

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KA-9

STATE OF LOUISIANA

versus

DONALD JENKINS

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 25-2770, DIVISION "E"
HONORABLE FRANK A. BRINDISI, JUDGE PRESIDING

September 14, 2026

SCOTT U. SCHLEGEL
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Scott U. Schlegel

SENTENCE VACATED;
REMANDED FOR RESENTENCING

SUS

SMC

JGG

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DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Thomas J. Butler
Matthew R. Clauss

COUNSEL FOR DEFENDANT/APPELLANT,
DONALD JENKINS

Ivan A. Orihuela

SCHLEGEL, J.

Defendant, Donald Jenkins, appeals his sentence on one count of criminal damage to property in violation of La. R.S. 14:56(B)(2). For the following reasons, we vacate defendant's sentence and remand for resentencing on an errors patent review.

Procedural and Factual Background

On June 25, 2025, the Jefferson Parish District Attorney filed a bill of information charging defendant with one count of simple criminal damage to property in violation of La. R.S. 14:56(B)(2). The bill alleged that on March 26, 2025, defendant damaged Nicolle Castillo-Cruz's 2016 Ford Explorer, with damage amounting to greater than \$1,000 but less than \$50,000. Defendant pled not guilty on June 25, 2025.

On October 30, 2025, defendant withdrew his plea of not guilty and pled guilty as charged pursuant to La. C.Cr.P. art. 893. The trial court sentenced defendant to two years imprisonment "deferred," and placed him on active probation for two years. As a condition of probation, defendant was ordered to pay \$12,000 in restitution to the victim.

Defendant timely filed a motion for appeal on November 21, 2025. The trial court granted the motion on December 2, 2025. Defendant now appeals, arguing that the trial court erred in assessing restitution to the victim in the amount of \$12,000.

Law and Analysis

Defendant asserts three assignments of error related to the restitution ordered by the trial court and contends that one of the errors asserted is an error patent.

We review the record 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). Our review indicates that an error patent is present in this case.

La. R.S. 14:56(B)(2) applies to a charge for simple criminal damage to property with damage amounting to \$1,000 but less than \$50,000 and provides: “Where the damage amounts to one thousand dollars but less than fifty thousand dollars, the offender shall be fined not more than one thousand dollars or imprisoned *with or without hard labor* for not more than two years, or both.” (Emphasis added.)

La. C.Cr.P. art. 879 requires a court to impose a determinate sentence. If the applicable sentencing statute allows discretion, the failure to indicate whether the sentence is to be served with or without hard labor is an impermissible indeterminate sentence. *State v. Rochefort*, 23-344 (La. App. 5 Cir. 2/7/24), 383 So.3d 256, 258-259; *State v. Rome*, 15-229 (La. App. 5 Cir. 9/23/15), 176 So.3d 721, 725.

Here, the trial court had discretion as to whether to sentence defendant to hard labor. While the commitment indicates that defendant’s sentence was to be served at hard labor, the trial court did not state on the record at sentencing whether the sentence was to be served with or without hard labor.

When there is a discrepancy between the minutes and the transcript, the transcript prevails. *Rochefort*, 383 So.3d at 259; *State v. Bourgeois*, 22-418 (La. App. 5 Cir. 4/26/23), 361 So.3d 1138, 1152. Accordingly, we conclude that defendant’s sentence is indeterminate. We therefore vacate defendant’s sentence and remand the matter to the trial court for the imposition of a determinate sentence in accordance with La. C.Cr.P. art. 879. *See Rochefort*, 383 So.3d at 259; *State v. Gilbert*, 23-121 (La. App. 5 Cir. 11/8/23), 377 So.3d 378, 387-88, *writ denied*, 23-1640 (La. 5/29/24), 385 So.3d 704.

Having found that defendant's sentence was indeterminate, we pretermitted discussion of defendant's asserted assignments of error related to restitution. *See State v. Granado-Gonzalez*, 24-612 (La. App. 5 Cir. 12/10/25), 428 So.3d 718, 724 (upon finding of errors patent related to sentencing, the Court pretermitted further discussion of assignments of error related to sentencing); *State v. Richey*, 13-228 (La. App. 5 Cir. 10/30/13), 128 So.3d 1143, 1156 n. 69 (pretermitted discussion of assigned error regarding restitution because defendant's sentence was vacated).

Decree

For these reasons, we vacate defendant's sentence and remand to the trial court for resentencing.

SENTENCE VACATED;
REMANDED FOR RESENTENCING

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
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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 **SEPTEMBER 14, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

26-KA-9

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE FRANK A. BRINDISI (DISTRICT JUDGE)
HONORABLE PAUL D. CONNICK, JR. MATTHEW R. CLAUSS (APPELLEE)
(APPELLEE)

IVAN A. ORIHUELA (APPELLANT)

MAILED