NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0693

STATE OF LOUISIANA

VERSUS

FREDERICK NATHAN CAMPBELL

Judgment Rendered: October 29, 2010

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 409063

The Honorable William J. Knight, Judge Presiding

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Frederick Nathan Campbell

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

The defendant, Frederick Nathan Campbell, was charged by bill of information with one count of felony carnal knowledge of a juvenile (count I), a violation of La. R.S. 14:80; and one count of cruelty to juveniles (count II), a violation of La. R.S. 14:93. He pled not guilty on both counts. Following a jury trial, on count I, he was found guilty as charged; and on count II, he was found not guilty. On count I, he was sentenced to nine years at hard labor. Thereafter, the State filed a habitual offender bill of information against the defendant, alleging he was a fifth-felony habitual offender.[1] Following a hearing, he was adjudged a fourth-felony habitual offender.[2] The court then vacated the previously imposed sentence and, on count I, sentenced the defendant to twenty years at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, contending the trial court illegally denied him eligibility for parole. For the following reasons, we affirm the conviction, affirm the habitual offender adjudication, amend the sentence, and affirm the sentence as amended.

FACTS

The victim, S.C.,[3] testified at trial. Her date of birth was July 11, 1989. On December 10, 2005, she was "dating" the defendant and had been in a sexual relationship with him for approximately one year. During the

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[1] Predicate #1 was set forth as the defendant's conviction, under Twenty-second Judicial District Court Docket #348868, for aggravated battery, a violation of La. R.S. 14:34. Predicate #2 was set forth as the defendant's conviction, under Thirtieth Judicial District Court Docket #53199, for simple escape, a violation of La. R.S. 14:110. Predicate #3 was set forth as the defendant's conviction, under Ninth Judicial District Court Docket #244821, for aggravated burglary, a violation of La. R.S. 14:60. Predicate #4 was set forth as the defendant's conviction, under Twenty-second Judicial District Court Docket #250884, of "possession of stolen [things] wherein the value was over $500," a violation of La. R.S. 14:69.

[2] The fingerprints appearing on the documentation concerning predicate #3 were incomplete.

[3] The victim is referenced herein only by her initials. See La. R.S. 46:1844(W).

relationship, the defendant "frequently" had vaginal sexual intercourse with the victim in his mother's house. During her sexual relationship with the defendant, the victim acquired a disease "from sleeping with a man." She indicated the defendant was the only man she was "messing with."

The police learned of the sexual relationship between the victim and the defendant after he punched her in the eye during an argument following her discovery that he had left her son (not the defendant's child) with a woman he was also "dating." Upon being arrested and advised of his *Miranda*[4] rights, the defendant indicated his date of birth was October 4, 1973. He also stated, "I didn't hit that girl. I've been messing with her for six months, but I didn't hit her."

ILLEGAL SENTENCE

In his sole assignment of error, the defendant argues the sentence imposed is illegal because the trial court denied him eligibility for parole, but neither the substantive offense nor the habitual offender law restricts eligibility for parole. The State agrees.

The trial court imposed the sentence herein without benefit of parole. However, neither La. R.S. 14:80(D) (prior to amendment by 2010 La. Acts No. 763, § 1), La. R.S. 15:529.1(A)(1)(c)(i), nor La. R.S. 15:529.1(G) restrict parole eligibility.[5] Accordingly, we amend the sentence to strike and delete the portion of the sentence that provides it shall be served without benefit of parole. See La. Code Crim. P. art. 882(A); *State v. Charles*, 2000-0664, pp. 5-6 (La. App. 1st Cir. 12/22/00), 775 So.2d 667, 670, writ denied, 2001-1067 (La. 1/4/02), 805 So.2d 1186.

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[4] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[5] It is not a crime to be an habitual offender. The statute increases the sentence for a recidivist. The penalty increase is computed by reference to the sentencing provisions of the underlying offense. Similarly, the conditions imposed on the sentence are those called for in the reference statute. *State v. Bruins*, 407 So.2d 685, 687 (La. 1981).

DECREE

For the reasons set forth above, the defendant's conviction and habitual offender adjudication are affirmed and the defendant's sentence is amended and, as amended, affirmed.

CONVICTION AND HABITUAL OFFENDER ADJUDICATION AFFIRMED; SENTENCE AMENDED AND AFFIRMED AS AMENDED.