

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0615

STATE OF LOUISIANA

VERSUS

WILLIE ONEAL COUSIN

Judgment Rendered: November 9, 2011

Appealed from the
Thirty-Second Judicial District Court
in and for the Parish of Terrebonne, State of Louisiana
Trial Court Number 504,642

Honorable Timothy C. Ellender, Judge Presiding

Joseph Waitz
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State of Louisiana

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Willie Oneal Cousin

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Whipple
Kuhn
Guidry

WHIPPLE, J.

The defendant, Willie Oneal Cousin, was charged by bill of information with two counts of armed robbery with a firearm, in violation of LSA-R.S. 14:64.3.¹ He initially pled not guilty to both charges. Subsequently, the defendant entered a plea of guilty to both charges. The defendant was sentenced to imprisonment at hard labor, without the benefit of probation, parole or suspension of sentence, for twenty years on each of the armed robbery charges. The court ordered that these sentences be served concurrently. The defendant was also sentenced to an additional penalty of imprisonment at hard labor for five years, without benefit of probation, parole, or suspension of sentence for use of a firearm in each of the armed robbery counts. The court ordered that the firearm sentences be served consecutively to each other and consecutively to the armed robbery sentences. The defendant moved for reconsideration of the sentence. The trial court denied the motion. The defendant now appeals, urging the following three assignments of error:

1. The trial court erred by accepting a guilty plea when the bill of information was legally deficient.
2. The trial court erred in denying the motion to reconsider sentence.
3. The sentence is constitutionally excessive.

We affirm the conviction and sentence.

FACTS

Because the defendant pled guilty, the facts of the case were never fully developed for the record. The following facts were gleaned from the sentencing hearing:

This was an individual, it was a lady in her early fifties. She was – or late forties. She was shopping at Wal-Mart one night on Grand Caillou Road. She had her minor child with her. Two

¹Codefendant Christopher Howard Guerin was also charged in the bill of information. He eventually pled guilty as charged.

individuals approached her with a handgun and robbed her of her purse. She called the police. A few minutes later another individual who was washing his car at a carwash down the street was robbed by the same two individuals within minutes later at gunpoint. So it was two separate robberies, at two separate locations, the same night.

ASSIGNMENT OF ERROR 1

In his first assignment of error, the defendant argues the trial court erred in allowing him to plead guilty to armed robbery. Specifically, he alleges that the bill of information was legally defective because it only contained the statutory citation to the sentencing enhancement for use of a firearm during an armed robbery (LSA-R.S. 14:64.3). Thus, the defendant asserts, the bill of information failed to properly charge him with armed robbery under LSA-R.S. 14:64.

A defendant has a constitutional right to be advised, in a criminal prosecution, of the nature and cause of the accusations against him. La. Const. art. I, § 13. Louisiana Code of Criminal Procedure article 464 provides, in pertinent part, “[t]he indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” The bill of information must contain all the elements of the crime intended to be charged in sufficient particularity to allow the defendant to prepare for trial, to enable the court to determine the propriety of the evidence that is submitted upon the trial, to impose the appropriate penalty on a guilty verdict, and to protect the defendant from double jeopardy. State v. Comeaux, 408 So. 2d 1099, 1106 (La. 1981).

A defendant may not complain of technical insufficiency in an indictment for the first time after conviction, when the indictment fairly informed the accused of the charge against him and the defendant is not prejudiced by the defect. See LSA-C.Cr.P. art. 487; State v. McLean, 525 So. 2d 1251, 1252 n.1 (La. App. 1st Cir.), writ denied, 532 So. 2d 130 (La. 1988). After the verdict, a defendant ordinarily cannot complain of the insufficiency of a bill of information or indictment "unless it is so defective that it does not set forth an identifiable offense

against the laws of this state, and inform the defendant of the statutory basis of the offense." State v. Robicheaux, 412 So. 2d 1313, 1321 (La. 1982).

As the defendant correctly asserts, the bill of information in this case alleges that the defendant committed two counts of armed robbery with use of a firearm and lists only LSA-R.S. 14:64.3. However, as the state correctly points out, prior to pleading guilty to the charged offenses, the defendant raised no issue regarding the form or substance of the bill of information. The defendant did not file a motion to quash contesting the validity of the bill of information. At the Boykin hearing, the defendant pled guilty to two counts of armed robbery with a firearm. Prior to accepting the defendant's guilty plea, the court explained:

The nature of these charges, that they are felony offenses and could result in a penitentiary sentence if you are guilty of it. The minimum and maximum sentence provided by law for armed robbery is imprisonment at hard labor and fall from 5 to 99 years [sic] without the benefit of parole, probation or suspension of sentence. Where the dangerous weapon used in the commission of an armed robbery is a firearm, the offender shall be imprisoned at hard labor for an additional period of 5 years without the benefit of parole, probation or suspension of sentence. This additional sentence shall be served consecutively to the sentence imposed for the armed robbery. The sentence provided by law applies to each count charged.

Furthermore, it is well settled that an error in statutory citation in a bill of information does not warrant reversal of a conviction where the defendant did not object to the citation, had no doubt as to the charge against him, and was not misled. LSA-C.Cr.P. art. 464; State v. Camou, 633 So. 2d 357, 358 (La. App. 1st Cir. 1993). In this case, the bill of information was clearly worded as to the particular crimes with which the defendant was charged. The court also specifically discussed the nature of the charges and the possible penalties to the defendant. At no time did the defendant express any doubt as to the nature of the charges. In fact, the defendant specifically indicated he understood the nature of the charges explained by the court. Thus, the record clearly reflects that the defendant was not misled by the omission of the statutory citation for armed

robbery and, therefore, the error does not warrant reversal of the defendant's conviction. The defendant was not prejudiced by the lack of this statutory citation.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR 2 & 3

In his second and third assignments of error, the defendant argues the trial court erred in imposing excessive sentences and in denying his request for reconsideration of the sentences. Specifically, he asserts the sentences imposed (which total thirty years) amount to needless infliction of excessive pain and suffering. The defendant notes that he is a youthful offender, only twenty-five years old, and the instant offenses were his first felony convictions. Additionally, the defendant notes that no one was physically hurt during the commission of the offenses.

As the state correctly notes in its brief, LSA-C.Cr.P. art. 881.2(A)(2) provides that "[t]he defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea." The prohibition in this article is applicable to both agreed specific sentences and agreed sentence ranges or sentencing caps. See State v. Young, 96-0195 (La. 10/15/96), 680 So. 2d 1171, 1174-75; State v. Fairley, 97-1026 (La. App. 1st Cir. 4/8/98), 711 So. 2d 349, 351-52.

Based upon the record before us, we find that the defendant voluntarily entered into a plea agreement wherein he agreed, along with the trial judge and the prosecutor, that he would receive the sentences of twenty years at hard labor, without the benefit of probation, parole or suspension on each armed robbery charge, and five additional years for the use of a firearm on each count. Therefore, we find Article 881.2(A)(2) precludes defendant from appealing his sentences imposed in conformity with a plea agreement, which was set forth in the record at

the time of his plea. Thus, the trial court did not err in denying the defendant's motion for reconsideration of the sentences.

These assignments also lack merit.

Accordingly, for the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.