

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2019-KH-00771

VS.

JARVIS BROWN

IN RE: Jarvis Brown - Applicant Defendant; Applying For Supervisory Writ, Parish of Orleans Criminal, Criminal District Court Number(s) 520-744, Court of Appeal, Fourth Circuit, Number(s) 2019-K-202;

October 14, 2020

Writ application granted in part; denied in part. See per curiam.

WJC

BJJ

JDH

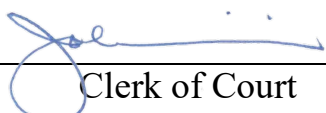
SJC

JTG

JHB

Weimer, J., would deny.

Supreme Court of Louisiana
October 14, 2020



Clerk of Court
For the Court

10/14/20

SUPREME COURT OF LOUISIANA

No. 2019-KH-00771

STATE OF LOUISIANA

versus

JARVIS BROWN

**ON SUPERVISORY WRITS TO THE CRIMINAL
DISTRICT COURT, PARISH OF ORLEANS**

PER CURIAM:

Writ granted in part; otherwise denied. Defendant was convicted of three counts of armed robbery, committed with a firearm, and two misdemeanors: possession of marijuana and access device fraud. The district court sentenced him to serve concurrently 60 years imprisonment at hard labor without parole eligibility for each armed robbery committed with a firearm, and six months for each misdemeanor. The court of appeal affirmed the convictions and misdemeanor sentences. However, the court of appeal found, as an error patent, that the sentences for armed robbery were indeterminate because the district court did not specify whether the 60-year terms included the mandatory five-year sentence enhancement required by La.R.S. 14:64.3(A). Therefore, the court of appeal vacated those sentences and remanded for resentencing. *State v. Brown*, 16-0965 (La. App. 4 Cir. 5/3/17), 219 So.3d 518, *writ denied*, 17-1145 (La. 6/1/18), 243 So.3d 1061.

The court of appeal erred in finding the sentences were indeterminate as an error patent. The 1926 indeterminate sentence law provided that, except as to certain enumerated offenses, the sentence imposed should include both a minimum and maximum term. *See* 2916 La. Acts 222. Under this law, after serving the minimum

term of his sentence a prisoner was eligible for parole. To remedy confusion over the correct interpretation and application of this law, Article 529 of the Code of Criminal Procedure was amended in 1942 to require determinate sentences of fixed terms of imprisonment. *See* 1942 La. Acts 46.

At present, La.C.Cr.P. art. 879 continues to require that a term of imprisonment be a fixed number of years by providing that “[i]f a defendant who has been convicted of an offense is sentenced to imprisonment, the court shall impose a determinate sentence.” This article is routinely misapplied by the intermediate appellate courts to find determinate, fixed term sentences to be indeterminate when a district court has not specified that five years of a fixed sentence result from the firearms enhancement provision of La.R.S. 14:64.3(A). The intermediate appellate courts vacate such sentences in errors patent review. *See, e.g., State v. Billingsley*, 11-1425 (La. App. 3 Cir. 3/14/12, 86 So.3d 872; *State v. Long*, 11-0313 (La. App. 5 Cir. 12/13/11), 81 So.3d 875; *State v. Adams*, 10-1140 (La. App. 4 Cir. 6/1/11), 68 So.3d 1165; *State v. Weaver*, 38,322 (La. App. 2 Cir. 5/12/04), 873 So.2d 909.

As a rule of thumb, however, if it is possible to calculate a parole eligibility or full-term release date, then the sentence is not indeterminate. While it is possible that defendant’s sentences did not include the firearms enhancement and were therefore *illegally lenient*, they were not *indeterminate*. Furthermore, the State did not complain on appeal that the sentences were illegally lenient. Therefore, the court of appeal erred in finding as an error patent that they were indeterminate and in vacating them, absent any complaint by the State that the district court failed to apply the mandatory firearms enhancement.

In reviewing defendant’s application for supervisory writs from the denial of his motion to correct an illegal sentence, it became apparent that the minute entries do not

show that defendant was ever resentenced, as ordered by the court of appeal in *State v. Brown, supra*. Therefore, we grant defendant's application for the limited purpose of remanding to the district court to resentence defendant, if it has not already done so, and to furnish this court with proof of compliance. The application is otherwise denied.

REMANDED