NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 2292

STATE OF LOUISIANA

VERSUS

RON PETERSON

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Judgment Rendered: June 8, 2012

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 503203, DIVISION "A"

THE HONORABLE RAYMOND S. CHILDRESS, JUDGE

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Hughes, J., dissents with reasons.

McDONALD, J.

The defendant, Ron Peterson, was charged by bill of information with sexual battery, a violation of La. R.S. 14:43.1. He pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced to seventy-five years imprisonment at hard labor with the first twenty-five years of the sentence to be served without benefit of parole, probation, or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied. The State filed a multiple offender bill of information. Following a hearing on the matter, the defendant was adjudicated a second-felony habitual offender. The trial court vacated the previously imposed seventy-five-year sentence and resentenced the defendant to ninety-nine years imprisonment at hard labor. The defendant now appeals, designating two assignments of error. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

Michelle had been dating the defendant for a few years. They both lived in Lacombe, but in separate houses. Sometimes when Michelle was at work, the defendant would watch her two children, her son and M.H., her daughter, at his house. One day during the summer of 2010 when M.H. was ten years old, she and her brother were at the defendant's house. At some point, while they were watching a movie, the defendant grabbed M.H.'s hand and put it on top of his clothes in his genital area.

ASSIGNMENTS OF ERROR

In the two related assignments of error, the defendant argues the trial court erred in denying the motion to reconsider sentence, and the sentence imposed is unconstitutionally excessive. Specifically, the defendant contends that his ninety-nine-year sentence as a second-felony habitual offender is excessive.

The defendant filed a motion to reconsider sentence after the trial court imposed the original seventy-five-year sentence. However, a thorough review of the record indicates the defendant did not make or file a second motion to reconsider sentence after the original sentence was vacated and the new ninety-nine-year sentence was imposed at the habitual offender hearing.[1] Under La. C.Cr.P. arts. 881.1(E) and 881.2(A)(1), the failure to make or file a motion to reconsider sentence shall preclude the defendant from raising an objection to the sentence on appeal, including a claim of excessiveness. See **State v. Mims**, 619 So.2d 1059 (La. 1993) (per curiam). The defendant, therefore, is procedurally barred from having this assignment of error reviewed because he failed to file a new motion to reconsider sentence after the trial court resentenced him as a habitual offender. See **State v. Chisolm**, 99-1055 (La. App. 4 Cir. 9/27/00), 771 So.2d 205, 212, writs denied, 2000-2965, 2000-3077 (La. 9/28/01), 798 So.2d 106, 108. See also **State v. Duncan**, 94-1563 (La. App. 1 Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam).

These assignments of error are without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

[1] When the defendant was resentenced, defense counsel stated, "Note defense objection to the harsh sentence, Your Honor." Defense counsel's objection did not constitute an oral motion to reconsider sentence. Moreover, a general objection to a sentence without stating specific grounds, including excessiveness, preserves nothing for appellate review. See **State v. Bickham**, 98-1839 (La. App. 1 Cir. 6/25/99), 739 So.2d 887, 891.

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HUGHES, J., dissenting.

I respectfully dissent.

Under the facts of this case, I would address the merits of a constitutionally excessive sentence.