Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

No. 52,744-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA Appellee

versus

JEREMIE DOUGLAS FELLOWS Appellant

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Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Bossier, Louisiana
Trial Court No. 224,719

Honorable Allen Parker Self, Jr., Judge

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LOUISIANA APPELLATE PROJECT Counsel for Appellant
By: Annette Fuller Roach

JOHN SCHUYLER MARVIN Counsel for Appellee
District Attorney

CHARLES A. SMITH
Assistant District Attorneys

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Before PITMAN, COX, and THOMPSON, JJ.

COX, J.

This appeal arises from the 26th Judicial District Court, Bossier Parish, Louisiana. The defendant, Jeremie Fellows, was charged with aggravated crime against nature, in violation of La. R.S. 14:89.1. Fellows pled guilty as charged. He was sentenced in accordance with an agreed-upon sentence to serve 25 years at hard labor, without the benefit of probation, parole, or suspension of sentence. Fellows now challenges his sentence as illegal. For the following reasons, Fellows's conviction and sentence are affirmed.

FACTS

On August 9, 2017, Fellows was charged by bill of information with aggravated crime against nature, in violation of "La. R.S. 14:89.1(A)(6)," committed on or about June 23, 2017, wherein the victim, B.F., having the DOB of 10/11/2007, was under the age of 17 years and the offender was at least 3 years older than the victim. The bill of information also listed Fellows's DOB as 11/24/1980. Notably, there was no subsection (6) provision listed under La. R.S. 14:89.1(A), at the time of the offense, at the time the bill was entered, or at the time of the guilty plea and sentencing. Fellows initially entered a plea of not guilty.

La. R.S. 14:89(A)(1) states that a crime against nature is the unnatural carnal copulation by a human being with another of the same sex or opposite sex. La. R.S. 14:89.1(A) provides that aggravated crime against nature is either of the following:

> (1) An act as defined by La. R.S. 14:89(A)(1) committed under any one or more of the following circumstances:
>
> > (a) When the victim resists the act to the utmost, but such resistance is overcome by force.

(b) When the victim is prevented from resisting the act by threats of great and immediate bodily harm accompanied by apparent power of execution.

(c) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.

(d) When as a result of an intellectual or mental disability or any unsoundness of mind, either temporary or permanent, the victim is incapable of giving consent and the offender knew or should have known of such incapacity.

(e) When the victim is incapable of resisting or of understanding the nature of the act, by reason of stupor or abnormal condition of mind produced by a narcotic or anesthetic agent, administered by or with the privity of the offender; or when he has such incapacity, by reason of a stupor or abnormal condition of mind from any cause, and the offender knew or should have known of such incapacity.

(f) When the victim is under the age of seventeen years and the offender is at least three years older than the victim.

(2)(a) The engaging in any prohibited act enumerated in Subparagraph (b) of this Paragraph with a person who is under eighteen years of age and who is known to the offender to be related to the offender as any of the following biological, step, or adoptive relatives: child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew, or niece.

(b) The following are prohibited acts under this Paragraph:

(i) Sexual intercourse, sexual battery, second degree sexual battery, carnal knowledge of a juvenile, indecent behavior with juveniles, pornography involving juveniles, molestation of a juvenile or a person with a physical or mental disability, crime against nature, cruelty to juveniles, parent enticing a child into prostitution, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

(ii) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child, the offender, or both.

On October 22, 2018, Fellows appeared before the district court and withdrew his former plea of not guilty. The prosecutor declared the following:

> Your Honor, it is my understanding he's going to withdraw his previously entered plea of not guilty and enter a plea of "guilty as charged." The sentencing will be under 14:89.1(C)(2). The mother of the alleged victim as well as the ex-wife of the defendant are present in court. After discussion with them there will be an agreed-upon sentence of 25 years at hard labor, which will be without benefit of parole, probation, or suspension of sentence."

The defendant's attorney acknowledged that was correct. La. R.S. 14:89.1(C)(2) is the sentencing provision for a conviction of aggravated crime against nature under La. R.S. 14:89.1(A)(2), where the offender is aware that there is a biological, step, or adoptive relationship, in any degree, between the victim and the offender; the offender commits a prohibited act enumerated in La. R.S. 14:89.1(A)(2)(b); and the victim is under age 13 while the offender is at least age 17. A person convicted of aggravated crime against nature under these circumstances faces a penalty range of 25-99 years at hard labor, with a minimum of 25 years without the benefit of probation, parole, or suspension of sentence.

The bill of information was silent as to any relationship between the victim and Fellows. However, the bill did state that a prohibited act, "a crime against nature," was committed, and established that at the time of the offense, the victim was age 9 and the offender was age 36.

During the plea colloquy, on inquiry about Fellows's personal information, Judge Self learned that Fellows was 37 years old, had completed three years of college, and was not under the influence of drugs or alcohol.

Judge Self asked Fellows if his appointed attorney "explained this proceeding to you as well as the maximum and minimum penalty associated with this charge. She has also explained to you the plea offer, as well as the suggested sentence. Is that correct?" Fellows answered "Yes, sir. That's correct."

Judge Self then reviewed with Fellows the rights that he would waive by pleading guilty: the right to a jury or judge trial; the right to have the State prove its case against him; the right to cross-examine any witnesses against him and to call witnesses on his behalf; the right to testify or remain silent; and, the right to appeal his conviction.

Fellows confirmed that he understood his rights and that he would waive them by pleading guilty. Fellows confirmed that he was not threatened or coerced to plead guilty and understood that by pleading guilty to the offense, he would be required to register as a sex offender. Fellows acknowledged that he had reviewed the sex offender statutes and the written notification and signed and initialed the notification.

The State provided the following factual basis for the guilty plea:

> All right, Your honor, on or about June 23, June 24th, of 2017, this defendant, at a location on, I believe on Palmetto Drive in Bossier City, Bossier Parish, Louisiana, um, and his date of birth is November 24, 1980. The victim, whose initials are B.F., is his biological daughter. Her date of birth is 10-11-2007. At that time and at that location, he did commit a lewd or lascivious act in the presence or on the person of the minor child, with the intent of arousing sexual desires of one or either of the parties.

Fellows confirmed that what the prosecutor stated was correct. Judge Self accepted Fellows's guilty plea and proceeded with sentencing. In conformity with the agreed-upon sentence, Judge Self sentenced Fellows to 25 years' imprisonment at hard labor, without the benefit of probation,

parole, or suspension of sentence. The court ordered that Fellows be given credit for time served. Judge Self informed Fellows that he had 30 days to appeal his sentence. Judge Self also advised Fellows of the time delay to file for post-conviction relief.

On October 26, 2018, the district court received a pro se letter from Fellows in which he requested assistance in filing a motion to modify or amend his sentence or to appeal his sentence. Judge Self considered this letter as a motion for appeal and granted the motion on November 29, 2018.

DISCUSSION

Fellows asserts, as a threshold argument, that he does have the right to appeal his sentence even though he was sentenced in conformity with the "agreed upon sentence" because his claim is that his sentence is illegal.

On the merits, Fellows complains that the district court failed to discuss the plea agreement with him and did not review the possible penalty ranges applicable under the facts of his case. Notably, Fellows has not moved to withdraw his guilty plea.

Fellows argues that his imposed sentence is illegal on the grounds that, because the bill of information did not charge an offense under La. R.S. 14:89.1(A)(2), the associated sentencing provision, La. R.S. 14:89.1(C)(2), was inapplicable here. Fellows contends that he pled guilty to a greater offense than he agreed to in the plea agreement, where the enhanced penalty provision in La. R.S. 14:89.1(C)(2) added additional elements of proof over those alleged in the bill. He further argues that the facts included in the bill of information were insufficient to support a charge under La. R.S. 14:89.1(A)(2) because the bill did not allege a familial relationship between the victim and Fellows.

Fellows argues that he was prejudiced by the error because he was sentenced under a provision with a much greater penalty range (25-99 years) than the range he believes was appropriate given the provision and facts stated in the bill of information. Fellows asserted that the language in the bill ("the victim…was under the age of 17 years and the offender was at least three years older than the victim."), tracked the language in La. R.S. 14:89.1(A)(1)(f). La. R.S. 14:89.1(B) provides that a person convicted under La. R.S. 14:89.1(A)(1) will be subject to imprisonment for 3-15 years at hard labor, without the benefit of probation, parole, or suspension of sentence. Fellows argues that he should have been sentenced according to La. R.S. 14:89.1(B).

In opposition, the State argues that Fellows entered an unqualified plea of guilty and, under La. C. Cr. P. art. 881.2(A), may not now appeal the sentence imposed in conformity with the plea agreement. The State asserts that Fellows fails to establish that he was misled about the essential nature of the offense to which he pled guilty because he (1) agreed during the recitation of the plea agreement that he was pleading guilty to the charge of aggravated crime against nature, with an agreed-upon sentence of 25 years at hard labor, pursuant to La. R.S. 14:89.1(C)(2); (2) he confirmed that he understood the nature of the charge against him; and, (3) he confirmed the factual basis for the plea was correct where it stated that the victim was his biological daughter and stated the prohibited conduct.

The State contends that Fellows suffered no prejudice due to any error in citation in the bill of information or failure to comply with La. C. Cr. P. art. 556.1, because Fellows was sentenced in accordance with the agreed-upon sentence.

The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. La. C. Cr. P. art. 881.2(A). However, even though there is an agreed sentence or sentence cap, when the right to appeal the sentence has been mentioned by the district court during the plea colloquy, the defendant's sentence may be reviewed. *State v. Thomas*, 51,364 (La. App. 2 Cir. 5/17/17), 223 So. 3d 125, *writ denied*, 17-1049 (La. 3/9/18), 238 So. 3d 450. An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review. La. C. Cr. P. art. 882.

La. C. Cr. P. art. 463 sets forth the form that a bill of information may follow and provides that the "particulars of the offense *may* be added." (Emphasis added.) "A bill of information must set forth an identifiable offense and inform defendant of the statutory basis of the offense, but need not set out detailed facts constituting violation since those facts can be given to defendant by answers to a bill of particulars." *State v. Robinson*, 47,427 (La. App. 2 Cir. 10/3/12), 105 So. 3d 751.

The requirements for the contents of a bill of indictment or information are provided in La. C. Cr. P. art. 464, which states:

> The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall state for each count the official or customary citation of the statute which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

In *State v. Olivia*, 13-0496 (La. App. 4 Cir. 3/26/14), 137 So. 3d 752, *writ denied*, 14-0884 (La. 11/14/14), 152 So. 3d 879, the trial court granted the defendant's motion to quash the bill of information on grounds that it

was insufficient because it did not specify which provision of the statute the defendant was accused of violating. Olivia asserted in her motion to quash that the bill of information failed to charge her with an offense punishable under a valid statute. The Fourth Circuit found that while the bill of information did not contain the actual statute number, it did state that Olivia was charged with "First Degree Vehicular Negligent Injuring." The court noted that under La. C. Cr. P. art. 464, the omission of the citation is not grounds for dismissal if the omission did not mislead the defendant to her prejudice. The court held that because the bill of information plainly demonstrated that the State charged Olivia with "First Degree Vehicular Negligent Injuring," she could have easily determined which statute she was charged with violating by referencing the Louisiana Criminal Code. Reversing the lower court, the Fourth Circuit concluded that the bill of information charged Olivia with an offense punishable under a valid statute and sufficiently informed her, without misleading her, of the offense charged.

In *State v. Skinner*, 15-0510 (La. App. 4 Cir. 4/27/16), 191 So. 3d 676, Skinner complained the trial court erred in denying his motion to quash the bill of information, which he argued failed to indicate the precise statute that he was accused of violating. Skinner argued that the bill listed a violation of La. R.S. 40:967(A), but that his sentencing was not reflective of that crime. The Fourth Circuit found that although the State's amended bill of information did not contain the actual statute number, it did state that Skinner possessed hydrocodone with the intent to distribute, and per La. C. Cr. P. art. 464, the omission of the citation was not grounds for dismissal if the omission did not mislead Skinner to his prejudice. Affirming the lower

court, the Fourth Circuit concluded that Skinner failed to show any error or omission which misled or prejudiced him.

La. C. Cr. P. art. 556.1 mandates that the trial court shall not accept a guilty plea without first advising the defendant and ensuring the defendant's understanding of the nature of the charge; the minimum and maximum possible penalty; the right to plead not guilty and have a jury or bench trial; the right to remain silent; and the right to confront and cross-examine his accusers. The court must also determine that the defendant conferred with the defendant's attorney and that the guilty plea was voluntary and not the result of force, threat, or promise other than a plea agreement recited into the record. *Id*. Any variance from the procedures required by this Article which does not affect substantial rights of the accused shall not invalidate the plea. *Id.*

Although Fellows was sentenced in accordance with his plea agreement, because the district court advised him that he could appeal his sentence within the allowable time delays, this Court typically will consider a sentencing claim. Additionally, Fellows's claim is that his sentence is illegal, and an illegal sentence may be corrected at any time.

The bill of information gave Fellows notice that he was charged with aggravated crime against nature under La. R.S. 14:89.1. By reference to the criminal code he could easily discern that he was charged under either the provisions of (A)(1) or (A)(2), since (A)(6) did not exist.

The bill of information also gave Fellows notice of the establishment of the required age element, where the bill of information stated the victim's date of birth and Fellows's date of birth, together with the date of the offense. This information established the element that "the victim was under

age 17 and the offender was at least three years older than the victim," which matched the language in subsection (A)(1)(f), which was linked to the lower penalty provision in (B). Yet the age information stated in the bill of information also established the element that "the victim was under age 13 and the offender was age 17 or older," which matched the language in subsection (C)(2), the penalty provision associated with (A)(2). Furthermore, as Fellows knew that he was the victim's biological father, Fellows was aware that the victim was under the age of 13.

Finally, while the bill of information did not expressly state the familial relationship between the victim and the offender, the victim's initials were listed and Fellows knew that the victim was his biological daughter. In other words, Fellows knew he was charged with aggravated crime against nature of his nine-year-old daughter based on prohibited conduct, so he had personal notice of all of the factual elements required to support a charge under La. R.S. 14:89.1(A)(2). Because there was no (A)(6) subsection, the defendant had to consider under which provision of the statute he was charged. Based on his own personal knowledge, Fellows should have concluded that he could be charged under La. R.S. 14:89.1(A)(2), due to his status as the victim's father, the victim's age of nine years, and his prohibited conduct.

To the extent that the bill of information, as written, did not expressly indicate that the offender's victim was his biological daughter, this detail was provided during the factual basis for the guilty plea, and Fellows confirmed the fact was correct.

Fellows's notice that he would be pleading guilty pursuant to La. R.S. 14:89.1(A)(2) occurred when the State advised during the recital of the

guilty plea that he was pleading guilty as charged to aggravated crime against nature and being sentenced pursuant to La. R.S. 14:89.1(C)(2) to 25 years' imprisonment at hard labor without benefits. Fellows heard the information recited into the record and made no objection when his attorney confirmed the plea agreement. Notably, Fellows made no complaint that his attorney failed to inform him of the minimum and maximum potential sentences for the charge for which he would be sentenced; rather, he confirmed on the record that his attorney did explain the nature of the charge and the potential sentencing range.

During the recital of the factual basis for the plea, Fellows was again given notice that his guilty plea would be to aggravated crime against nature based upon the elements required under La. R.S. 14:89.1(A)(2) and La. R.S. 14:89.1(C)(2), when the prosecutor stated all three required factual elements during the recital of the factual basis for the plea – the familial relationship, their ages, and the prohibited act. Conversely, La. R.S. 14:89.1(A)(1)(f) has no required familial element.

After hearing all of this information being read aloud into the record, Fellows did not object or demand that he was rejecting the guilty plea in favor of trial. Instead, Fellows confirmed the facts provided by the State and informed the judge that he was pleading guilty because he was guilty, without any reservation of rights.

A review of the record shows that Fellows had ample notice of the nature of the charge against him and the factual details that made him subject to multiple provisions under the statute, including the provision associated with a penalty range of 25-99 years' imprisonment. Fellows knew the plea agreement was for a set term of 25 years' imprisonment at

hard labor without benefits, and there is no showing that he suffered any prejudice for being sentenced to exactly those terms.

Under these facts, there is no showing that there was any error in the bill of information that misled Fellows to his prejudice as required to justify reversing his conviction under La. C. Cr. P. art. 464. There is no showing of any error in the guilty plea colloquy that affected Fellows's substantial rights, as required to invalidate his guilty plea under La. C. Cr. P. art. 556.1(E). The 25-year term imposed under the plea agreement falls squarely within the range permitted by the applicable penalty provision and is not illegal. The 25-year term was the minimum sentence Fellows could have received under the applicable sentencing provision.

While the State could have amended the bill of information to state the familial relationship and cite the specific provision of La. R.S. 14:89.1(A)(2), the failure to do so is not fatal given the circumstances of this case. Fellows does not deny that the cumulative facts, taken together from the written bill and the recitation of the factual basis, support the plea under La. R.S. 14:89.1(A)(2). Fellows has not expressed any desire to withdraw his plea or asserted that he would otherwise have proceeded to trial. Because Fellows does not want to withdraw the agreement and he received the sentence to which he agreed to avoid trial and a longer sentence, remand to clarify the record by amending the bill, conducting a second guilty plea colloquy, and resentencing Fellows is not warranted here.

CONCLUSION

For the foregoing reasons, Jeremie Fellows's conviction and sentence are affirmed.

AFFIRMED.