NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1342

STATE OF LOUISIANA

VERSUS

ANDREW K. GALATAS

Judgment rendered February 13, 2012.

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 414501-1
Honorable William J. Knight, Judge

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HON. WALTER P. REED
DISTRICT ATTORNEY
COVINGTON, LA
AND
KATHRYN W. LANDRY
SPECIAL APPEALS COUNSEL
BATON ROUGE, LA

ATTORNEYS FOR
STATE OF LOUISIANA

FRANK SLOAN
MANDEVILLE, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
ANDREW K. GALATAS

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

The defendant, Andrew K. Galatas, was charged by bill of information with possession with intent to distribute marijuana, a violation of La. R.S. 40:966(A)(1) (count 1); and pornography involving juveniles, a violation of La. R.S. 14:81.1 (count 2). He pled not guilty and, following a jury trial, was found guilty as charged on both counts. The State subsequently filed a habitual offender bill of information. At the habitual offender hearing, the defendant was adjudicated a fourth-felony habitual offender and was sentenced to sixty years imprisonment at hard labor without the benefit of probation or suspension of sentence for the possession with intent to distribute marijuana conviction (count 1). He was sentenced to forty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence for the pornography involving juveniles conviction (count 2). The sentences were ordered to run consecutively. The defendant filed a motion to reconsider sentence, which was denied. The defendant appealed. In an unpublished opinion, this court affirmed the defendant's convictions, but vacated the habitual offender adjudications and sentences and remanded for further proceedings. Because the sentences were vacated, we pretermitted addressing the defendant's third assignment of error, which challenged the sentences as excessive.[1] See **State v. Galatas**, 2010-0980 (La. App. 1 Cir. 12/22/10), 57 So.3d 607. Another habitual offender hearing was held on March 31, 2011. The trial court adjudicated the defendant a fourth-felony habitual offender and, again, sentenced him to sixty years imprisonment at hard labor without the benefit of probation or suspension of sentence for the possession with intent to distribute marijuana conviction (count 1), and to forty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence for the pornography involving juveniles conviction (count 2). The sentences were ordered to

[1] Also in the unpublished opinion we noted sentencing error because, according to the record, the trial court had not ruled on the defendant's motions for new trial and postverdict judgment of acquittal. A transcript of a November 13, 2009 hearing was made a part of the new appellate record, which indicates the trial court did, in fact, deny the defendant's motions for new trial and postverdict judgment of acquittal.

run consecutively. The defendant now appeals, designating two assignments of error. We affirm the habitual offender adjudications and sentences.

FACTS

On April 13, 2006, based on information from a complainant that the defendant owned a computer that contained child pornography, Lisa Freitas, an FBI agent assigned to the New Orleans field office, executed a search warrant, along with other FBI agents, at the defendant's trailer on Oak Drive in Slidell, Louisiana. The defendant's computer was seized. During the search of the defendant's trailer, agents also found a digital scale and fourteen bags of marijuana totaling about one pound. An FBI agent trained in forensic computer examination imaged the hard drive of the defendant's computer and examined the files, both saved and deleted. The hard drive contained many images and video clips of child pornography.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the trial court erred in failing to "actually sentence" him on count 2 (the pornography involving juveniles conviction).

At the resentencing on March 31, 2011, the trial court stated in pertinent part:

> And as to Count 1, docket number 414501, the crime of possession with intent to distribute marijuana, the Court once again sentences Mr. Galatas to serve a term of sixty (60) years without benefit of probation, parole, or suspension of sentence at hard labor.[2]. . .
>
> The Court had previously imposed upon Mr. Galatas in Count 2, the sentence of forty (40) years for pornography involving juveniles, which was to be served consecutively with the sentence imposed in Count 1.

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[2] There is no parole restriction for a conviction of possession with intent to distribute marijuana. See La. R.S. 40:966(B)(3). Shortly following sentencing, the issue regarding parole restriction was addressed and corrected:

> Mr. Gardner [prosecutor]: With regard to Count 1, I believe that the Court indicated that was sixty years (60) without benefit of probation or suspension of sentence.
> The Court: That's correct.

The minutes also reflect that for the possession with intent to distribute marijuana conviction, the defendant was sentenced to sixty years at hard labor without benefit of probation or suspension of sentence.

And the Court will reiterate that that is the sentence which was imposed in connection therewith.

The defendant asserts he was not resentenced to forty years because the trial court merely reiterated the sentence that *was* imposed. We do not agree. When the defendant's sentencing transcript is read in its entirety, it is clear the trial court was resentencing the defendant to the same sentences he had previously received and that were vacated. Following the trial court's imposition of the new sentences, the prosecutor reiterated the sentence for pornography involving juveniles: "With regard to Count 2, that was forty years (40) without benefit of probation, parole, or suspension of sentence, and that they ran consecutively." The minutes indicate: "The sentence previously imposed on Count 2 is to remain intact as previously sentenced on December 3, 2009 and is to be served consecutive to the sentence imposed on Count 1[.]"

The defendant was properly resentenced. Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues that the sentence imposed on count 2 is illegally excessive. Specifically, the defendant contends that his forty-year sentence for pornography involving juveniles should not run consecutively to his sixty-year sentence.

According to the defendant, both of his counts are for illegal possession of contraband, and the possessions occurred simultaneously for a period of time. Therefore, the trial court was incorrect when it asserted that the two crimes, which were detected at the same time, did not occur simultaneously.

The defendant's motion to reconsider sentence, which was filed on December 3, 2009, states that the "sentence is, on its face, constitutionally excessive." The defendant did not raise in his motion the issue of excessiveness based on consecutive rather than concurrent sentences. Louisiana Code of Criminal Procedure article 881.1(B) requires a party who is filing a motion to reconsider sentence to state in the motion the specific grounds on which the motion is based. A party is precluded from urging on appeal any

ground that was not raised in the motion to reconsider. La. Code Crim. P. art. 881.1(E). Thus, the defendant's claim in his motion that his sentence was "excessive" was insufficient to preserve the claim he now attempts to raise on appeal; namely, that the trial court erred by imposing consecutive sentences. See **State v. Arbuthnot**, 625 So.2d 1377, 1385 (La. App. 1 Cir. 1993).

Moreover, if we were to consider the claim regarding consecutive sentences, we would find it baseless. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Jones**, 2004-1524, p. 3 (La. App. 1 Cir. 3/24/05), 907 So.2d 139, 141. Louisiana Code of Criminal Procedure article 883 provides, in pertinent part:

> If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. Other sentences of imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently.

The charge for possession with intent to distribute marijuana occurred on April 13, 2006, while the pornography charge was based on acts occurring over a period of time from July 1, 2005, to April 13, 2006. The sentences in this case were imposed for offenses that were not based on the same act or transaction and did not constitute parts of a common scheme or plan. See **Jones**, 2004-1524 at 5, 907 So.2d at 142-143. Further, they occurred at different times. Accordingly, we find no abuse of discretion in the trial court's imposition of consecutive sentences.

This assignment of error is without merit.

HABITUAL OFFENDER ADJUDICATIONS AND SENTENCES AFFIRMED.