

NOT DESIGNATED FOR PUBLICATION

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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 0973

STATE OF LOUISIANA

VERSUS

WALTER ADAM KOTT, JR.

Judgment Rendered: December 28, 2006

**Appealed from the
Twenty-Second Judicial District Court
in and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 379354**

Honorable William J. Burris, Judge Presiding

**Walter P. Reed
Covington, LA**

**Attorneys for Appellee,
State of Louisiana**

**Kathryn Landry
Baton Rouge, LA**

**Frank Sloan
Mandeville, LA**

**Attorney for Defendant/Appellant,
Walter Adam Kott, Jr.**

BEFORE: CARTER, C. J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

The defendant, Walter Adam Kott, Jr., was charged by bill of information with driving while intoxicated (DWI), third offense, a violation of LSA-R.S. 14:98(D). He pled not guilty. Following a trial by jury, the defendant was convicted as charged. The defendant was sentenced to imprisonment at hard labor for three years. The trial court suspended the imprisonment sentence and placed the defendant on supervised probation for three years, subject to extensive, various special conditions.

At the conclusion of the imposition of the sentence, counsel for the defendant informed the court that the defendant had been incarcerated for approximately twenty-two months and thus requested that defendant's probation be revoked. After ascertaining that the defendant waived "any filing of any motion and order for revocation," the trial court revoked the defendant's probation and sentenced him to three years at hard labor. The court ordered that the defendant be given credit for the time already served in jail. The defendant now appeals.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant avers that at the time of sentencing, the trial court failed to properly advise him regarding the two-year time limitation contained in LSA-C.Cr.P. art. 930.8(A) for the filing of post-conviction relief applications. The defendant avers that the trial court should be directed to provide the defendant with written notice of the correct prescriptive period within ten days of the rendition of this court's opinion. We agree.

The record reflects that upon imposition of sentence, the trial court advised the defendant that he had "two years **from this date** to file my (sic) post conviction relief." (Emphasis added.) However, LSA-C.Cr.P. art. 930.8(A) provides, in pertinent part: "[n]o application for post-conviction relief, including applications

which seek an out-of-time appeal, shall be considered if it is filed more than two years **after the judgment of conviction and sentence has become final** under the provisions of Article 914 or 922.” (Emphasis added.) Section C of article 930.8 states that at the time of sentencing, the trial court shall inform the defendant of the prescriptive period for seeking post-conviction relief. Thus, we agree with the defendant’s observation that the trial court incorrectly stated the prescriptive period set forth in LSA-C.Cr.P. article 930.8.

Failure to advise (or to correctly advise) the defendant of the time limitation, however, does not constitute grounds for reversal of the sentence or remand for resentencing. State v. Jones, 97-1687, p. 12 (La. App. 1st Cir. 5/15/98), 714 So. 2d 819, 826, writ denied, 98-1597 (La. 10/30/98), 723 So. 2d 975; State v. Morgan, 93-2365, p. 5 (La. App. 1st Cir. 12/22/94), 648 So. 2d 1063, 1065-66, writ denied, 95-0207 (La. 6/2/95), 654 So. 2d 1104. Instead, under such circumstances, this court routinely directs the trial court to provide defendant with written notice of the correct prescriptive period. See State v. Lowery, 2004-0802, pp. 18-19 (La. App. 1st Cir. 12/17/04), 890 So. 2d 711, 724-725, writ denied, 2005-0447 (La. 5/13/05), 902 So. 2d 1018. Therefore, the trial court is hereby directed to give the defendant written notice of the correct prescriptive period for applying for post-conviction relief within ten days of the rendition of this opinion and to file written proof that the defendant has received such notice into the trial court record of these proceedings.

In all other respects, the appeal is denied. The defendant's conviction and sentence are affirmed in accordance with Uniform Rules -- Courts of Appeal, Rule 2-16.2(A)(2) and (4).

CONVICTION AND SENTENCE AFFIRMED; REMANDED WITH INSTRUCTIONS.