

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-433

STATE OF LOUISIANA

versus

ALFONZO FAIR

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 24-5763, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

May 29, 2026

SCOTT U. SCHLEGEL
JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, Jude G. Gravois, Marc E. Johnson,
Stephen J. Windhorst, John J. Molaison, Jr., Scott U. Schlegel, and
Timothy S. Marcel

CONVICTION AFFIRMED; SENTENCE
AFFIRMED IN PART AND VACATED IN PART;
REMANDED WITH INSTRUCTIONS

SUS
SMC
JGG
SJW
JJM

MARCEL, J., CONCURS WITH REASONS

TSM

WICKER, J., CONCURS FOR THE REASONS ASSIGNED BY
MARCEL, J.

FHW

JOHNSON, J., CONCURS FOR THE REASONS ASSIGNED BY
MARCEL, J.

MEJ

TRUE COPY



JALISA WALKER
DEPUTY CLERK

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ALFONZO FAIR

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COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.

Thomas J. Butler

Andrea F. Long

Zachary L. Grate

SCHLEGEL, J.

Defendant, Alfonzo Fair, appeals his conviction for attempted possession of a firearm by a convicted felon. For the reasons that follow, we affirm defendant's conviction, affirm his sentence as amended, and remand this matter for compliance with La. C.Cr.P. art. 875.1 and correction of the Uniform Commitment Order (UCO).

PROCEDURAL HISTORY

On December 11, 2024, the Jefferson Parish District Attorney filed a bill of information charging defendant, Alfonzo Fair, with possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1.¹ Defendant was arraigned on December 12, 2024, and pled not guilty. Defendant filed motions to suppress evidence and statements. Following an evidentiary hearing on February 20, 2025, the trial court denied the motion to suppress evidence and granted the motion to suppress statements in part to exclude any statements made by defendant after he was placed in handcuffs, but prior to being read his *Miranda*² rights.

Trial commenced on June 3, 2025. At the conclusion of the trial, the jury found defendant guilty of the lesser responsive verdict of attempted possession of a firearm by a convicted felon. On July 7, 2025, the trial court sentenced defendant to imprisonment at hard labor for seven and one-half years. On that same date, defendant stipulated to the State's multiple offender bill of information alleging that defendant was a second-felony offender.³ The trial court then vacated the

¹ The bill of information provides that defendant was previously convicted in Division "K" of the Orleans Parish Criminal District Court under Case No. 516-085 for first degree robbery in violation of La. R.S. 14:64.1.

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

³ The multiple bill alleges that on July 25, 2013, defendant pled guilty to the predicate offense in Division "K" of the Orleans Parish Criminal District Court under Case No. 516-085 for first degree robbery in violation of La. R.S. 14:64.1 and was sentenced to seven years imprisonment at hard labor. As explained more fully below, defendant pled guilty to two counts of first degree robbery in this underlying criminal matter.

original sentence and resentenced defendant as a second-felony offender under La. R.S. 15:529.1 to imprisonment at hard labor for fifteen years without the benefit of probation or suspension of sentence. The court also imposed a \$1,000.00 fine, as well as additional fees. On July 10, 2025, defendant filed a motion for appeal which the trial court granted on July 14, 2025.

FACTS

In the early morning hours of November 14, 2024, defendant was driving his moped home from work when he was stopped by Deputies Brenan Bean and Giovanni Gonzalez of the Jefferson Parish Sheriff's Office (JPSO) in the 1500 block of Jefferson Highway. The deputies cited defendant for driving a moped without a valid license plate and for not having insurance. During the stop, defendant appeared to be very nervous while conversing with the deputies. Deputy Bean noticed that defendant had a backpack and asked defendant for consent to search it. Defendant agreed and Deputy Gonzalez discovered a High Point model JCP .40 caliber firearm and magazine that contained live ammunition.

After searching law enforcement databases, Deputy Bean testified that he determined defendant was a convicted felon who was prohibited from carrying a firearm and placed defendant under arrest. In the video footage from his body-worn camera, Deputy Bean stated, "Got him...First degree robbery, arrest date 2013, seven years hard labor so he just got out in 2020." Deputy Bean stated that defendant was probably on probation, and Deputy Gonzalez responded, "It's ten years...once he gets out." Deputy Bean then stated, "So his probation for aggravated assault with a gun ended in 2015 for that one too."

Deputy Bean also identified a jail call that was played for the jury. The call was made by defendant on November 14, 2024 at 5:45 p.m., and the recipient identified herself as his wife. During the jail call, defendant's wife asked him, "You had a gun on you, didn't you?" After defendant answered, "Yeah," she

responded, “That’s what it is... you know you are a convicted felon.” She admonished him for carrying a firearm, stating that she had warned him about it and that he did not listen to her.

Jazim Charles, an expert in latent print processing and analysis, took defendant’s fingerprints before trial. She also identified a fingerprint card from the Automated Finger Identification System (AFIS), associated with defendant’s July 25, 2013 conviction for two counts of first degree robbery in Case No. 516-085 in Orleans Parish. She also testified that it contained defendant’s name, a conviction date of July 25, 2013, and listed two counts of first degree robbery. Ms. Charles compared the fingerprints she took before trial with the fingerprints taken in connection with defendant’s prior first degree robbery conviction, and found sufficient features in agreement to identify defendant’s left thumb. The Waiver of Constitutional Rights form and minute entry contained in the conviction packet for the first degree robbery convictions reflect that defendant received a sentence of seven years at hard labor with credit for time served, to run concurrently with any and all other sentences, and that the State agreed not to multiple bill defendant.

Defendant testified at trial and confirmed that the gun was in his backpack when he was stopped by the officers. However, he denied knowing that he was in possession of it. He explained that prior to the stop, he was working his janitorial job at Tulane University. For approximately three to four hours while at work, defendant left the backpack hanging on a small hook near the floorboard on his scooter in the parking garage. He explained that he normally left his backpack there because he was the only one present. After work, defendant got on his scooter and headed toward his mother’s residence. He stated that he had not looked inside his backpack at that point because he did not “need to.”

Defendant testified that after the officers stopped him, he gave them consent to search his bag because he believed there was nothing in it. When asked whose

gun he believed it was, defendant said he was nervous and told the officers that he thought it was a co-worker's gun. At trial, defendant explained that his wife was an alcoholic and that they were experiencing marital issues at the time. Defendant testified that his wife had threatened him, and he believed she planted the gun in his bag.

Defendant also confirmed that he was a convicted felon. He acknowledged his prior convictions for first degree robbery in Orleans Parish and further confirmed a prior conviction for aggravated assault with a firearm in Mississippi.

LAW AND ANALYSIS

On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that the ten-year statutory cleansing period under La. R.S. 14:95.1 had not elapsed. Defendant argues that while the State introduced evidence of his prior felony conviction, it failed to present any evidence establishing the date he completed his sentence for that predicate offense. He maintains that proof of the conviction and sentence alone is insufficient to establish the absence of the ten-year cleansing period and that the jury was left without the necessary information to determine whether this essential element of the offense had been proven. Defendant does not challenge any of the other elements of the crime.

The State responds that the evidence was sufficient to establish the absence of the ten-year statutory cleansing period under La. R.S. 14:95.1. The State argues that proof of defendant's July 25, 2013 conviction for first degree robbery, the seven-year sentence imposed, and the November 14, 2024 offense date for the instant charge, along with Deputy Bean's testimony regarding his determination that defendant was prohibited from carrying a firearm and the statements of defendant and his wife during the jailhouse call, allowed the jury to infer that ten years had not elapsed since completion of defendant's sentence. The State further

contends that under the applicable sentencing statutes, defendant was ineligible for parole and good time diminution and that any possibility of early discharge through commutation or pardon was either legally foreclosed or so remote as to be discounted. Finally, the State argues that during opening statements and closing arguments, defense counsel agreed with the State that defendant was a convicted felon who was not permitted to possess a firearm at the time of the offense. Thus, the State maintains that a rational trier of fact could conclude beyond a reasonable doubt that the ten-year cleansing period had not expired.

In reviewing the sufficiency of the evidence, an appellate court must determine if the evidence, whether direct or circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

Evidence may be either direct or circumstantial. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. *State v. Gatson*, 21-156 (La. App. 5 Cir. 12/29/21), 334 So.3d 1021, 1034. When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 provides that “assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.” *Id.* This is not a separate test from the *Jackson* standard but rather provides a helpful basis for determining the existence of reasonable doubt. All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt.

The directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact’s rational

credibility calls, evidence weighing, and inference drawing. *State v. Aguilar*, 23-34 (La. App. 5 Cir. 11/15/23), 376 So.3d 1105, 1108. This deference to the fact-finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *Id.*

In the instant case, defendant was charged with possession of a firearm by a convicted felon but was convicted of the lesser responsive verdict of attempted possession of a firearm by a convicted felon in violation of La. R.S. 14:27 and La. R.S. 14:95.1. Even though the evidence at trial may show that the crime attempted was actually completed by the defendant, he may nevertheless be convicted of an attempt to commit the crime. La. R.S. 14:27(C); *State v. Johnson*, 23-309 (La. App. 5 Cir. 12/27/23), 379 So.3d 771, 776.⁴ If there is sufficient evidence to convict a defendant of a greater offense, which includes the offense for which defendant was convicted, the evidence will necessarily and automatically, because of Louisiana's statutory system of responsive verdicts, support the conviction for the lesser offense, as long as the defendant did not object to the inclusion of this lesser included offense. *State v. Redell*, 22-457 (La. App. 5 Cir. 4/26/23), 361 So.3d 1153, 1163, *writ denied*, 23-734 (La. 2/6/24), 378 So.3d 752. Here, the record does not reflect that defendant objected to the inclusion of attempted possession of a firearm by a convicted felon as a lesser included offense.

To support a conviction under La. R.S. 14:95.1, the State must prove beyond a reasonable doubt that defendant had: (1) possession of a firearm; (2) a prior conviction for an enumerated felony; (3) absence of the ten-year statutory period of limitation; and (4) the general intent to commit the offense. *State v. Woods*, 23-41

⁴ Attempt is defined in La. R.S. 14:27 as follows:

- A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

(La. App. 5 Cir. 11/15/23), 376 So.3d 1144, 1156, *writ denied*, 23-1615 (La. 5/29/24), 385 So.3d 700. First degree robbery is an enumerated felony under La. R.S. 14:95.1(A)(1) because it is a crime of violence listed in La. R.S. 14:2(B)(22).⁵ La. R.S. 14:95.1(C) provides as follows regarding the ten-year cleansing period:

C. The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of, or who have been found not guilty by reason of insanity for, certain felonies shall not apply to any person who has not been convicted of, or who has not been found not guilty by reason of insanity for, any felony **for a period of ten years from the date of completion of sentence, probation, parole, suspension of sentence, or discharge from a mental institution by a court of competent jurisdiction.** (Emphasis added).

With respect to the cleansing period element, the State must prove that ten years have not elapsed since the date of completion of the punishment for the prior felony conviction. *Woods*, 376 So.3d at 1156. Thus, in the instant matter, the State had to prove that the date of defendant's arrest for convicted felon in possession of a firearm — November 14, 2024 — was within ten years of the date defendant completed his sentence, including parole supervision, for his prior first degree robbery conviction.

Defendant contends that the State failed to prove the absence of the ten-year statutory cleansing period beyond a reasonable doubt because the State only presented evidence of his initial seven-year sentence imposed for the first degree robbery conviction. He contends this evidence is not sufficient because the discharge or completion date of a sentence can take place either earlier or later than the term of the initial sentence because of a pardon, commutation, good time credit, or parole revocation. *See State ex rel. Wilson v. Maggio*, 422 So.2d 1121, 1123 (La. 1982).

⁵ La. R.S. 14:95.1(A)(1) provides that it is unlawful for any person who has been convicted of a crime of violence as defined in La. R.S. 14:2(B) to possess a firearm or carry a concealed weapon.

In *State v. Jefferson*, 08-470, 2008 WL 8919942, pp. 5-6 (La. App. 4 Cir. 9/24/08), *writ denied*, 08-2523 (La. 5/22/09), 9 So.3d 138, and *writ denied*, 08-2663 (La. 5/29/09), 9 So.3d 162, the appellate court considered a similar situation where the State did not introduce evidence of the actual date that the defendant was discharged from state custody or supervision. The defendant in *Jefferson* was charged with possession of a firearm by a convicted felon and the only evidence that the State introduced to prove that the ten-year cleansing period had not elapsed was the date of the defendant's prior manslaughter conviction on August 26, 1993, and that defendant had received a sentence of twenty-one years at hard labor. Defendant was arrested for the convicted felon with a firearm charge in March 2005.

Despite the lack of evidence of the defendant's actual date of discharge for the underlying manslaughter conviction, the Fourth Circuit found the evidence sufficient to support the conviction because pursuant to the applicable provisions governing parole eligibility (La. R.S. 15:574.4), good time, and continued parole supervision until the completion of the original sentence (La. R.S. 15:571.5 and 15:574.6), the defendant "could not possibly have been discharged from or have completed his parole more than ten years prior to the instant arrest." *Id.* at p. 6. The *Jefferson* court also reasoned that "an individual released on 'good time' is released as if on parole, and as a parolee—either on straight parole or 'good time' parole—the individual cannot be discharged from parole until the completion of his original sentence date, which in this case would be January 1, 2013, at the earliest. *Id.*; see also *State v. Williams*, 14-666, 2014 WL 5310523, pp. 3-4 (La. App. 4 Cir. 10/15/14); *Haynes v. Cain*, 2014 WL 1028577, p. 12 (M.D. La. Mar. 17, 2014). The *Jefferson* court further concluded that the possibility that defendant had received a pardon or commutation of sentence "is so remote that its existence

would not create a reasonable doubt as to the non-expiration of the cleansing period.” *Jefferson*, 2008 WL 8919942, p. 7.

With respect to the instant matter, at all relevant times, La. R.S. 14:64.1(B) required a sentence for first degree robbery to be served without the benefit of parole, probation, or suspension of imposition or execution of the sentence. Even though the conviction packet does not indicate that the trial court imposed the seven year sentence without benefits, La. R.S. 15:301.1 provides that when the criminal statute requires all or a portion of a sentence to be served without benefits, the sentence shall be deemed to be imposed without such benefits by operation of law.⁶

More importantly, even if defendant was released early from prison for good time or parole, he would have remained under state supervision until he completed the term of his original seven-year sentence. If defendant earned a diminution in his sentence for good behavior while he was in prison, otherwise referred to as “good time,” La. R.S. 15:571.5(A) provided at all pertinent times that when a prisoner “is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.” *See also State v. McGhee*, 99-3343 (La. 12/8/99), 752 So.2d 770 (“defendants’ good time release under [La. R.S. 15:571.5(A)] . . . is the equivalent of parole and does not fully discharge him from state supervision until the balance of his sentence lapses at the full term date.”).

⁶ La. R.S. 15:301.1 provides in pertinent part:

A. When a criminal statute requires that all or a portion of a sentence imposed for a violation of that statute be served without benefit of probation, parole, or suspension of sentence, each sentence which is imposed under the provisions of that statute shall be deemed to contain the provisions relating to the service of that sentence without benefit of probation, parole, or suspension of sentence. The failure of a sentencing court to specifically state that all or a portion of the sentence is to be served without benefit of probation, parole, or suspension of sentence shall not in any way affect the statutory requirement that all or a portion of the sentence be served without benefit of probation, parole, or suspension of sentence.

At all times since defendant committed the underlying first degree robbery offense, La. R.S. 15:574.6(A) has provided that when a defendant is released on parole, he remains on parole and under state supervision until the completion of the remainder of the offender's sentence.⁷ Consequently, while a defendant is on parole, he is still in state custody. *See* La. R.S. 15:574.7; *State v. Vincent*, 387 So.2d 1097, 1102 (La. 1980) (recognizing that the cleansing period had not expired because the defendant was on parole and in the custody of the state for the remainder of his sentence pursuant to La. R.S. 15:574.6 and 574.7); *State v. Gamberella*, 633 So.2d 595, 607-08 (La. App. 1st Cir. 1993), *writ denied*, 640 So.2d 1341 (La. 1994) (“For a defendant who has been released from custody on parole, the date of discharge from parole supervision is equated with the expiration of the maximum sentence.”). Thus, pursuant to La. R.S. 15:571.5(A), a defendant remains under state supervision until he completes his original sentence when he is released early for good time, just as for a release on parole.

The record shows that defendant committed and was arrested for the first degree robbery charges in Orleans Parish on April 15, 2013. Assuming defendant remained incarcerated until he pled guilty in his Orleans Parish case on July 25, 2013, his full release date from state supervision would have been April 14, 2020,

⁷ La. R.S. 15:574.6 provided as follows from 1991 to October 31, 2017:

The parole term, when the board orders a prisoner released on parole, shall be for the **remainder of the prisoner's sentence**, without any diminution of sentence for good behavior. When the parolee has completed his full parole term, he shall be discharged from parole by the Department of Public Safety and Corrections without order by the board, provided that:

- (1) No warrant has been issued by the board for the arrest of the parolee;
- (2) No detainer has been issued by the parole officer for the detention of the parolee pending revocation proceedings; and
- (3) No indictment or bill of information is pending for any felony the parolee is suspected to have committed while on parole. (Emphasis added.)

In 2017, the Louisiana legislature amended La. R.S. 15:574.6(A) to allow parolees to earn “credits for compliance with the terms and conditions of parole supervision pursuant to R.S. 15:574.6.1.” *See* 2017 La. Acts No. 280, § 3. However, the credits did not apply to crimes of violence such as first degree robbery per La. R.S. 15:574.6.1(A). In 2024, the legislature eliminated these credits for parolees. *See* 2024 La. 2nd Ext. Sess. Acts No. 7, § 2.

even if defendant received an early release for good time. Thus, defendant could not have possibly completed his prison sentence or term of state supervision more than ten years prior to November 14, 2024, the date of his arrest for the instant matter. In other words, in order to receive the benefit of the cleansing period, defendant's time in prison, and subsequent state supervision if he was released early for good time or parole, would have had to end by November 14, 2014. This date is only a year and approximately four months after defendant was sentenced to seven years at hard labor with credit for time served on July 25, 2013. Thus, it would have been impossible for ten years to elapse since defendant was discharged from his original sentence for the first degree robbery conviction. We also agree with the *Jefferson* court that the possibility of a pardon or commutation of defendant's sentence in this case is so remote that its existence would not create a reasonable doubt as to the non-expiration of the ten-year cleansing period.

Though neither party cited to the case in their appellate briefs, in *State v. Knight*, 99-138 (La. App. 5 Cir. 6/30/99), 738 So.2d 1179, 1181, this Court reversed a conviction for possession of a firearm by a convicted felon, finding that the State failed to meet its burden to prove the ten-year cleansing period had not elapsed. Specifically, this Court found that the State was required to introduce evidence of the date of termination of the defendant's sentence, and that evidence of the initial sentence and defendant's statement at the time of the arrest that he was on parole were not sufficient to meet this burden. *Id.* at 1181-82. But in concluding that evidence of the date of the termination of the sentence was necessary, the *Knight* court relied on two First Circuit cases that involved defendants who were placed on probation, which unlike parole supervision, can be terminated by the trial court at any time after the expiration of one year of probation pursuant to La. C.Cr.P. art. 897(A). See *State v. Dennis*, 569 So.2d 566 (La. App. 1st Cir. 1990), and *State v. Miller*, 499 So.2d 281 (La. App. 1st Cir.

1986). Thus, evidence of the date of the completion of the defendants' probation supervision was essential in *Dennis and Miller*.

The defendant in *Knight*, however, was not placed on probation for his underlying felony conviction of aggravated crime against nature. He received a sentence of ten years without the benefit of parole, probation, or suspension of sentence. The State relied on a statement by the defendant that he was currently on parole for this conviction to prove that cleansing period had not elapsed. The Court, however, found that the evidence was unreliable and insufficient because the defendant's statement was that he was on parole for a non-parolable offense. The *Knight* court did not discuss or consider the applicable statutory provisions governing good time and parole supervision which mandate that a defendant who receives an early release under these conditions must remain under state supervision for the remainder of the original sentence. Thus, we find this Court's reliance upon *Dennis and Miller* to be error. And to the extent that this Court in *Knight* found that the State is required to introduce evidence of the date of termination of the defendant's sentence in every case, we overrule it. In certain cases, like the one here, the State can carry its burden that the ten-year cleansing period had not elapsed by providing evidence of the initial sentence and then arguing the applicable laws on parole eligibility and good time. Furthermore, the remote possibility of a pardon or commutation of defendant's sentence does not create a reasonable doubt as to the non-expiration of the ten-year cleansing period.

In addition, the jury heard testimony from Deputy Bean explaining that his search of the police database indicated that defendant was not allowed to possess a gun, as well as the jailhouse call during which defendant's wife admonished defendant for carrying a firearm, stating that she had warned him about it and that he did not listen to her. The State further argued that the defendant can be heard on the call agreeing with his wife that he was not supposed to carry a firearm.

For all of these reasons and viewing the evidence in a light most favorable to the prosecution, we find that any rational trier of fact could have found that the State proved beyond a reasonable doubt that the ten-year cleansing period had not elapsed.

ERROR PATENT

The record was reviewed for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990).

Discrepancy in UCO

The original UCO states that defendant pled guilty to attempted possession of a firearm by a convicted felon. However, he was convicted by a jury. Therefore, we remand this matter for correction of the original UCO and direct the Clerk of Court for the 24th Judicial District Court to transmit the original of the corrected UCO to the appropriate authorities in accordance with La. C.Cr.P. art. 892(B)(2) and the Department of Corrections' legal department. *See State v. Ard*, 20-221 (La. App. 5 Cir. 4/28/21), 347 So.3d 1046, 1060.

Mandatory Fine/Financial Hardship Hearing

The trial court did not impose the mandatory fine of not less than one thousand dollars nor more than five thousand dollars pursuant to La. R.S. 14:95.1(B)(2)⁸ or any fees at the time of the original sentence. However, when the trial court sentenced defendant as a second-felony offender, the trial court ordered defendant to pay a \$1,000.00 fine, and fees including \$150.00 to the Indigent Defendant Board, \$150.00 to the Jefferson Parish Sheriff's Office, and \$250.00 to the Jefferson Parish Sheriff's Office Crime Lab.

⁸ La. R.S. 14:95.1(B)(2) provides: "Whoever is found guilty of attempting to violate the provisions of this Section shall be imprisoned at hard labor for not less than one year nor more than seven and one-half years and fined not less than one thousand dollars nor more than five thousand dollars."

The trial court erred by imposing a \$1,000.00 fine when sentencing defendant under the Habitual Offender Law. La. R.S. 15:529.1 does not authorize imposition of a fine but only provides for enhanced sentences relating to the term of imprisonment. *State v. Faciane*, 17-224 (La. App. 5 Cir. 11/15/17), 233 So.3d 195, 212, *writ denied*, 17-2069 (La. 10/8/18), 253 So.3d 797. Pursuant to our authority under La. C.Cr.P. art. 882, we vacate the \$1,000.00 fine from defendant's enhanced sentence, affirm the sentence as amended, and order the Clerk of the 24th Judicial District Court to transmit notice to the appropriate authorities in accordance with La. C.Cr.P. art. 892(B)(2) and the Department of Corrections' legal department.

As to the fees imposed by the trial court, La. C.Cr.P. art. 875.1 requires the court to conduct a hearing to determine whether payment of any fine, fee, cost, restitution, or other monetary obligation would cause substantial financial hardship to the defendant or his dependents. Upon review of the record, we find no indication the trial court conducted such a hearing or that the required judicial determination was waived. Accordingly, due to the requirements of La. C.Cr.P. art. 875.1, we also vacate the fees imposed on defendant and remand the matter for compliance with La. C.Cr.P. art. 875.1. *See State v. Chest*, 24-199 (La. App. 5 Cir. 2/26/25), 406 So.3d 684, 701, *writ denied*, 25-387 (La. 5/20/25), 409 So.3d 222.

DECREE

For the preceding reasons, we affirm defendant's conviction. We also affirm defendant's sentence except we vacate the \$1,000.00 fine imposed by the trial court as part of defendant's multiple offender sentence. We further vacate the fees

imposed by the trial court and remand this matter for compliance with La. C.Cr.P.
Art. 875.1 and correction of the UCO.

**CONVICTION AFFIRMED; SENTENCE
AFFIRMED IN PART AND VACATED IN
PART; REMANDED WITH
INSTRUCTIONS**

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 25-KA-433

STATE OF LOUISIANA

versus

ALFONZO FAIR

MARCEL, J., CONCURS WITH REASONS

I concur with the majority that a certified copy of documents evidencing an initial sentence imposed without the benefit of probation or suspension following conviction for a certain felony is sufficient for proving that the ten-year statutory period of limitations (cleansing period) had not elapsed before the commission of attempted violation of La. R.S. 14:95.1. In addition, to the extent that our holding overrules this Court's prior decision *State v. Knight*¹, I also agree. However, I write separately to address my observation that this case is factually distinguishable from *Knight* and my respectful disagreement with the scope of the majority opinion.

The defendant in *Knight* was arrested for violating La. R.S. 14:95.1 on June 28, 1998, at which time he self-reported being on parole for aggravated crime against nature to the law enforcement officer. At trial, it was stipulated that the defendant had been convicted of aggravated crime against nature for which he was sentenced on August 6, 1987 to ten years at hard labor without the benefit of parole, probation, or suspension of sentence. No other evidence was presented. In

¹ *State v. Knight* 99-138 (La. App. 5 Cir. 6/30/99), 738 So.2d 1179.

reversing the conviction, this Court observed that defendant's predicate offense sentence was to be served without benefit of parole, which contradicted defendant's admission to being on parole at the time of his arrest. Consequently, the court found the state failed to prove the cleansing period element of the crime beyond a reasonable doubt.

Turning now to the instant case, defendant was arrested on November 14, 2024 for violation of La. R.S. 95.1 after a firearm was discovered in his backpack during a traffic stop. At trial, certified records from the Orleans Parish Criminal District Court for case number 516-085 were introduced into evidence. The certified records document that defendant was arrested on April 15, 2013, that he entered guilty pleas to two counts of first-degree robbery (La. R.S. 14:64.4.1), and the trial court imposed concurrent seven-year sentences to be served at hard labor on July 25, 2013. The sentence was consistent with the sentencing requirements of La. R.S. 14:64.1(B) and is deemed imposed without benefits.² Considering certified records from the Orleans Parish Criminal District Court, statutes applicable to determining the completion of sentences imposed without benefit of parole, probation, or suspension, and counting seven years on the Gregorian calendar, the earliest date on which defendant could have completed his sentence for the predicate conviction was April 15, 2020 (if he remained in pre-trial custody until sentencing). Thus, the earliest cleansing period expiration date for defendant's predicate conviction was April 15, 2030.

I agree that the documentary evidence described in the preceding paragraph was sufficient proof of the cleansing period element of La. R.S. 14:79.1.

² As noted in our opinion, "at all relevant times, La. R.S. 14:64.1(B) required a sentence for first degree robbery to be served without the benefit of parole, probation, or suspension of imposition or execution of the sentence. Even though the conviction packet does not indicate that the trial court imposed the seven year sentence without benefits, La. R.S. 15:301.1 provides that when the criminal statute requires all or a portion of a sentence to be served without benefits, the sentence shall be deemed to be imposed without such benefits by operation of law."

However, to the extent that the majority opinion confers weight to testimony from an officer recounting certain statements made by defendant and his wife in a recorded jailhouse telephone conversation, I disagree. While finding these statements potentially probative of the intent to possess a handgun, which is not before us on appeal, I do not find the purported inculpatory statements made by defendant in response to his wife's opinion to be competent corroborative evidence satisfying the State's burden of proving the cleansing period element of La. R.S. 14:95.1.

In conclusion, I restate my concurrence with the majority as to prosecutions for La. R.S. 14:95.1 violations where the predicate offense sentence is imposed without benefit of parole, probation, or suspension of sentence. Our holding, in my view, should not be interpreted as a *per se* rule for proving the cleansing period element, particularly in those cases where the sentence for a predicate conviction is imposed with the benefit of parole, probation, or suspension of sentence.

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 25-KA-433

STATE OF LOUISIANA

versus

ALFONZO FAIR

**WICKER, J., CONCURS FOR THE REASONS ASSIGNED
BY MARCEL, J.**

**Fifth Circuit Court of Appeal
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versus

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**JOHNSON, J., CONCURS FOR THE REASONS ASSIGNED
BY MARCEL, J.**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
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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 **MAY 29, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-KA-433

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE NANCY A. MILLER (DISTRICT JUDGE)

MICHAEL A. MITCHELL (APPELLANT)

DARREN A. ALLEMAND (APPELLEE)

REMY V. STARNS (APPELLANT)

SUSAN C. CIARAVELLA (APPELLANT)

HONORABLE PAUL D. CONNICK, JR.

(APPELLEE)

ZACHARY L. GRATE (APPELLEE)

ANDREA F. LONG (APPELLEE)

THOMAS J. BUTLER (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED