

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1767

STATE OF LOUISIANA

VERSUS

SIDNEY POINDEXTER

Judgment rendered May 6, 2011.



Appealed from the
17th Judicial District Court
in and for the Parish of Lafourche, Louisiana
Trial Court No. 472320
Honorable Jerome J. Barbera, III, Judge

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ATTORNEY FOR
DEFENDANT-APPELLANT
SIDNEY POINDEXTER

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

PETTIGREW, J.

The defendant, Sidney Poindexter, was charged by bill of information with home invasion, a violation of La. R.S. 14:62.8.¹ The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The defendant filed a pro se motion "to reconsider sentence" prior to sentencing, which was denied by the trial court as premature. The trial court denied the defendant's motion for new trial. Upon waiving sentencing delays, the defendant was sentenced to fifteen years imprisonment at hard labor, with the first five years ordered to be served without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, assigning error to the constitutionality of the imposed sentence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On June 27, 2009, the police were dispatched to a domestic disturbance scene at 707 St. Louis Street in Raceland, Louisiana. The defendant's wife, Bessie Poindexter (the victim), called 911. On June 25, 2009, two days prior to the instant offense, the victim obtained a protective order against the defendant for prior domestic abuse. The protective order granted, in part, the use of the residence to the victim and prohibited the defendant from going within one hundred feet of the residence. The defendant was served with the protective order on June 25, 2009. Accordingly, the defendant was not living with the victim at the time of the instant offense.

On June 27, 2009, the victim arrived at her home and was approached by the defendant. As she attempted to enter the house, the defendant walked up behind her, and she pushed him away. The defendant demanded to be allowed into the home and hit the victim in the chest, pushing her backward into the house. The defendant entered the home as the victim yelled, pleading with him to leave. The defendant

¹ The defendant was originally charged with aggravated burglary and the charge was later amended as stated above. A separate bill of information was filed charging misdemeanor offenses (not part of the instant appeal) related to the incident leading to the instant offense. According to the record, the State nolle prossed the charges in that bill of information.

began searching the home, yelling that he wanted to see who was in the house. The victim's brother, Darin Mack, was present at the time, and the victim told him to call the police. The defendant went into the kitchen and retrieved a twelve-inch knife. The victim then took the telephone from Mack and informed the 911 dispatcher that she had a protective order against her husband and that he was in her house, armed with a knife. The victim then ran out of the front door of the trailer home and fell down the steps. The defendant pursued the victim and held the knife over her after she fell on the ground. The victim still had the telephone in her hand at the time, and the defendant demanded that she call and cancel the request for emergency assistance. After the initial telephone call had been disconnected, the dispatcher called the victim's home. With the defendant waving the knife at her in a threatening manner, the victim answered the phone and indicated that she no longer needed assistance.

The dispatcher continued to question the victim and informed her that the police were en route to her residence. The victim remained on the telephone with the dispatcher as Mack helped her off the ground. Just before the police arrived at the scene of the disturbance, the victim ran into the street, and the defendant chased after her with the knife, pulling it back in a threatening manner. When the police arrived, they ordered the defendant to drop his weapon. When he refused, they used a taser gun to disarm him. After a struggle, the defendant was taken into custody.

ASSIGNMENT OF ERROR

In the defendant's sole assignment of error, he argues that the sentence imposed by the trial court is constitutionally excessive based on the circumstances of the instant case. The defendant notes that while a weapon was introduced in this case, he never actually used the knife and no one was harmed. The defendant also notes that the imposed sentence will keep him incarcerated until his late fifties. The defendant further notes that the sentencing guidelines should have been considered.

Herein, the defendant was sentenced on June 22, 2010. The record shows the defendant did not make or file a timely oral or written motion to reconsider sentence pursuant to La. Code Crim. P. art. 881.1. We note that on June 15, 2010, prior to the

sentencing date, the defendant filed a handwritten pro se motion entitled, "MOTION TO RECONSIDER SENTENCE PURSUANT TO LA. C. CR. P. ART. 881.1." In that motion the defendant noted that his trial counsel moved for a continuance of the trial and specifically stated: "I ask for reconsideration due to the FACT that all my witnesses wasn't [sic] present and also not having any knowledge of home invasion I now ask that the courts give me a fair trail [sic] I feel as if my Constitutional Rights were violated." The trial court denied the motion as premature. The defendant's motion for new trial, filed on June 2, 2010, also in part challenged the trial court's denial of the motion to continue the trial to secure witnesses.

Article 881.1A(1) provides: "In felony cases, within thirty days *following* the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence." (Emphasis added.) An objection to a sentence or a motion to reconsider sentence filed before the sentence is imposed is premature. Moreover, the motion filed in this case, though styled a motion to reconsider sentence, does not raise any grounds for challenging the sentence. Under the clear language of Article 881.1E, a failure to make or file a motion to reconsider sentence precludes a defendant from raising an objection to the sentence on appeal. One purpose of the motion to reconsider sentence is to allow the defendant to raise any errors that may have occurred during sentencing while the trial judge still has the jurisdiction to change or correct the sentence. The defendant may point out such errors or deficiencies, or may present argument or evidence not considered in the original sentencing, thereby preventing the necessity of a remand for resentencing. **State v. Mims**, 619 So.2d 1059 (La. 1993) (per curiam).

The defendant's failure to timely make or file and include these specific grounds in a motion to reconsider sentence precludes him from urging same for the first time on appeal. Thus, the defendant is procedurally barred from having the sole assignment of error reviewed. See **State v. Felder**, 2000-2887, p. 10 (La. App. 1 Cir. 9/28/01), 809 So.2d 360, 369, writ denied, 2001-3027 (La. 10/25/02), 827 So.2d 1173.

CONVICTION AND SENTENCE AFFIRMED.