NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1603

STATE OF LOUISIANA

VERSUS

SHELIA M. HAMILTON

Judgment Rendered: MAR 2 5 2011

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APPEALED FROM THE SIXTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. MARY
STATE OF LOUISIANA
DOCKET NUMBER 2008-177,984

THE HONORABLE JOHN E. CONERY, JUDGE

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and
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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

The defendant, Shelia M. Hamilton, was charged by bill of information with two counts of attempted second degree murder, violations of La. R.S. 14:30.1 and 14:27 (counts 1 and 2); unauthorized entry of an inhabited dwelling, a violation of La. R.S. 14:62.3 (count 3); and theft under $300.00, a violation of La. R.S. 14:67(B)(3) (prior to the 2010 amendment) (count 4). She initially pled not guilty on all counts. However, she later withdrew her not guilty pleas on count 1 and count 2. During a **Boykin** hearing, she entered a plea of guilty to count 1 and an **Alford** plea to count 2.[1] For each count, the defendant was sentenced to forty years at hard labor without benefit of probation, parole, or suspension of sentence. The sentences were ordered to run concurrently. The defendant now appeals, designating one assignment of error. We affirm the convictions and sentences.

FACTS

Because the defendant pled guilty, the facts were not fully developed during a trial. The factual basis for the guilty plea, provided by the prosecutor during the **Boykin** hearing, is as follows:

> [O]n September 18th of 2008 the Defendant entered a washeteria on the corner of Iberia and Eagle Streets in city of Franklin. . . . At the time of entering the washeteria, she was armed with a handgun. She entered the washeteria, and in the washeteria at the time were the victims, Danielle Hebert and Janoka Joseph.
>
> Upon entering and being armed with a handgun, she (the Defendant) comes into contact first with Janoka Joseph, points the handgun at her, attempts to fire the gun, and it "clicks[.]" It does not fire. She proceeds to the area of Danielle Hebert, points the gun at her, pulls the trigger, it fires, and one (1) round is lodged in her face - the side of her face.

[1] When the defendant pled guilty to the attempted second degree murder charges, counts 3 and 4 were dismissed.

Miss Hamilton flees the area. Miss Hebert, the victim who was actually shot, was able to get to the police station, covering her eye up with some bandages. An investigation proceeded from there. She received extensive medical treatment and is recovering from that.

The investigation that ensued revealed that Miss Hebert and Miss Joseph knew Miss Hamilton. They were able to identify her as the person who brandished the firearm and shot her - shot Miss Hebert and pulled the gun and pulled the trigger on Miss Joseph. An investigation ensued whereby Miss Hamilton's person was recovered . . . in the area of Baldwin, Louisiana.

Upon her coming into contact with law enforcement, she asked if Miss Hebert, the one who was actually shot, was alive. They recovered a firearm at the residence that she was at that was the same caliber as that recovered from the bullet from Miss Hebert's face.

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant argues that her forty-year sentences were excessive.

Pursuant to La. C. Cr. P. article 881.2(A)(2), a defendant is precluded from appealing a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. See **State v. Young**, 96-0195 (La. 10/15/96), 680 So.2d 1171, 1175. The term "plea agreement" encompasses a plea agreement whereby a defendant agrees to plead guilty in order to be sentenced under an agreed upon sentencing cap. See **Young**, 680 So.2d at 1173-74.

At the **Boykin** hearing, the trial court informed the defendant the sentence for attempted second degree murder is not less than ten years nor more than fifty years at hard labor without benefits. The trial court further informed the defendant that the "plea carries a minimum of ten (10) years without benefit up to a maximum of fifty (50) (years) without benefit, with each count to run concurrent,

or together." The defendant did not reserve the right at the **Boykin** hearing to review the sentences.

The defendant entered into a plea agreement on the record whereby she agreed to a maximum sentence of fifty years imprisonment. By the terms of the plea agreement, the defendant was assured that concurrent sentences would be imposed, thereby placing a cap on the possible sentences. See **State v. Martin**, 96-1042 (La. App. 3d Cir. 2/5/97), 688 So.2d 1259, 1261-62. See also Chief Judge Brown's concurrence in **State v. Tomlinson**, 44,078 (La. App. 2d Cir. 4/8/09), 8 So.3d 819, 822. Further, as part of the plea agreement, counts 3 and 4 were dismissed. Accordingly, the defendant is procedurally barred from appealing her sentences.

The assignment of error is without merit. The convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.