

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0001

STATE OF LOUISIANA

VERSUS

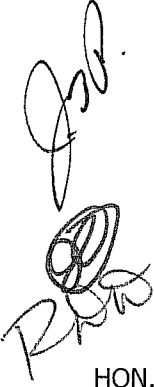
ELRICK PAUL FORET, SR.

**Judgment rendered May 4, 2007.**

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Appealed from the  
32<sup>nd</sup> Judicial District Court  
in and for the Parish of Terrebonne, Louisiana  
Trial Court No. 459,223  
Honorable Randall L. Bethancourt, Judge

\* \* \* \* \*



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DEFENDANT-APPELLANT  
ELRICK PAUL FORET, SR.

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

## **PETTIGREW, J.**

The defendant, Elrick Paul Foret, Sr., was charged by bill of information with molestation of a juvenile in violation of La. R.S. 14:81.2, sexual battery in violation of La. R.S. 14:43.1, and simple rape in violation of La. R.S. 14:43A(2). The defendant originally pled not guilty to the charges. The defendant later withdrew his not guilty plea and entered a plea of guilty to sexual battery. In exchange, the State nol-prossed the remaining charges. The defendant was sentenced to nine years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The State filed a habitual offender bill of information. The defendant denied the allegations of the habitual offender bill of information. After a hearing on the habitual offender bill of information, the defendant was adjudicated a fourth felony habitual offender. The trial court vacated the original sentence, and the defendant was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, raising the following assignments of error:

1. Though [the defendant] was subjected to a life sentence, neither the multiple bill [nor] the underlying offense was charged by grand jury indictment as required by the Louisiana Constitution.
2. It is a violation of defendant's right to due process to accept a guilty plea to a fourth felony offense and subsequently charge him as a fourth felony habitual offender subject to life imprisonment. The defendant derived no benefit from the guilty plea.

For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

### **STATEMENT OF FACTS**

The defendant entered a guilty plea to the underlying offense (sexual battery) and the State nol-prossed the remaining charges. The details of the sexual battery offense are not in the record.<sup>1</sup>

### **ASSIGNMENT OF ERROR NUMBER ONE**

In his first assignment of error, the defendant argues that the State violated his

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<sup>1</sup> The record does, however, state that the victim of the crime was six years of age.

constitutional rights as neither the underlying offense nor the habitual offender proceedings were charged by grand jury indictment. The defendant contends that the State was aware of the defendant's prior convictions when the bills of information for the underlying offense and habitual offender allegations were filed. While the prior convictions made the defendant subject to life imprisonment, there was no grand jury indictment. Citing La. Const. art. I, § 15 and La. Code Crim. P. art. 382, the defendant concludes that the trial court was without jurisdiction to impose a life sentence. The defendant argues that, to the extent the Habitual Offender Law allows the defendant to be subject to life imprisonment by bill of information, it is in conflict with the Constitution and should be declared unconstitutional. Finally, the defendant suggests that **State v. Alexander**, 325 So.2d 777 (La. 1976), be overruled.<sup>2</sup>

Prosecution for an offense punishable by life imprisonment requires indictment by grand jury. La. Const. art. I, § 15; La. Code Crim. P. art. 382A. However, the above constitutional provision and code article were not intended to, and do not, apply to the institution of enhanced-penalty proceedings, pursuant to La. R.S. 15:529.1. They apply only to the substantive crime with which an accused is initially charged. **State v. Alexander**, 325 So.2d at 778-79; **State v. Collins**, 2004-1443, p. 16 (La. App. 5 Cir. 7/26/05), 910 So.2d 454, 464; see also **State v. Delandro**, 2001-2514, p. 3 (La. App. 1 Cir. 5/10/02), 818 So.2d 1011, 1014. In addition, a multiple offender bill of information does not charge a crime but is "merely a method of informing the sentencing court of the circumstances and requesting an enhancement-of-penalty." **State v. Alexander**, 325 So.2d at 779. Thus, "[m]ultiple billing need not be by grand jury indictment in cases involving possible life sentences." **State v. Jolla**, 337 So.2d 197, 201 (La. 1976). In **State v. Alexander**, the court explained that the "post-conviction enhanced-penalty proceedings have no functional relationship to the innocence or guilt of the crime for which prosecution is initiated either by grand-jury indictment or by (bill of) information," stating that the grand jury's function is to inquire

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<sup>2</sup> Of course, this court cannot overrule **Alexander**, a decision from the Louisiana Supreme Court.

into an offense and to indict for an offense if the evidence so indicates. **State v. Alexander**, 325 So.2d at 779.

Thus, it is well settled that the classification of felonies for initiation of prosecution is based on the penalty applicable to the substantive crime and not the enhanced penalty to which a defendant might be subjected. Because the offenses with which the defendant was initially charged (molestation of a juvenile, sexual battery, and simple rape) are not punishable by life imprisonment, the law did not require that he be indicted by a grand jury. See La. R.S. 14:81.2, La. R.S. 14.43.1 and La. R.S. 14:43B. This assignment of error lacks merit.

#### **ASSIGNMENT OF ERROR NUMBER TWO**

In the second assignment of error, the defendant contends that the habitual offender proceeding was unconstitutional. The defendant argues that his guilty plea to the underlying offense was not knowing and intelligent because he was not advised that he would be charged as a fourth felony offender in a subsequent habitual offender bill of information. The defendant contends that he did not receive any benefit, such as a lenient sentence, for pleading guilty. The defendant concedes that the trial court conducted an "extensive colloquy that discussed all applicable constitutional rights he was waiving by pleading guilty."

In order for a guilty plea to be used as a basis for actual imprisonment, enhancement of actual imprisonment, or conversion of a subsequent misdemeanor into a felony, the trial judge must have informed the defendant that by pleading guilty he waives: (a) his privilege against compulsory self-incrimination; (b) his right to trial and jury trial where applicable; and (c) his right to confront his accuser. The judge also must have ascertained that the accused understood what the plea connotes and its consequences. See **Boykin v. Alabama**, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969). **Boykin** only requires that a defendant be informed of the three rights enumerated above. The jurisprudence indicates that courts have been unwilling to extend the scope of **Boykin** to include advising the defendant of any other rights

that he may have. **State v. Brockwell**, 2000-2547, pp. 2-3 (La. App. 1 Cir. 6/22/01), 797 So.2d 735, 736.

It is well settled that a court is not required to inform a defendant that his guilty plea may be used as a basis for the filing of a future multiple offender bill. **State v. Nuccio**, 454 So.2d 93, 104 (La. 1984); **State v. Tomlinson**, 2005-201, p. 6 (La. App. 5 Cir. 10/6/05), 916 So.2d 1200, 1203-1204; **State v. Jackson**, 31,849, pp. 2-3 (La. App. 2 Cir. 3/31/99), 734 So.2d 54, 56; **State v. Wagster**, 489 So.2d 1299, 1307 (La. App. 1 Cir.), writ denied, 493 So.2d 1218 (La. 1986). Furthermore, the defendant did receive some benefit from his instant guilty plea, as the molestation of a juvenile and simple rape charges were nol-prossed.

We find that the defendant has failed to show error in the habitual offender adjudication. This assignment of error is without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**