

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 1540

STATE OF LOUISIANA

VERSUS

DONALD PEA

Judgment Rendered: February 9, 2007.

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On Appeal from the  
21st Judicial District Court,  
in and for the Parish of Livingston  
State of Louisiana  
District Court No. 18478

The Honorable Zorraine M. Waguespack, Judge Presiding

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Scott M. Perrilloux  
District Attorney  
Amite, La.

Greg Murphy  
Assistant District Attorney  
Livingston, La.  
Morgan Griggs  
Assistant District Attorney  
Amite, La.

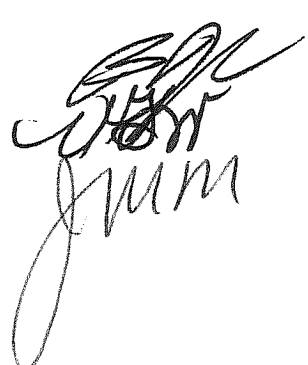
Counsel for Appellee,  
State of Louisiana

Bertha M. Hillman  
Thibodaux, La.

Counsel for Defendant/Appellant,  
Donald Pea

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



## **CARTER, C.J.**

The defendant, Donald Pea, was charged by grand jury indictment with armed robbery, a violation of LSA-R.S. 14:64. A jury found the defendant guilty as charged. The defendant filed motions for new trial and for post verdict judgment of acquittal. Immediately after denying the defendant's motions in open court, the trial court sentenced the defendant to seventy years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied.

The defendant appeals, raising as his sole assignment of error that the trial court erred in denying his motion to reconsider sentence and that the sentence imposed is unconstitutionally excessive. For the following reasons, we affirm the conviction, vacate the sentence, and remand for resentencing.

### **PATENT ERROR**

In reviewing the record for patent error,<sup>1</sup> we have discovered that the trial court did not wait the required twenty-four hours after denial of the defendant's motions for new trial and for post verdict judgment of acquittal before sentencing the defendant, nor did the defendant waive the waiting period. See LSA-C.Cr.P. art. 873. In **State v. Augustine**, 555 So.2d 1331, 1333-1334 (La. 1990), the Louisiana Supreme Court held that a trial court's failure to observe the twenty-four-hour delay is not harmless error if the defendant challenges his sentence on appeal, regardless of whether the defendant demonstrates that he was prejudiced by the failure to observe the

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<sup>1</sup> This court routinely reviews the record for patent error—error discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. See LSA-C.Cr.P. art. 920(2).

delay. **State v. Odom**, 03-1772 (La. App. 1 Cir. 4/2/04), 878 So.2d 582, 594-595, writ denied, 04-1105 (La. 10/8/04), 883 So.2d 1026.

The trial court sentenced the defendant immediately after denying his motions for new trial and for post verdict judgment of acquittal. The defendant did not waive the twenty-four-hour delay provided for in LSA-C.Cr.P. art. 873. The defendant filed a motion to reconsider his sentence within thirty days of imposition of sentence in accordance with LSA-C.Cr.P. art. 881.1 and now appeals his non-mandatory sentence as excessive. For these reasons, we are required to vacate the defendant's sentence and remand the matter for resentencing. We are procedurally barred from considering the defendant's challenge to his sentence. **Odom**, 878 So.2d at 595.

**CONVICTION    AFFIRMED;    SENTENCE    VACATED;  
REMANDED FOR RESENTENCING.**