

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0155

STATE OF LOUISIANA

VERSUS

TONY KEITH STRAUB, JR.

Judgment Rendered: June 10, 2011.

\* \* \* \* \*

On Appeal from the  
22nd Judicial District Court,  
In and for the Parish of St. Tammany,  
State of Louisiana  
Trial Court No. 453488

The Honorable Martin E. Coady, Judge Presiding

\* \* \* \* \*

Frederick H. Kroenke, Jr.  
Baton Rouge, LA

Attorney for Defendant/Appellant,  
Tony Keith Straub, Jr.

Walter P. Reed  
District Attorney  
Covington, LA  
Kathryn W. Landry  
Baton Rouge, LA

Attorneys for the State of Louisiana

\* \* \* \* \*

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

**CARTER, C. J.**

The defendant, Tony Keith Straub, Jr., was charged by grand jury indictment with one count of aggravated rape of a victim under the age of thirteen years, a violation of La. R.S. 14:42(A)(4), and pled not guilty. After a jury found the defendant guilty as charged, the trial court sentenced the defendant to life imprisonment at hard labor with the Department of Public Safety and Corrections, and, in recognition of the Supreme Court's ruling in *Graham v. Florida*, 130 S.Ct. 2011 (2010), added that the defendant would have the potential benefit of parole at a later date.<sup>1</sup> The defendant's post-trial motions were denied. The defendant now appeals, challenging the sentence imposed and complaining that he was denied a hearing on his post-trial motions. The defendant does not challenge his conviction, which we hereby affirm.<sup>2</sup>

**DISCUSSION**

After being found guilty, the defendant filed motions for new trial, in arrest of judgment, and for post-verdict judgment of acquittal. The trial court sentenced the defendant then denied the pending motions.

Motions for new trial, in arrest of judgment, and for post-verdict judgment of acquittal must be disposed of before sentencing. La. Code Crim. Proc. Ann. arts. 821A, 853A, and 861. Further, unless the defendant pleads guilty or expressly waives it, a delay of at least twenty-four hours is

---

<sup>1</sup> In *Graham*, 130 S.Ct. at 2030, the Supreme Court held that the Eighth Amendment forbids the sentence of life without parole for a juvenile offender who did not commit homicide. The defendant was under the age of eighteen when this crime occurred.

<sup>2</sup> Because the defendant has not challenged his conviction, and because the victim of the crime is a juvenile, we do not set forth the facts of the crime herein.

required after motions for new trial or in arrest of judgment are overruled before sentence can be imposed. La. Code Crim. Proc. Ann. art. 873.

In this case, the requirements of La. Code Crim. Proc. Ann. arts. 821A, 853A, 861 and 873 were not met. The trial court did not dispose of the pending motions before sentencing the defendant. Further, the trial court did not wait twenty four hours after denying the motions before imposing sentence on the defendant, who neither waived the delays nor pleaded guilty and challenges the sentence on appeal. Accordingly, we vacate the sentence and remand the case to the trial court for resentencing.<sup>3</sup> See *State v. Augustine*, 555 So. 2d 1331, 1333-35 (La. 1990); *State v. Pursell*, 04-1775 (La. App. 1 Cir. 5/6/05); 915 So. 2d 871, 874. This opinion is issued in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2.A(1).

**CONVICTION AFFIRMED; SENTENCE VACATED;  
REMANDED FOR RESENTENCING.**

---

<sup>3</sup> We do not address the defendant's remaining arguments regarding the sentence imposed by the trial court as it is herein vacated.