

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

No. 56,083-KH

STATE OF LOUISIANA

VERSUS

LESTER C. BALL

FILED: 08/20/24

RECEIVED: PM 08/08/24

On application of Lester C. Ball for POST CONVICTION RELIEF in No. 190,267 on the docket of the First Judicial District, Parish of CADDO, Judge John D. Mosely, Jr.

Pro se

Counsel for:
Lester C. Ball

James Edward Stewart, Sr.

Counsel for:
State of Louisiana

Before COX, HUNTER and MARCOTTE, JJ.

WRIT GRANTED; REVERSED AND REMANDED.

The applicant, Lester Ball, seeks review of the trial court's denial of his motion to correct an illegal sentence. The applicant was convicted of armed robbery, adjudicated a third felony habitual offender, and sentenced to life imprisonment. The applicant asserts that his life sentence is illegal in light of the Louisiana Supreme Court's pronouncement in *State ex rel Esteen v. State*, 16-0949 (La. 1/30/18), 239 So. 3d 233.

At the time of the applicant's underlying offense in 1995, La. R.S. 15:529.1(A)(1)(b)(ii) provided:

If the third felony *or either of* the two prior felonies is a felony defined as a crime of violence under La. R.S. 14:2(13) or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for more than five years or any other crime punishable by imprisonment for more than twelve years, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation or suspension of sentence. (Emphasis added.)

In 2001, by enactment of 2001 La. Acts 403 (effective June 15, 2001), the legislature amended La. R.S. 15:529.1(A)(1)(b)(ii) to provide:

If the third felony *and* the two prior felonies are felonies defined as a crime of violence under R.S. 14:2(13), a sex offense as defined in R.S. 15:540 *et seq.* when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence. (Emphasis added.)

In 2006, the legislature enacted La. R.S. 15:308, which provided for retroactive application of the 2001 amendments including La. R.S. 15:529.1(A)(1)(b)(ii), to the class of persons who committed crimes, who were convicted, or who were sentenced prior to June 15, 2001.

In *Esteen, supra*, the Louisiana Supreme Court held that pursuant to La. R.S. 15:308, an offender may seek resentencing under the more lenient penalty provisions by motion to correct illegal sentence in the proper district court.

At the time the applicant committed the underlying offense of armed robbery, La. R.S. 15:529.1(A)(1)(b)(ii) required that he be sentenced to life imprisonment as a third-felony offender. However, under the 2001 amended version of La. R.S. 15:529.1(A)(1)(b)(ii), made retroactive to the applicant's case per La. R.S. 15:308(B), the applicant's life sentence is illegal because only two of his three prior felony convictions fall into the categories described in La. R.S. 15:529.1(A)(1)(b)(ii). The applicant's prior conviction for access device fraud is not a crime of violence, a sex offense, or a drug offense, nor is it a crime punishable by imprisonment for 12 years or more. Thus, under *Esteen, supra*, we find that the applicant properly filed a motion to correct illegal sentence with the district court and that his claim has merit.

Accordingly, this writ is granted and the trial court's ruling denying the applicant's motion is reversed. This matter is remanded to the trial court for resentencing under La. R.S. 15:529.1(A)(1)(b)(i) "for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction."

Shreveport, Louisiana, this 20 day of September, 2024.

Com JSC MLH

FILED: September 20, 2024

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DEPUTY CLERK