

Judgment rendered June 20, 2007.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 42,227-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

DONALD R. HILL

Appellant

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Appealed from the
Eleventh Judicial District Court for the
Parish of Desoto, Louisiana
Trial Court No. 0512683

Honorable Robert E. Burgess, Judge

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LOUISIANA APPELLATE PROJECT
By: Paula Corley Marx
William J. Franklin

Counsel for
Appellant

DON M. BURKETT
District Attorney

Counsel for
Appellee

RICHARD Z. JOHNSON, JR.
Assistant District Attorney

* * * * *

Before STEWART, GASKINS and LOLLEY, JJ.

LOLLEY, J.

Defendant, Donald J. Hill, appeals a judgment from the Eleventh Judicial District Court, Parish of DeSoto, State of Louisiana, where Hill pled guilty to one count of distribution of cocaine, a violation of La. R.S. 40:967(A)(1), and was sentenced to 10 years at hard labor, the first two years to be served without benefits. For the following reasons, we affirm Hill's conviction and sentence.

FACTS

On May 14, 2005, Hill sold an undercover detective two \$20 rocks of crack cocaine. Hill, who has an extensive criminal history, pled guilty as charged on April 11, 2006. The terms of Hill's plea agreement included a promise by the state not to file a habitual offender bill against him and, further, that Hill's sentence would not exceed 15 years' imprisonment. The trial court accurately explained to Hill at his plea that 2 years of his sentence must be imposed without benefit of parole, probation or suspension of sentence, and subsequently Hill elected to plead guilty.

On August 3, 2006, the trial court sentenced Hill to serve 10 years imprisonment at hard labor, the first 2 years of which would be served without benefit of parole, probation or suspension of sentence. Hill filed a motion to reconsider sentence, urging that his sentence was excessive; the trial court denied that motion. Hill now appeals, again urging that his sentence is excessive.

LAW AND DISCUSSION

Louisiana C. Cr. P. art. 881.2(A)(2) provides:

The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea.

This provision applies both to agreed sentences and to agreed ceilings, “ranges” or “caps.” *State v. Young*, 1996-0195 (La. 10/15/96), 680 So. 2d 1171; *State v. Burford*, 39,801 (La. App. 2d Cir. 06/29/05), 907 So. 2d 873; *State v. Rice*, 26,478 (La. App. 2d Cir. 12/07/94), 648 So. 2d 426, *writ denied*, 1995-0431 (La. 06/16/95), 655 So. 2d 340.

Since the record shows the state, Hill, and the trial court all agreed to the ceiling on Hill’s sentence, and the subsequent sentence was imposed within the limits of that agreement, Hill may not appeal his sentence. *See State v. Jonas*, 29,750 (La. App. 2d Cir. 08/20/97), 698 So. 2d 744.

Accordingly, Hill’s conviction and sentence are affirmed.

AFFIRMED.