

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 2108

STATE OF LOUISIANA

VERSUS

JEROME OUBRE

Judgment rendered March 27, 2009.

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Appealed from the
17th Judicial District Court
in and for the Parish of Lafourche, Louisiana
Trial Court No. 451432
Honorable F. Hugh Larose, Judge

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HON. CAMILLE A. MORVANT, II.
DISTRICT ATTORNEY
PETER J. ROUSSE
MARTIN CAILLOUET
ASSISTANT DISTRICT ATTORNEYS
THIBODAUX, LA

ATTORNEY FOR
STATE OF LOUISIANA

FRANK SLOAN
MANDEVILLE, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
JEROME OUBRE

* * * * *

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

Hughes, J., concurs.

PETTIGREW, J.

The defendant, Jerome Oubre, was charged by bill of information with aggravated burglary, a violation of La. R.S. 14:60 (count 1), and attempted forcible rape, a violation of La. R.S. 14:42.1 and 14:27 (count 2). The defendant pled not guilty and, following a jury trial, he was found guilty of the aggravated burglary charge and not guilty of the attempted forcible rape charge. The defendant was sentenced to twenty-five years imprisonment at hard labor. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On December 7, 2007, about 3:00 a.m., the defendant attempted to gain entry into Betty Langs' apartment on Lagarde Street in Thibodaux, Louisiana. According to Langs, who testified at trial, the defendant somehow disconnected her electricity before entering the apartment. The defendant struck the locked front door several times with a hammer. The defendant then broke out the kitchen window with the hammer. Langs, who lived alone and had not yet gone to bed, sprayed the defendant in the face with bug spray through the broken window. After several moments, Langs opened her front door to see if the defendant had left. The defendant pushed Langs back into the apartment and attacked her. According to Langs, the defendant choked her, threw her down, and beat her. They struggled throughout the apartment, causing objects to fall and furniture to be pushed around and knocked over. At one point during the struggle, Langs managed to get outside and scream, but the defendant pulled her back inside. A next door neighbor, who was awakened by the loud noise, the breaking glass, and the screaming, dialed 9-1-1.

When the struggle led to Langs' bedroom, the defendant pulled off Langs' shorts and underwear. The defendant also pulled his pants down around his ankles. At about this time, the police, who were responding to the 9-1-1 call, entered Langs' apartment, found the defendant in her bedroom, and apprehended him. The hammer used by the defendant was found in the kitchen and taken into evidence.

Langs suffered cuts, an injury to her head, and a broken finger. According to her testimony, Langs did not know the defendant and had never seen him before. She also testified that the defendant did not rape her.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in imposing restrictions on diminution of sentence for good behavior. Specifically, the defendant contends that pursuant to La. R.S. 15:571.3(C), the trial court was without authority to deny good time eligibility.

The contention is baseless. After sentencing the defendant to twenty-five years at hard labor, the trial court noted the defendant was convicted of a crime of violence. Accordingly, the trial court imposed restrictions concerning the diminution for any good behavior.

A trial judge lacks authority under La. R.S. 15:571.3(C)¹ to deny a defendant eligibility for good time credits against his sentence, because that statute is directed to the Department of Corrections exclusively. Moreover, even the Department of Corrections lacks that authority under La. R.S. 15:571.3(C) in a case in which the trial

¹ Louisiana Revised Statutes 15:571.3(C) provides in pertinent part:

C. Diminution of sentence shall not be allowed an inmate in the custody of the Department of Public Safety and Corrections if:

(1) The inmate has been convicted one or more times under the laws of this state of any one or more of the following crimes:

....

(i) Aggravated burglary.

....

(t) Any felony which is defined as an attempt to commit one of the crimes enumerated in Subparagraphs (a) through (s) of this Paragraph, and

(2) The inmate has been sentenced as an habitual offender under the Habitual Offender Law as set forth in R.S. 15:529.1, and

(3) The inmate's last conviction for the purposes of the Habitual Offender Law, was for a crime . . . committed on or after September 10, 1977.

court has not formally adjudicated and sentenced the defendant as a multiple offender under the provisions of La. R.S. 15:529.1. However, when the sentencing court is of the opinion that a denial of diminution of sentence is warranted under the specific circumstances of the case, the trial judge's discretion should be exercised under La. Code Crim. P. art. 890.1(B).² See **State v. Narcisse**, 97-3161, p. 1 (La. 6/26/98), 714 So.2d 698, 699 (per curiam).

The defendant was convicted of aggravated burglary, a crime of violence. See La. R.S. 14:2(B)(20). The defendant was not adjudicated a habitual offender in the instant matter. Since the defendant was not adjudicated a habitual offender, La. R.S. 15:571.3(C) is inapplicable. Instead, Article 890.1(B) is the controlling provision, which provides that the trial court may deny diminution of sentence. See **Narcisse**, 97-3161 at 1, 714 So.2d at 699. Accordingly, the trial court's imposition of restrictions on the diminution of the defendant's sentence for good behavior was proper under Article 890.1(B).

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.

² Louisiana Code of Criminal Procedure article 890.1(B) states:

Notwithstanding any provision of the law to the contrary, if a person is convicted of or pleads guilty to a crime of violence as defined or enumerated in R.S. 14:2(B) and is sentenced to imprisonment for a stated number of years or months, the sentencing court may deny or place conditions on eligibility for diminution of sentence for good behavior unless diminution of sentence is prohibited by R.S. 15:571.3(C) or (D).