

Judgment rendered August 2, 2007.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 42,611-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

JOHNNY LEE CAPERS

Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 235,108

Honorable John Mosely, Judge

* * * * *

INDIGENT DEFENDER OFFICE
By: Michelle M. Andrepont

Counsel for
Appellant

LOUISIANA APPELLATE PROJECT
By: W. Jarred Franklin

PAUL J. CARMOUCHE
District Attorney

Counsel for
Appellee

DAMON D. KERVIN
JOHN FORD McWILLIAMS, JR.
Assistant District Attorneys

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Before BROWN, PEATROSS and MOORE, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

DMM

HNB
CBP

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PER CURIAM

Johnny Lee Capers appeals his adjudication as a second felony offender and his sentences of 49½ years at hard labor. We now vacate the adjudication and remand for further proceedings.

Capers was originally convicted of two counts of armed robbery, adjudicated a third felony offender and sentenced to two concurrent life sentences. On appeal, this court affirmed the offenses of conviction but vacated the multiple offender adjudication for insufficient proof that the cleansing period of La. R.S. 15:529.1 C had not elapsed. *State v. Capers*, 41,231 (La. App. 2 Cir. 8/23/06), 938 So. 2d 1076.

On remand, the district court vacated the original sentences, adjudicated him a second felony offender and sentenced him to 49½ years at hard labor on each count. Capers again appeals, urging insufficient proof that the cleansing period had elapsed. In brief, the state concedes that it “failed to offer proof of defendant’s actual discharge date at the multiple offender hearing” and that the adjudication and sentences should be vacated.

We agree that this error patent requires us to vacate the adjudication and sentences and remand the case for further proceedings. *State v. Bullock*, 311 So. 2d 242 (La. 1975); *State v. Capers, supra*.

HABITUAL OFFENDER ADJUDICATION AND SENTENCES
VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS.