

Judgment rendered January 18, 2012
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 47,026-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

DESHUNSKI DEWAYNE BURKS

Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 290,107

Honorable Craig Marcotte, Judge

* * * * *

JAMES E. BEAL
Louisiana Appellate Project

Counsel for
Appellant

DESHUNSKI DEWAYNE BURKS

Pro se

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Appellee

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Before GASKINS, CARAWAY and LOLLEY, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

PER CURIAM.

This appeal arises from the First Judicial District Court, Parish of Caddo, the Honorable Craig Marcotte presiding. Our error patent review reveals, and the state concedes, the prematurity of this appeal caused by the trial court's failure to rule on motions for new trial and for post-verdict judgment of acquittal.

On January 26, 2011, the defendant was convicted of possession of cocaine. The appellant's trial counsel filed the post-verdict motions on February 24, 2011. On May 12, 2011, without first having ruled on the defendant's post-verdict motions, the trial court sentenced the defendant, a third-felony offender, to life imprisonment without the benefit of parole, probation or suspension of sentence.

On December 12, 2011, this Court received an order from the trial court, dated December 9, 2011, denying the defendant's motions for new trial and post-verdict judgment of acquittal. However, pursuant to La. C. Cr. P. arts. 821 and 851, the trial court is required to rule on a defendant's motion for new trial or motion for post-verdict judgment of acquittal prior to sentencing. Failure to do so requires the sentence to be vacated and the matter remanded for further proceedings. *State v. Randolph*, 409 So. 2d 554 (La. 1981); *State v. Jackson*, 614 So. 2d 783 (La. App. 2d Cir. 1993); *State v. Winslow*, 45,414 (La. App. 2d Cir. 12/15/10), 55 So. 3d 910, writ denied, 2011-0192 (La. 6/17/11), 63 So. 3d 1033.

Accordingly, the sentence imposed is hereby set aside and vacated and the matter is remanded for further proceedings. The appellant may

appeal any adverse rulings or any sentence subsequently imposed. *State v. Jackson, supra.*

Additionally, given the foregoing, the defendant's motion for an extension of time to file his pro se brief is denied as moot.

SENTENCE SET ASIDE AND VACATED; CASE REMANDED.