

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 0364

STATE OF LOUISIANA

VERSUS

SKYLER A. JENKINS

JEW
J.P.
ME

Judgment Rendered: September 14, 2011

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 481,775

Honorable William J. Crain, Judge

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and
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1st Appellant/Appellee
Skyler A. Jenkins

* * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Skyler A. Jenkins, was charged by amended bill of information with one count of sexual battery “by committing a sexual battery upon the person of E.C.[,] d/o/b 5/26/97,” between June 1, 2009 and July 31, 2009, a violation of La. R.S. 14:43.1(C)(2). He pled not guilty and moved to suppress his confession. Following a hearing, the motion was denied. Following a jury trial, he was found “guilty of sexual battery.” The defendant timely moved for a new trial and for a post verdict judgment of acquittal; however, the record does not reflect that the trial court ruled on those motions. He was sentenced to ten years at hard labor without benefit of probation, parole, or suspension of sentence. The State timely moved for reconsideration of sentence and for sentencing under La. R.S. 14:43.1(C)(2), but the motion was denied. The defendant timely moved for reconsideration of sentence, and his motion was also denied. He timely moved for appeal, and an order of appeal was entered. Thereafter, he filed another motion for a post verdict judgment of acquittal and another motion for a new trial, and the motions were denied.¹ He now appeals, contending: (1) the trial court erred in denying the motion to suppress the confession; and (2) the trial court erred in sentencing him without ruling on the timely motions for a post verdict judgment of acquittal and for a new trial. The State appeals from the denial of its motion for reconsideration of sentence. For the following reasons, we find the defendant’s second assignment of error to have merit, pretermitt consideration of the remaining assignments of error, vacate the sentence, and remand for a hearing and disposition of the outstanding motions for a post verdict judgment of acquittal and for a new trial.

**FAILURE TO RULE ON TIMELY MOTIONS FOR A POST VERDICT
JUDGMENT OF ACQUITTAL AND FOR A NEW TRIAL**

In assignment of error number two, the defendant argues the trial court erred

¹ In addition to these motions being untimely because they were filed after sentencing, the trial court lacked jurisdiction to consider them following the entering of the order of appeal. See La. C.Cr.P. art. 916.

in sentencing him without ruling on the timely motions for a post verdict judgment of acquittal and for a new trial. The State concedes the record fails to reflect any rulings on the motions at issue.

Louisiana Code of Criminal Procedure article 853 provides that “[a] motion for a new trial must be filed *and disposed of* before sentence.” (Emphasis added.) Similarly, La. C.Cr.P. art. 821 provides that “[a] motion for a post verdict judgment of acquittal must be made *and disposed of* before sentence.” (Emphasis added.) Counsel had alleged no specific prejudice arising out of the apparent failure of the trial court to rule on the motions. Nevertheless, it is preferred and the statutory provisions require that the trial court rule on the merits of an application for a new trial or post verdict judgment of acquittal before imposing sentence on the defendant. **State v. Magee**, 496 So.2d 562, 563 (La. App. 1st Cir. 1986).

Therefore, we vacate the sentence imposed upon the defendant and remand this matter to the trial court for a hearing and disposition of these outstanding motions. We pretermitt discussion of all remaining assignments of error raised by the defendant and by the State in its appeal.

This assignment of error has merit.

CONCLUSION

For the foregoing reasons, the sentence is vacated, and the matter is remanded for a hearing and disposition of the outstanding motions for a post verdict judgment of acquittal and a new trial.

SENTENCE VACATED; REMANDED WITH INSTRUCTIONS.