

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1128

STATE OF LOUISIANA

VERSUS

ALCIDE J. BOUDOIN

Judgment Rendered: FEB 11 2011

*MM
JCB*

APPEALED FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ASSUMPTION
STATE OF LOUISIANA
DOCKET NUMBER 06-138, DISTRICT "C"

THE HONORABLE GUY HOLDRIDGE, JUDGE

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Alcide J. Boudoin

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McClendon, J. concurs and assigns reasons.

McDONALD, J.

The defendant, Alcide Boudoin, was charged by grand jury indictment with three counts of aggravated rape, in violation of La. R.S. 14:42 (count 1-vaginal, count 2-anal, count 3-oral sexual intercourse). He pled not guilty to all charges. Following a jury trial, the defendant was convicted as charged on counts 1 and 2. He was acquitted on count 3. The defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence for each aggravated rape conviction. The trial court ordered that the sentences be served consecutively. The defendant now appeals, urging a single assignment of error challenging the sentences as excessive. We affirm the convictions and sentences.

FACTS

The victim, who was sixteen years old at the time of trial, testified that the defendant, her mother's stepbrother, repeatedly raped her over a period of approximately six months. A.L., the victim's mother, and her two children moved in with the defendant in July 2005. A.L. had recently separated from her husband and was experiencing financial difficulties. Shortly after the family moved in, the defendant began having sexual intercourse with the victim, who was then eleven years old. The victim testified that the abuse occurred when her mother was away at work and/or spending the night at her boyfriend's house. She explained that she and the defendant regularly engaged in vaginal intercourse, but several times, when she was on her menstrual cycle, the defendant would perform anal intercourse. The defendant also made the victim wear lingerie he purchased for her, used a vibrator on her, and showed her pornography on his personal computer.

The victim disclosed the abuse to her mother in February 2006 during a conversation in preparation for an upcoming custody hearing. A.L. immediately took the victim to the hospital and reported the abuse.

ASSIGNMENT OF ERROR

In his sole assignment of error on appeal, the defendant contends the trial court erred in ordering that the sentences imposed be served consecutively rather than concurrently. Specifically, the defendant argues that the imposition of consecutive life sentences for illegal activity that was part of a “common scheme or plan,” as provided in La. Code Crim. P. art. 883, amounts to needless infliction of pain and suffering. He requests that the sentences be vacated and the matter remanded to the district court for resentencing.

Louisiana Code of Criminal Procedure article 881.1, regarding a motion to reconsider sentence, states, in pertinent part:

A. (1) In 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.

* * * * *

B. The motion shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based.

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E. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

Our review of the record reflects that defense counsel did not make a written or oral motion to reconsider sentence. Under Louisiana Code of Criminal Procedure articles 881.1(E) and 881.2(A)(1), the failure to file or make a motion to reconsider sentence precludes a defendant from raising any objection to the sentence on appeal, including a claim of excessiveness. **State v. Duncan**, 94-1563, p. 2 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam). Thus, the defendant is barred procedurally from having this assignment

of error reviewed on appeal. **State v. LeBouef**, 97-0902, p. 3 (La. App. 1st Cir. 2/20/98), 708 So.2d 808, 809, writ denied, 98-0767 (La. 7/2/98), 724 So.2d 206; **State v. Duncan**, 94-1563 at p. 2, 667 So.2d at 1143.

Accordingly, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.

DMC

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McCLENDON, J., concurs and assigns reasons.

I do not find that the trial court abused its discretion in ordering the sentences to run consecutively, rather than concurrently. Therefore, I concur with the result reached by the majority.