

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0004

STATE OF LOUISIANA

VERSUS

PHILLIP C. SKIPPER

RHP
[Signature]
[Signature]

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 11-08-0298, Section II
Honorable Richard D. Anderson, Judge Presiding**

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Defendant-Appellant
Phillip C. Skipper**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered JUN 17 2011

PARRO, J.

The defendant, Phillip C. Skipper, was charged by grand jury indictment with aggravated rape, a violation of LSA-R.S. 14:42. He pled not guilty and, following a jury trial, was found guilty as charged on March 4, 2010. On May 14, 2010, the defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. We affirm the conviction; however, we vacate the sentence and remand.

FACTS

On March 2, 2001, around 7 p.m., S.C. was returning from Walgreens to her apartment at Villa Apartments on Carol Marie Drive in Baton Rouge. As she walked toward the back door of her apartment, the defendant approached her with a handgun. The defendant pulled S.C.'s stockings and underwear down and told her to bend over and lean against the building. She complied. With his gun at the back of her head, the defendant vaginally raped S.C. The defendant took S.C.'s car, which the Baton Rouge police found abandoned two days later on Main Street.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues his sentence is unconstitutionally excessive. Specifically, the defendant contends that, pursuant to the recent United States Supreme Court opinion in **Graham v. Florida**, __ U.S. __, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), his life sentence without benefit of parole violates the Eighth Amendment by imposing cruel and unusual punishment. This contention has merit.

After being sentenced, the defendant timely filed a motion to reconsider sentence, in which he asserted that, pursuant to **Graham** (which was decided on May 17, 2010, three days after the defendant was sentenced), he could not be sentenced to life imprisonment without parole for his conviction of a non-homicide crime. In its order denying the motion to reconsider sentence, the trial court stated:

Having been found guilty of aggravated rape following a trial by jury, this Court sentenced defendant to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence as mandated by

La. R.S. 14:42. At the time of sentencing, this Court considered the sentence justified after reviewing all relevant mitigating and aggravating circumstances surrounding the charge including information received from a pre-sentence investigation.

In **Graham**, the United States Supreme Court held that the Eighth Amendment to the United States Constitution, made applicable to the States by the Due Process Clause of the Fourteenth Amendment, prohibits the imposition of a life-without-parole sentence on a juvenile offender who did not commit a homicide.¹ In the instant matter, the defendant was sixteen years old,² a juvenile, when he committed aggravated rape. When a decision of the United States Supreme Court results in a "new rule" regarding the conduct of criminal prosecutions, that rule is to be applied retroactively to all criminal cases pending on direct review or not yet final. **Griffith v. Kentucky**, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987). Therefore, the holding in **Graham** is to be applied to this case, because it is a new rule of substantive law clarifying the Eighth Amendment prohibition on cruel and unusual punishment.

Accordingly, although the defendant's conviction is affirmed, the defendant's sentence is vacated. The case is remanded to the trial court for further proceedings consistent with this opinion.

CONVICTION AFFIRMED; SENTENCE VACATED AND REMANDED.

¹ The **Graham** court also held that, "[a] State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." **Graham**, ___ U.S. at ___, 130 S.Ct. at 2034. The United States Supreme Court elaborated on this concept, as follows:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 2030.

² The defendant was born on December 18, 1984.