

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 2254



STATE OF LOUISIANA

VERSUS

DANIELLE RENEE THOMPSON

Judgment Rendered: June 10, 2011

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 488,610

Honorable Peter J. Garcia, Judge

Walter P. Reed, District Attorney
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and
Kathryn W. Landry
Baton Rouge, LA

Attorneys for
State – Appellee

Frank Sloan
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Attorney for
Defendant – Appellant
Danielle Renee Thompson

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

WELCH, J.

The defendant, Danielle Renee Thompson, was charged by bill of information with theft of property having a value amounting to over \$500.00, a violation of La. R.S. 14:67. She pled not guilty and, following a trial by jury, was found guilty as charged. After denying the defendant's motions for new trial and for post-verdict judgment of acquittal, the trial court sentenced the defendant to ten years with the Department of Corrections,¹ but suspended the sentence and placed her on probation for five years. The defendant was ordered to pay restitution to the victim in the amount of \$3,700.00 within six months. The defendant now appeals, arguing in two assignments of error that the trial court imposed an illegally excessive sentence and failed to advise her of the delays for applying for post-conviction relief. For the following reasons, we affirm the conviction, but vacate the sentence, and remand this matter to the trial court for resentencing.

FACTS

On April 3, 2010, Paul Cousin purchased several items at the Jubilee gas station in Slidell, Louisiana, and then returned home. Several hours later, he realized his wallet was missing. It was later discovered that he had left his wallet lying open on the counter at the gas station. Shortly after he left the gas station, the defendant entered the building and stood in line at the counter to buy cigarettes. After seeing the wallet, she knocked it to the floor, and then bent down and picked it up. Next, she walked out of the gas station, removed the cash from the wallet, and threw it away. At trial, the defendant admitted taking the wallet, but claimed it contained only \$100.00 in cash. Mr. Cousin

¹ A sentence to the Department of Corrections is necessarily a sentence at hard labor. See La. R.S. 15:824C; **Rochon v. Blackburn**, 97-2799, p. 4 (La. App. 1st Cir. 12/28/98), 727 So.2d 602, 604.

testified there was \$3,700.00 in cash inside the wallet.

REVIEW FOR ERROR

In reviewing the record for error pursuant to La. C.Cr.P. art. 920(2), we have discovered that the trial court did not wait the required twenty-four hours after the denial of the defendant's motions for new trial and for post-verdict judgment of acquittal before imposing sentence, as required by La. C.Cr.P. art. 873.² Nothing in the record reflects that the defendant waived this delay. Moreover, for her theft conviction, the defendant was exposed to a non-mandatory sentence, and has challenged the sentence imposed on appeal.

In **State v. Augustine**, 555 So.2d 1331, 1333-1334 (La. 1990), the Supreme Court held that a trial court's failure to observe the twenty-four hour delay is not harmless error if the defendant challenges the sentence on appeal. Therefore, given the circumstances present, we must vacate the defendant's sentence and remand the case to the trial court for resentencing. See Augustine, 555 So.2d at 1334-1335; **State v. Denham**, 2001-0400, p. 5 (La. App. 1st Cir. 12/28/01), 804 So.2d 929, 932, writ denied, 2002-0393 (La. 1/24/03), 836 So.2d 37; **State v. Claxton**, 603 So.2d 247, 250 (La. App. 1st Cir. 1992). Because **Augustine** requires us to vacate the defendant's sentence, we pretermitt consideration of the defendant's assignments of error, which both relate to her sentence. However, we note that, when resentencing the defendant, the trial court should advise her of the time limitations provided by La. C.Cr.P. art. 930.8(A) for applying for post-conviction relief.

² Louisiana Code of Criminal Procedure article 873 does not explicitly require a twenty-four hour delay in sentencing after the denial of a motion for a post-verdict judgment of acquittal, as it does after the denial of a motion for new trial. However, this court previously has applied the twenty-four hour delay required by Article 873 to motions for a post-verdict judgment of acquittal. See State v. Coates, 2000-1013, p. 6 (La. App. 1st Cir. 12/22/00), 774 So.2d 1223, 1226; **State v. Jones**, 97-2521, p. 2 (La. App. 1st Cir. 9/25/98), 720 So.2d 52, 53.

CONCLUSION

For the foregoing reasons, the defendant's conviction is affirmed, the sentence is vacated, and the matter is remanded for resentencing.

CONVICTION AFFIRMED; SENTENCE VACATED AND REMANDED FOR RESENTENCING.