 920\(2\)](#). Furthermore, we have found no nonfrivolous issues or trial court rulings that arguably [*20] support this appeal. Accordingly, defendant's habitual offender adjudication and sentence are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition in this matter, is hereby granted.

**HABITUAL OFFENDER ADJUDICATION AND
SENTENCE AFFIRMED; MOTION TO WITHDRAW
GRANTED.**

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APPENDIX B

State v. Anderson, No. 2017-KO-0671, 2018 La. LEXIS 352
(La. Feb. 2, 2018)



State v. Anderson

Supreme Court of Louisiana

February 2, 2018, Decided

NO. 2017-KO-0671

Reporter

2018 La. LEXIS 352 *; 2017-0671 (La.App. 02/02/18); 2018 WL 671186

STATE OF LOUISIANA VS. MAURICE ANDERSON

year sentence on a theft charge excessive.

Notice: THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE FOURTEEN DAY REHEARING PERIOD.

Prior History: [*1] IN RE: Maurice Anderson; - Defendant; Applying For Writ of Certiorari and/or Review, Parish of Tangipahoa, 21st Judicial District Court Div. B, No. 1202751; to the Court of Appeal, First Circuit, No. 2016 KA 1191. ON WRIT OF CERTIORARI TO COURT OF APPEAL FIRST CIRCUIT, PARISH OF TANGIPAHOA.

[State v. Anderson, 2017 La. App. Unpub. LEXIS 47 \(La.App. 1 Cir., Feb. 17, 2017\)](#)

Disposition: Denied.

Core Terms

sentence, years imprisonment, district court, habitual offender statute, habitual offender, writ application, violent crime, habitual offender law, conviction for theft, prior conviction, recent amendment, simple battery, life sentence, theft charge, sex offense, hard labor, disproportionate, reasons

Judges: John L. Weimer, Greg G. Guidry, Marcus R. Clark, Jefferson D. Hughes, III, James T. Genovese. JOHNSON, C.J., would grant and assigns reasons. CRICHTON, J., would grant and assigns reasons.

Opinion

JOHNSON, C.J., would grant the writ application and assigns reasons.

I would grant defendant's writ application, finding his 60-

In 2014, defendant was convicted of theft over \$1500 and simple battery, charges that stemmed from a burglary and home invasion in 2012. The district court sentenced defendant to 10 years imprisonment at hard labor on the theft conviction, and six months imprisonment in parish jail for simple battery, with the sentences be served consecutively. -Following habitual offender proceedings, the district court adjudicated defendant a fourth-felony habitual offender, vacated defendant's 10-year sentence on the theft charge, and resentenced defendant [*2] to 60 years imprisonment at hard labor, without the benefit of probation or suspension of sentence. The court of appeal affirmed defendant's habitual offender adjudication and sentence. The majority of this court now denies defendant's writ application.

In this case, the district court based its decision in part on the fact that defendant has an extensive criminal history. Notably, defendant has no convictions for crimes of violence. Louisiana's habitual offender law is set forth in *La. R.S. 15:529.1*. The legislature recently amended this statute to provide for a reduction of sentences under the habitual offender law in certain circumstances. In this case, because neither the underlying offense nor any of defendant's prior convictions were crimes of violence or sex offenses, defendant would only have been sentenced to 20 years imprisonment under the amended habitual offender statute. See *La. R.S. 15:529.1(A)(4)(b)*.

Louisiana law provides that a sentence is unconstitutionally excessive when it imposes punishment grossly disproportionate to the severity of the offense or constitutes nothing more than needless infliction of pain and suffering. See [State v. Bonanno, 384 So. 2d 355, 357 \(La. 1980\)](#). Considering defendant was in his 40s when he was sentenced to 60 years imprisonment, [*3] his sentence is effectively a life sentence. In my view, the legislature's recent

amendment of the habitual offender statute suggests that a life sentence (or any sentence greater than 20 years), when the offender has no prior convictions for crimes of violence or sex offenses, is disproportionate to the gravity of the offense. Defendant should be entitled to the benefit of the ameliorative provisions in the amended habitual offender statute. See, e.g., [*State ex rel. John Esteen v. State of Louisiana*, 16-0949 \(La. 1/30/18\), ___ So. 3d ___, 2018 La. LEXIS 186](#). For these reasons, I find the district court abused its discretion in imposing a 60-year sentence, and defendant's sentence should be set aside.

Crichton, J., would grant.

I would grant this application to examine the defendant's sentence in light of the recent amendments to *La. R.S. 15:529.1*. See *La. R.S. 15:529.1(A)*.

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