

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2019-KP-01330

VS.

CARDELL DEMOND ROBINSON

IN RE: Cardell Demond Robinson - Applicant Defendant; Applying For Writ Of
Certiorari, Parish of East Baton Rouge, 19th Judicial District Court Number(s) 11-
10-0063, Court of Appeal, First Circuit, Number(s) 2019KW0690;

November 24, 2020

Writ application granted. Reversed and remanded. See per curiam.

JDH

BJJ

SJC

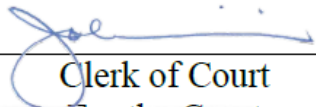
JTG

JBM

Weimer, J., concurs and assigns reasons.

Crain, J., dissents and assigns reasons.

Supreme Court of Louisiana
November 24, 2020



Clerk of Court
For the Court

11/24/20

SUPREME COURT OF LOUISIANA

No. 2019-KP-1330

STATE OF LOUISIANA

VERSUS

CARDELL ROBINSON

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

PER CURIAM

Writ granted. In 2011, Defendant, Cardell Robinson, was convicted of possession with intent to distribute marijuana in violation of La. R.S. 40:966. He was subsequently adjudicated a four-time habitual offender and given the then-mandatory sentence of life imprisonment pursuant to La. R.S. 15:529.1.¹

Counsel for Mr. Robinson filed a motion to reconsider the sentence. It is at this stage that Mr. Robinson could have asked the trial court to declare his sentence excessive under Article I, Section 20 of the Louisiana Constitution even though it fell within the statutory limits provided by the Legislature. *State v. Johnson*, 97-1906 (La. 3/4/98); 709 So.2d 672, 676; *State v. Sepulvado*, 367 So.2d 762, 767 (La. 1979). In *State v. Dorthey*, we held that this power extends to the minimum sentences mandated by the Habitual Offender Law and that the trial court must reduce a defendant's sentence to one not constitutionally excessive if the trial court finds that the sentence mandated by the Habitual Offender Law “makes no measurable contribution to acceptable goals of punishment” or is nothing more than “the

¹ In 2017, the Louisiana Legislature passed ameliorative amendments to the Habitual Offender Law, such that, if he were convicted today, Mr. Robinson would not be subject to a mandatory minimum life sentence, but rather a minimum 20-year sentence. La. R.S. 15:529.1(A)(4)(b).

purposeful imposition of pain and suffering” and “is grossly out of proportion to the severity of the crime.” 623 So.2d 1276, 1280–81 (La. 1993). However, when he argued the motion to reconsider the sentence, Mr. Robinson’s counsel was unaware of our holding in *Dorthey*, and, therefore, did not seek a downward departure on the basis that a life sentence would be excessive. Due to counsel’s error, the trial court did not consider whether a downward departure was warranted, and the trial record was not fully developed with regard to this question. The trial court denied the motion to reconsider.

The undeveloped trial record prevented the appellate court from performing a meaningful *Dorthey* analysis. Thus, the court of appeal upheld the sentence after performing a review much like that when a bare claim of excessiveness is before an appellate court. *State v. Robinson*, 12-1731, p. 3 (La. App. 1 Cir. 4/26/13) (unpub’d), available at 2013 WL 1791051, *writ denied*, 13-1234 (La. 11/22/13), 126 So.3d 480.

In 2018, Mr. Robinson subsequently challenged the life sentence in a motion to correct illegal sentence. At that time, Mr. Robinson was barred from raising a claim of ineffective assistance of sentencing counsel on collateral review pursuant to our earlier holdings in *State ex rel. Melinie v. State*, 93-1380 (La. 1/12/96), 665 So.2d 1172 and *State v. Cotton*, 09-2397 (La. 10/15/10), 45 So.3d 1030. The trial court granted the motion to correct illegal sentence on April 22, 2019, and the court of appeal reversed the trial court’s ruling on July 22, 2019. These proceedings occurred before our recent decision in *State v. Harris*, where we held that an “ineffective assistance of counsel at sentencing claim is cognizable on collateral review.” 18-1012, p. 1 (La. 7/9/20), — So.3d —, *available at* 2020 WL 3867207. Accordingly, because this case has never been evaluated by any court in light of our decision in *Harris*, and because Mr. Robinson has presented a *prima facie* claim of ineffective assistance of counsel at sentencing meriting an evidentiary hearing, we grant Mr. Robinson’s writ application. The ruling of the court of appeal is reversed,

and the matter is remanded to the district court to reconsider its ruling in light of *Harris* and conduct an evidentiary hearing on the claim of ineffective assistance of counsel at sentencing.

REVERSED AND REMANDED