

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 1246

STATE OF LOUISIANA

VERSUS

CARL ENGLAND



Judgment Rendered: February 11, 2011

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 396,443

Honorable William J. Knight, Judge

Walter P. Reed, District Attorney
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and
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Attorneys for
State – Appellee

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Attorney for
Defendant – Appellant
Carl England

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

The defendant, Carl England, was charged by bill of information with one count of aggravated burglary, a violation of La. R.S. 14:60, and one count of attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1. The defendant pled not guilty and, following a jury trial, was found guilty as charged on both counts. He was sentenced to fifteen years at hard labor for his aggravated burglary conviction, and thirty-five years at hard labor without benefit of parole, probation, or suspension of sentence for his attempted second degree murder conviction. The trial court ordered the sentences to run concurrently. The defendant appealed and, in an unpublished decision, this court affirmed the defendant's convictions and sentences. See State v. England, 2008-0817 (La. App. 1st Cir. 10/31/08), 994 So.2d 154 (unpublished), writ denied, 2009-0176 (La. 10/16/09), 19 So.3d 475.

Subsequently, the State filed a multiple offender bill of information on May 29, 2009. The defendant filed a motion to quash the multiple offender bill of information, which was denied. At the habitual offender hearing on April 8, 2010, the defendant was adjudicated a second-felony habitual offender. The trial court vacated the defendant's thirty-five-year sentence for his attempted second degree murder conviction and resentenced him to forty years at hard labor without benefit of parole, probation, or suspension of sentence. The forty-year sentence was ordered to run concurrently with the aggravated burglary sentence. The defendant now appeals his adjudication as a second-felony habitual offender and his sentence. We affirm the habitual offender adjudication and enhanced sentence.

FACTS

Alexis Calcotes was temporarily staying at her aunt's mobile home in Slidell. On February 13, 2005, the defendant entered the trailer and attacked Alexis while she was sleeping. The defendant stabbed her several times with a

knife and struck her with a hammer.¹

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in denying his motion to quash the multiple offender bill of information. Specifically, the defendant contends the bill should have been quashed for untimeliness because the bill was not filed until almost one-and-one-half years after sentencing.

The defendant was originally sentenced on December 4, 2007. While the State did not file a multiple offender bill of information until May 29, 2009, the prosecutor at the defendant's original sentencing hearing informed the trial court that, upon obtaining records from another parish, the State would be filing a multiple offender bill: "Your Honor, in connection with this matter we are obtaining the records from Jefferson Parish and the Department of Corrections. We will be filing a multiple offender bill on Mr. England."

Thus, while the habitual offender hearing on April 8, 2010, did not take place until almost eleven months after the multiple offender bill was filed, the defendant had been put on notice as early as December of 2007 that the State would file a multiple offender bill of information against him. Moreover, a review of the minutes indicates that for various reasons during the eleven-month period between May 29, 2009, and April 8, 2010, the habitual offender hearing was continued, sometimes for reasons beyond the control of the prosecutor. For example, on July 7, 2009, the matter was continued because the defendant had not been transported from jail. On September 14, 2009, for unexplained reasons, the trial court continued the matter. On January 21, 2010, the matter was continued because the defendant was not present in court. On February 8, 2010, the matter

¹ For a full recitation of the facts, see **State v. England**, 2008-0817 (La. App. 1st Cir. 10/31/08), 994 So.2d 154 (unpublished), writ denied, 2009-0176 (La. 10/16/09), 19 So.3d 475.

was continued because the defendant had not been transported by the Department of Corrections. At no time during these court-ordered continuances did the defendant assert any right to a speedy trial. It was not until the habitual offender hearing on April 8, 2010, after the introduction of all evidence, that defense counsel first addressed the trial court with the issue of timeliness. Following the State's submission of its evidence, defense counsel stated:

I just have an argument, Judge. I had filed an answer and a Motion to Quash. I think my main argument would be that it's been 27 months since Mr. England's trial. It's been more than a reasonable time in which the State has had to have this hearing. I think under Article 874 it's unreasonable and I'd ask that it be quashed.

In denying the motion to quash, the trial court stated:

The Court notes that Mr. England is quite correct about that. The trial in this case was November 28, 2007. That said, 15:529.1, which is the governing statute for an habitual offender rule, does not have a specific time period within which an habitual offender rule [sic] must be filed. The Court notes that there is not any foreseeable prejudice to the defendant by a delayed undertaking of the habitual offender rule. And the fact that a contradictory hearing is being held quite sometime down the road, that's really not of any detriment to the defendant.

The district attorney may file a habitual offender bill of information "at any time, either after conviction or sentence." See La. R.S. 15:529.1(D)(1)(a). The supreme court in **State v. Muhammad**, 2003-2991, p. 17 (La. 5/25/04), 875 So.2d 45, 56, held that there is no bright-line deadline by which the habitual offender proceeding must be completed. Instead, since La. R.S. 15:529.1(D)(1)(a) does not prescribe a time within which the bill must be filed, it has been determined that the district attorney must file the habitual offender bill "within a reasonable time." **Muhammad**, 2003-2991 at p. 14, 875 So.2d at 54. The determination of whether the hearing is held within a reasonable time hinges on the facts and circumstances of the specific case. **Muhammad**, 2003-2991 at p. 14, 875 So.2d at 55.

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 been violated. Those factors are the length of the delay, the reasons for the delay, the accused's assertion of his right to 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, 2003-2991 at pp. 14-15, 875 So.2d at 55; see also State v. Reaves, 376 So.2d 136, 138 (La. 1979).

While the State had to wait on criminal records from another parish, it is not clear from the record if this factor, alone, was the cause of the delay in filing the habitual offender bill. In any event, we do not find the State's filing the habitual offender bill less than eighteen months after sentencing, or less than seven months after this court rendered judgment on the defendant's appeal, to be unreasonable. See State v. Torres, 2005-260, pp. 6-7 (La. App. 5th Cir. 11/29/05), 919 So.2d 730, 733-34, writ denied, 2006-0697 (La. 10/6/06), 938 So.2d 65 (where defendant's sentence as a habitual offender, occurring more than nine years after his convictions and after his original five-year sentence was completed, was affirmed); see also State v. Dazart, 2007-15, pp. 7-8 (La. App. 5th Cir. 5/15/07), 960 So.2d 1079, 1085-86. Also, as noted by the trial court in its denial of the motion to quash, there was no prejudice to the defendant resulting from any delay, particularly in light of the fact the defendant was already serving a thirty-five-year sentence without benefits before habitual offender proceedings were brought.

At his original sentencing hearing, one week following his convictions, the defendant was made aware that the State would be filing a habitual offender bill of information. Further, there is nothing in the record before us that indicates any abusive or vindictive behavior by the State. Thus, despite the delay in being adjudicated a habitual offender and being sentenced accordingly, the defendant's due process rights were not violated. See Muhammad, 2003-2991 at pp. 13-17,

875 So.2d at 54-56. The trial court did not err in denying the motion to quash.

The assignment of error is without merit.

REVIEW FOR ERRORS

The defendant asks this court to examine the record for error under La. C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether such a request is made by a defendant. Under La. C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See State v. Price, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

For the foregoing reasons, the defendant's habitual offender adjudication and enhanced sentence is affirmed.

HABITUAL OFFENDER ADJUDICATION AND ENHANCED SENTENCE AFFIRMED.