

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0999

STATE OF LOUISIANA

VERSUS

JORDAN D. ZANTIZ

Judgment Rendered: February 11, 2011.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 436391

The Honorable Martin E. Coady, Judge Presiding

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

CARTER, C.J.

The defendant challenges his habitual offender adjudication. For the reasons that follow, we affirm the adjudication and sentence.

FACTS AND PROCEDURAL HISTORY

The defendant, Jordan D. Zantiz, was charged by bill of information with obscenity, second offense, a violation of La. Rev. Stat. Ann. § 14:106(G)(2)(a). Following the trial court's grant of the defendant's motion to quash, the defendant was tried for obscenity, first offense, La. Rev. Stat. Ann. § 14:106(A)(1). A jury found the defendant guilty, and he was sentenced to three years at hard labor. The defendant appealed, and this court rendered judgment affirming the conviction and sentence. *State v. Zantiz*, 09-0771 (La. App. 1 Cir. 10/27/09) (unpublished), *writ denied*, 09-2553 (La. 5/7/10); 34 So. 3d 860.

Following the defendant's conviction and sentencing on the substantive offense in this case, the state filed a multiple offender bill of information against the defendant. The defendant admitted his status as a third-felony habitual offender, withdrew his former plea of not guilty, and entered a plea of guilty. The court vacated the previously imposed sentence and resentenced the defendant to imprisonment for five years at hard labor.

The defendant appeals his habitual offender adjudication.

ADVICE OF RIGHTS AT HABITUAL OFFENDER PROCEEDING

In his sole counseled and first pro se assignment of error, the defendant asserts the trial court erred in failing to advise him of his rights prior to allowing a plea of guilty on the multiple offender bill of information.

When a trial court fails to advise a defendant of his right to a formal hearing and right to remain silent, the habitual offender adjudication and sentence must be vacated. *See State v. Gonsoulin*, 03-2473 (La. App. 1 Cir. 6/25/04); 886 So. 2d 499, 501 (*en banc*), *writ denied*, 04-1917 (La. 12/10/04); 888 So. 2d 835.

The habitual offender hearing was held on September 10, 2009. While the defendant is correct that the trial court did not advise him of his rights on the habitual offender bill on this date, the court minutes reflect that the trial court did advise him of his rights at the May 18, 2009, arraignment on the habitual offender bill. Specifically, the trial court read the multiple offender bill to the defendant and advised him of his right to enter a plea of not guilty, right to remain silent, and right to admit or deny the allegations contained in the bill. The defendant entered a plea of not guilty, and the matter was set for hearing. Later, at the September 10, 2009, hearing, the defendant through counsel stipulated to being a third-felony offender and advised that he wished to withdraw the previously entered not guilty plea and admit his habitual offender status.

Therefore, the defendant's claim that the trial court failed to advise him of his rights prior to accepting his stipulation clearly lacks merit. It would have been unnecessarily redundant to advise him again of his rights a second time before he entered his stipulation. *See Gonsoulin*, 886 So. 2d at 502. This assignment of error lacks merit.

**FAILURE TO RULE ON THE MOTION TO QUASH
THE HABITUAL OFFENDER BILL OF INFORMATION**

In his second pro se assignment of error, the defendant argues the trial court erred in failing to entertain or rule on his motion to quash the habitual

offender bill of information. The record reflects that on August 17, 2009, the defendant filed a pro se motion to quash the habitual offender bill of information. On September 10, 2009, after the defendant stipulated to his habitual offender status, the trial court ruled that the motion to quash was “moot.”

The defendant cannot now raise on appeal the trial court’s failure to rule on his motion to quash the habitual offender bill of information when he did not object to the trial court’s lack of a ruling during the proceedings below. It is incumbent on the proponent of a motion to move for a hearing date on that motion. *State v. Wagster*, 361 So. 2d 849, 856 (La. 1978). Otherwise, it is appropriate for a reviewing court to consider that the motion has been abandoned. *Wagster*, 361 So. 2d at 856.

The defendant indicates he attempted to obtain a ruling on the motion to quash (and resubmitted a second motion) prior to entering the stipulation. He claims the court told him that the motions would be resolved after the multiple offender hearing. The record contradicts this assertion. First, the record contains only one pro se motion to quash the multiple offender bill of information filed by the defendant. Furthermore, the record reflects that the defendant was present in court when the trial court ruled that the motion to quash was moot, and the defendant did not object to the court’s dismissal of the motion. This assignment of error lacks merit.

VOLUNTARINESS OF HABITUAL OFFENDER STIPULATION

In his final pro se assignment of error, the defendant argues the trial court forced him to stipulate to the allegations in the habitual offender bill and accept the five-year plea offered by the state. The defendant claims the

trial court threatened to impose the maximum sentence of six years if the defendant did not accept the state's offer. He claims this coercive action by the court occurred at another proceeding, the transcripts for which are not part of the instant record. He complains about these "missing" transcripts (and other missing items of evidence) and requests that his habitual offender adjudication be vacated.

As a court of review, only that which is contained in the record may be reviewed on appeal. *State v. Vampran*, 491 So. 2d 1356, 1364 (La. App. 1st Cir.), *writ denied*, 496 So. 2d 347 (La. 1986). Since the appeal record is insufficient to address the merits of the defendant's claim of coercion by the trial court, the defendant must raise this claim in an application for post-conviction relief, wherein an evidentiary hearing can be held, if necessary. *State v. Walter*, 542 So. 2d 586, 590 (La. App. 1st Cir.), *writ denied*, 546 So. 2d 1222 (La. 1989). This assignment of error lacks merit or is otherwise not subject to appellate review.

REVIEW FOR ERROR

The defendant asks that this court examine the record for error under La. Code Crim. Proc. Ann. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under Article 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.

CONCLUSION

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

**HABITUAL OFFENDER ADJUDICATION AND SENTENCE
AFFIRMED.**