

Judgment rendered March 4, 2010.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 45,448-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

GRALEY ROBERSON

Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 257824

Honorable John R. Joyce, Judge

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LOUISIANA APPELLATE PROJECT
By: Bruce G. Whittaker

Counsel for
Appellant

CHARLES R. SCOTT
District Attorney

Counsel for
Appellee

JASON BROWN
Assistant District Attorney

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Before STEWART, DREW and MOORE, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

PER CURIAM

This appeal arises from the First Judicial District Court, Parish of Caddo, the Honorable John R. Joyce, judge *pro-tempore* presiding, and directed to the attention of the Honorable Craig Marcotte, judge presiding. This Court's error patent review reveals that the trial court has failed to re-sentence the defendant before granting his motion to appeal. This matter, therefore, is assigned for summary disposition, without oral argument, under the authority of U.R.C.A. Rule 2-11.3.

The defendant previously appealed his conviction and sentence for Possession of 400 grams or more of cocaine in violation of La. R.S. 40:967(F)(1)(c). Because the trial court did not rule on a timely filed motion for new trial, this court issued a *per curiam* opinion rendered on January 8, 2009, vacating the defendant's sentence and remanding the matter back to the trial court for further proceedings while reserving the defendant's right to appeal the trial court's ruling.

The minutes filed with the record reveal that the motion for new trial was withdrawn on September 10, 2009. The minutes show that on October 9, 2009, a motion for appeal and designation of the record was filed and was granted by the trial court on October 13, 2009. Nothing indicates that the defendant was re-sentenced. An appeal from a conviction before sentencing is premature. La. C. Cr. P. art. 912(C); *State v. Carrerot*, 63 So. 599 (La. 1913).

Therefore, the matter is remanded to the trial court for re-sentencing. The appellant's right to appeal any adverse rulings or sentence subsequently imposed is hereby reserved.