Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KA-55

STATE OF LOUISIANA

versus

PERRY J HAYDEL JR

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 21-4489, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

November 04, 2026

FREDERICKA HOMBERG WICKER

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Timothy S. Marcel

SENTENCE VACATED;
REMANDED FOR RESENTENCING

FHW
SJW
TSM

TRUE COPY



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DEPUTY CLERK

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Honorable Paul D. Connick, Jr.
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WICKER, J.

Appellant, Perry J. Haydel, Jr., seeks review of his sentence, imposed by the 24th Judicial District Court pursuant to a remand from this Court. The sentence was imposed on a multiple offender bill of information filed against him by the State to which he pled guilty. For the reasons stated below, we vacate the district court's judgment imposing the sentence and remand the matter to the District Court for resentencing in accordance with this opinion.

FACTS AND PROCEDURAL BACKGROUND

This Court set out the following facts and the procedural background of this matter in our opinion on Mr. Haydel's first appeal. *State v. Haydel,* 24-487 (La. App. 5 Cir. 9/24/25), 423 So.3d 110, 111-13.

> On July 29, 2021, the Jefferson Parish District Attorney filed a bill of information charging Defendant, Perry J. Haydel, Jr., with seven counts of simple burglary in violation of La. R.S. 14:62. Haydel initially pled not guilty to all counts; however, upon his acceptance into [the] 24th Judicial District Court Swift and Certain Specialty Court Program, he withdrew his initial plea and entered a plea of guilty as charged. The trial court then deferred the imposition of sentence pending Haydel's successful completion of the specialty court program and placed him on active supervised probation for five years. At that time, the trial court informed Haydel that, if he failed to successfully complete the specialty court program, the court would revoke his probation and impose a sentence of imprisonment on all counts, and further that the District Attorney would have the option of seeking an enhancement of his sentence as a second-felony offender under Louisiana's Habitual Offender Law, La. R.S. 15:529.1.
>
> On August 2, 2023, after Haydel failed to comply with the requirements of the specialty court program, the trial court revoked his probation and sentenced him to imprisonment for seven years at hard labor on counts one, two, and three; and ten years at hard labor on counts four, five, six, and seven – all to be served concurrently. Thereafter, on June 12, 2023, the District Attorney filed a multiple offender bill of information against Haydel, seeking enhancement of his sentence as a second-felony offender under La. R.S. 15:529.1.
>
> On August 16, 2023, the trial court held a hearing on the multiple bill. During the hearing, Haydel stipulated to all allegations asserted in the multiple bill and then entered a plea of guilty admitting his status [as] a second felony offender. After accepting Haydel's guilty plea, the trial court vacated his original sentence and resentenced him as a second-felony offender to eighteen years imprisonment at hard labor,

without the benefit of probation or suspension of sentence. Following the multiple bill hearing, Haydel filed a motion for reconsideration of sentence, which the trial court denied.

A year later, on August 20, 2024, Haydel filed a *pro se* uniform application for post-conviction relief and requested authorization to file an out-of-time appeal pursuant to *State v. Counterman,* 475 So.2d 336 (La. 1985). In his application, Haydel identified his multiple offender adjudication and enhanced sentence of eighteen years imprisonment as the judgment of conviction being appealed. On August 29, 2024, the trial court granted Haydel's request for an out-of-time appeal and assigned appellate counsel to represent him.

On appeal, we affirmed Mr. Haydel's multiple offender adjudication but found that the sentence on the multiple offender bill of information was indeterminate because the district court failed to specify the count to be vacated or enhanced. As a result, we remanded the matter to the district court for resentencing with instructions for the court to specify which of Mr. Haydel's seven counts of simple burglary was being vacated and enhanced.

On November 12, 2025, the district court resentenced Mr. Haydel to eighteen years imprisonment at hard labor, without benefit of probation or suspension of sentence, on count one of his conviction, to run concurrently with the sentences the court had imposed on counts two through seven. Mr. Haydel filed a *pro se* Motion for Appeal and Designation of Record, postmarked December 5, 2025, which was stamped as filed in the district court on December 17, 2025.[1] The district court granted Mr. Haydel's appeal on January 9, 2026. Mr. Haydel timely appealed to this Court.

ASSIGNMENT OF ERROR

Mr. Haydel, who is represented by counsel in this appeal, assigns a single error – that, in his sentencing on remand, the trial court erred in failing to vacate

[1] A pleading filed by an incarcerated person is deemed filed as of the date the pleading is delivered to prison authorities for mailing. *Houston v. Lack,* 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988); *State ex rel. Johnson v. Whitley,* 92-2689 (La. 1/6/95), 648 So.2d 909. The district court issued a *nunc pro tunc* order on August 23, 2025, stating that Mr. Haydel's sentences were to run concurrently, thereby attempting to correct its failure to state whether the sentences were to run concurrently or consecutively.

the underlying seven year sentence when it imposed a sentence of eighteen years on count one, pursuant to the habitual offender adjudication.

DISCUSSION

The transcript of Mr. Haydel's November 12, 2025 resentencing reflects that the district court did not vacate his sentence as to count one prior to imposing the enhanced sentence pursuant to the habitual offender adjudication. The State agrees that the trial court failed to vacate the sentence on count one when it imposed an enhanced sentence as to that count pursuant to the habitual offender adjudication but argues that it was sufficient that the district court vacated the sentence on August 16, 2023, in conjunction with Mr. Haydel's original habitual offender sentence. The State concedes, however, that if this Court finds that the August 16, 2023 vacatur was invalid, "the proper remedy is to remand the matter for resentencing pursuant to La. R.S. 15:529.1, with instructions for the district court to vacate Count One's original sentence prior to the Habitual Offender sentencing."

In fact, this Court has already found the August 16, 2023 vacature to be invalid when we decided Mr. Haydel's first appeal. There, we vacated Mr. Haydel's habitual offender sentence, which was null and void as a result of the district court's failure to specify which count was being vacated and enhanced. *Haydel,* 423 So.3d at 117. On remand, the district court specified which count – count one – was being enhanced but failed to vacate the original seven-year sentence on count one prior to sentencing Mr. Haydel as a habitual offender as to that count. The district court stated:

> Specifically, Court notes that the sentence imposed as a habitual offender, pursuant to the Multiple Offender Bill filed, is specifically Count 1 of the sentence, sentence pursuant to Revised Statute 15:529.1, 18 years Department of Corrections at hard labor; 18 years to be served without benefit or probation or suspension of sentence. Sentence is to run concurrent with Counts 2, 3, 4, 5, 6, and 7 of the Bill of Information.

La. R.S. 15:529.1 states, in pertinent part:

> When the judge finds that [a defendant] has been convicted of a prior felony or felonies, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted, the court shall sentence him to the punishment prescribed in this Section, and ***shall vacate the previous sentence*** if already imposed, deducting from the new sentence the time actually served under the sentence so vacated.

The statute is mandatory. It states that the trial court ***shall*** vacate the previous sentence prior to sentencing a defendant who has been adjudicated to be a habitual offender. This Court has repeatedly held that when the district court fails to vacate a defendant's original sentence on an underlying offense prior to sentencing the defendant as a habitual offender, the original sentence remains in effect, and the subsequent sentence as a multiple offender is null and void. *State v. Dillon,* 23-423 (La. App. 5 Cir. 6/5/24), 391 So.3d 82, 95, *writ denied,* 24-835 (La. 11/14/24), 395 So.3d 1182; *State v. Lyles,* 17-405 (La. App. 5 Cir. 2/21/18), 239 So.3d 1055, 1057; *State v. Netter,* 11-202 (La. App. 5 Cir. 11/29/11), 79 So.3d 478, 483-84; *State v. London,* 98-65 (La. App. 5 Cir. 5/27/98), 712 So.2d 287, *writ denied,* 98-1903 (La. 11/13/98), 730 So.2d 933.

The district court failed to comply with the mandatory provisions of La. R.S. 15:529.1 when it neglected to vacate Mr. Haydel's sentence as to count one prior to sentencing him as a habitual offender as to that count. Accordingly, Mr. Haydel's November 12, 2025 sentence as a habitual offender is vacated, and the matter is remanded to the district court with instructions to vacate Mr. Haydel's original sentence on count one prior to sentencing him as a habitual offender. We have previously affirmed Mr. Haydel's adjudication as a multiple offender under La. R.S. 15:529.1.

ERROR PATENT DISCUSSION

The record was reviewed for errors patent. La. C.Cr.P. art. 920; *State v. Oliveaux,* 312 So.2d 337 (La. 1975); *State v. Weiland,* 556 So.2d 175 (La. App.. 5 Cir. 1990). We found no errors patent.

DECREE:

For the reasons stated above, we vacate appellant's November 12, 2025 sentence and remand the matter to the district court for resentencing in accordance with this opinion.

SENTENCE VACATED;
REMANDED FOR RESENTENCING

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 4, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-KA-55

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)
HOLLI A. HERRLE-CASTILLO (APPELLANT)
REMY V. STARNS (APPELLANT)
MONIQUE D. NOLAN (APPELLEE)
MOLLY M. MASSEY (APPELLEE)
NORMA B. BROUSSARD (APPELLEE)
THOMAS J. BUTLER (APPELLEE)

MAILED
NO ATTORNEYS WERE MAILED