

SUPREME COURT OF LOUISIANA

2008-K-634

STATE OF LOUISIANA

vs.

ELIZABETH ZACHARY

**ON APPLICATION WRIT OF CERTIORARI
FROM THE FIRST CIRCUIT COURT OF APPEAL**

Johnson, J. would grant the writ application and assigns reasons:

The bare facts of this case raise several issues of concern. Defendant, Elizabeth Zachary, was present when her boyfriend, Paul Weber, killed George Taylor, and she assisted with covering up the crime. The state initially charged Weber and Zachary with 1st degree murder, by grand jury indictment. Zachary's case was severed, and charges amended to charge Zachary with obstruction of justice. Paul Weber, her former co-defendant, plead guilty to manslaughter and was sentenced to 40 years, twenty seven years of which were suspended, resulting in an actual sentence of incarceration of 13 years.

On January 9, 1998, after trial, Zachary was found guilty of obstruction of justice in violation of 14:130.1 and sentenced to ten years. A bill of information charging Zachary as a habitual offender was filed a month later, on February 19,

1998, because Zachary had a prior conviction for burglary in Florida. The defense filed a motion to quash the habitual offender bill on July 30, 1998. The trial court judge, Jefferson Hughes, while not ruling on the motion to quash, declined to adjudicate defendant a habitual offender because he found defects in the guilty plea form used by the Florida court in the prior burglary conviction. In fact, Judge Hughes made a hand written note in the record stating that he declined to sentence the defendant as a habitual offender “‘to make up’ for the fact that the actual killer, Paul Weber, was allowed to plea to a reduced charge [although] he was the actual killer”. R., Vol.2, p. 371. The state did not seek supervisory review of the court’s determination that there were defects in the guilty plea. In 1999, the state, upon discovery of the guilty plea colloquy in the burglary case, moved to reopen the habitual offender hearing. This prompted the defense to file two additional motions to quash and resulted in protracted litigation¹. When the state filed their motion to reopen the habitual offender hearing, Zachary was approximately a year and a half away from her parole release date. After serving nearly five years of her sentence for obstruction of justice, Zachary was released on parole in 2001.

The second hearing on the habitual defender motion was held on October 26, 2005, five years after the first hearing, and seven (7) years after filing the bill of information. At the hearing, a new trial court judge, Elizabeth Wolfe, sentenced Zachary to 20 years imprisonment, which was the mandatory minimum term for a

¹*The motions to quash resulted in appeals and writs taken to this Court. State v. Zachary, 01-3191, p. 6 (La. 10/25/02), 829 So. 2d 405, 408.*

second offender convicted of obstruction of justice when the underlying offense involves a crime in which the sentence of death or life imprisonment may be imposed².

The habitual offender statute contemplates an enhanced sentence based on the maximum sentence for an underlying offense. It should not prescribe a particular enhancement for a sentence, which by virtue of plea agreement and adjudication cannot be imposed. Stated simply, Zachary, in effect, received an enhancement for a life sentence for which no one was ultimately convicted. The defendant is now sentenced to a total of 20 years imprisonment, without the benefit of parole or probation, for her part in covering up the death of George Taylor, while the killer, Paul Weber, has been sentenced to a total of 13 years in custody for the actual killing. The bill of information should have been re-filed to reflect the appropriate maximum sentence as per the adjudicated underlying offense, and I would grant the writ application to consider this disparity.

Considering the length of the delay in prosecution, the delay in the instant case is presumptively prejudicial to the defendant. The defendant has, from all accounts, busied herself with her own rehabilitation, excelling at university studies, maintaining gainful employment and is living as a productive member of society. Her case deserves more than a cursory review. She enrolled in, and completed, a paralegal studies certification course at Louisiana State University, re-married, attended church

²R.S. 14:130.1 (b) (1).

services devoutly, and from all accounts became a model citizen.

Seven (7) years is NOT a “reasonable time” for final adjudication of the habitual offender issue. A defendant charged in a criminal case has the right to be apprized of the undivided, complete consequences of a verdict of guilty within a reasonable time.³ The trial court’s written note that the court would not adjudicate defendant a habitual offender, effectively apprised the defendant that she would not be subject to the consequences of application of the habitual offender statute subsequent to her guilty plea. This Court held in *State v. Muhammed*⁴, that “...the Sixth Amendment will not tolerate unlimited delays in imposing the “sentence for the offense of conviction.” Although, the Court in *Muhammed*, found that completion of the sentence on an underlying offense does not necessarily preclude subsequent multiple offender sentencing, it recognized that fundamental fairness in determining whether a habitual offender hearing is held within a reasonable time, turns upon the facts of each individual case.⁵ Relevant factors include: 1) length of delay, 2) reason for delay, 3) defendant’s invocation of speedy trial rights, and 4) prejudice to the defendant. Specifically, this Court articulated... “a case by case evaluation is

³*State v. Broussard*, 416 So.2d at 110-111; *State v. Perkins*, 01-1092 at p. 4, 811 So.2d at 999.

⁴875 So. 2d. 45, at 54 (La. 2004).

⁵There are many instances when the state acted within the time limitation, but the case specific facts deemed the delay as unreasonable and “presumptively prejudicial.” In *State v. Reaves*, 376 So.2d 136 (La.1979), the defendant was charged with possession of one marijuana cigarette, a simple misdemeanor offense. The trial was continued four times in the three and one-half months after charges had been filed. On the fourth trial date, the state moved for a continuance because its principal witness was absent. The trial court denied the continuance, and the state entered a nolle prosequi. The state then filed a new bill of information, which the defendant moved to quash on the basis that he had been denied his right to a speedy trial. The trial court granted the motion, and this Court affirmed the lower courts’ rulings.

warranted to determine whether the proceeding has been properly concluded.⁶ This issue should be examined in light of the decision in *State v. Broussard*, 416 So. 2d 109, 110-111 (La. 1982), which held that the filing of a habitual offender bill was not timely when filed 13 months after initial sentencing and just before the defendant's parole release.

We should also examine whether relator's prior burglary conviction was final at the time of the commission of the current offense. In the instant case, the state did not seek supervisory review on the trial court's determination that the Florida guilty plea was defective. The trial judge apparently based his decision on the fact that the trial judge in Florida had not signed the guilty plea form, and the minutes of the proceeding indicated that the defendant had not received her Boykin rights⁷. The appellate courts are split on whether a conviction must be final to invoke the habitual offender statute. The Second, Third, Fourth and Fifth Circuits require finality, while the First Circuit rejects this conclusion.

The sentencing disparity in this case is glaring. Using the crime originally charged, as opposed to the crime of conviction in this habitual offender proceeding, results in an excessive sentence, particularly when we consider the light sentence received by the actual perpetrator of the crime. There are numerous examples in our jurisprudence where sentences involving the habitual offender law have been found

⁶Id at 55.

⁷R., Vol. 2, p. 407

excessive⁸. Additionally, since there is a great disparity regarding the circumstances under which each District Attorney elects to invoke the habitual offender statute, with some District Attorneys charging *every* defendant for whom the statute applies, and other District Attorneys not using it at all, the results vary from parish to parish, which gives rise to constitutional questions of equal protection under the law.

⁸*State v. Hayes*, 739 So. 2d 301 (La. App. 1st Cir. 1999) (life sentence for theft over \$500.00 found excessive), *State v. Bailey*, 727 So. 2d 1199 (La App. 4th Cir. 1999) (15 years for third offense second degree battery found excessive), *State v. Wilson*, 803 So. 2d 102 (La. App. 4th Cir. 2001) (life sentence for third offense distribution of cocaine found excessive), *State v. Robinson*, 713 So.2d 828 (La. App. 5th Cir. 1998) (life sentence for third offense robbery found excessive), *State v. Rice*, 807 So. 2d 350 (La. App. 4th Cir. 2002) (life sentence for third felony offender found excessive).