

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0314

STATE OF LOUISIANA

VERSUS

MARK PERKINS

**DATE OF JUDGMENT: NOV 01 2013**

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT  
NUMBER 25266, DIV. C, PARISH OF ASCENSION  
STATE OF LOUISIANA

HONORABLE GUY HOLDRIDGE, JUDGE

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Ricky L. Babin  
District Attorney  
Donald D. Candell  
Gonzales, Louisiana

Counsel for Appellee  
State of Louisiana

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Baton Rouge, Louisiana

Counsel for Defendant-Appellant  
Mark Perkins

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

**Disposition: CONVICTIONS AND SENTENCES AFFIRMED.**

*CF*  
*TMH*  
*mt*

KUHN, J.

Defendant, Mark Perkins, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1. Defendant pled not guilty and waived his right to a jury trial. Defendant filed a motion to quash the bill of information, which was denied. Following the direct examination of the first witness at the bench trial, the State amended its charge from attempted second degree murder to aggravated criminal damage to property, a violation of La. R.S. 14:55. Defendant withdrew his not guilty plea and pled guilty to the amended charge. He also pled guilty to illegal possession of stolen firearms, a violation of La. R.S. 14:69.1, and possession of cocaine, a violation of La. R.S. 40:967(C). For the aggravated criminal damage to property conviction, defendant was sentenced to seven and one-half years imprisonment at hard labor; for the illegal possession of stolen firearms conviction, he was sentenced to five years imprisonment at hard labor; for the possession of cocaine conviction, he was sentenced to five years imprisonment at hard labor. The sentences were ordered to run concurrently. Defendant now appeals, designating one assignment of error. We affirm the convictions and sentences.

### FACTS

The following facts were adduced at the *Boykin* hearing:

On or about April 30, 2009, Parish of Ascension, detectives with the Ascension Parish Sheriff's Office responded to Conner Road in reference to a shooting. Upon arrival, detectives met with Charlene Chester who stated she went to her boyfriend's, Mark Perkins, home in order to retrieve a CD player out of her vehicle. Chester stated Perkins began accusing her of having an affair. Chester stated that she then left the residence at which time Perkins ran through several yards catching up with the vehicle and shot at and hit her vehicle several times. Search of Perkins's home was conducted and detectives located crack cocaine and a digital scale. Perkins was not located. A warrant was issued for Perkins's arrest and he turned himself in on May 1, 2009.

On or about March 28, 2008, Parish of Ascension, deputies from the Ascension Parish Sheriff's Office were investigating a

complaint of shots fired. During the investigation, deputies observed a blue Buick in the area. The driver, later identified as Mark Perkins, sped up and spun the tires down the street. Detectives located the vehicle parked by a driveway. Deputies spoke to Perkins and while speaking to the detectives they noticed a chrome 357 magnum with a brown handle lying in the ditch. The gun was reported stolen from East Baton Rouge Parish. Perkins was then arrested and booked into the Ascension Parish jail.

### ASSIGNMENT OF ERROR

In his sole assignment of error, defendant asserts the trial court erred in denying his pro se motion to quash the bill of information. When defendant changed his not guilty plea to a guilty plea to an amended charge of aggravated criminal damage to property, defendant also pled guilty to possession of cocaine and illegal possession of stolen firearms. Defendant contends the motion to quash should have been granted because these two additional offenses he pled guilty to were not listed on any bill of information.

It is well settled that entry of an unqualified plea of guilty waives all non-jurisdictional defects occurring prior thereto, and precludes review thereof either by appeal, or where appeal is unavailable, by supervisory review. In *State v. Crosby*, 338 So.2d 584, 588 (La. 1976), the Louisiana Supreme Court held that where a defendant, at the time of entering a guilty plea, expressly stipulates that he does not waive his right to the review of a non-jurisdictional pre-plea ruling, the court will review that ruling. *State v. Moore*, 420 So.2d 1099, 1100 (La. 1982). But in the instant matter, defendant did not enter any of his three guilty pleas pursuant to *Crosby*.

At the *Boykin* hearing, defendant specifically informed the trial court he was not appealing any ruling:

Q. Do you wish to appeal any rulings or orders entered by this court prior to your guilty plea?

A. No, sir.

Accordingly, we find defendant waived his right of review of non-jurisdictional defects, including the denial of his motion to quash, when he entered his unqualified plea to a reduced charge. See Moore, 420 So.2d at 1100.

Moreover, defendant's pro se motion to quash attacked the sufficiency of the evidence of the charges against him, which goes to the merits of the case. Because such issues were factual matters that related to the merits of the case, they were not properly raised in a motion to quash. Accordingly, the trial court properly denied defendant's motion to quash. See La. C.Cr.P. arts. 532-34; State v. Byrd, 96-2302 (La. 3/13/98), 708 So.2d 401, 411, cert. denied, 525 U.S. 876, 119 S.Ct. 179, 142 L.Ed.2d 146 (1998). Further, to the extent that in his brief defendant is contending something other than sufficiency -- i.e., the two additional offenses he pled guilty to did not appear on any bills of information -- the issue is not properly before us because it was not preserved for review in the trial court below. See La. C.Cr.P. art. 841(A).

The failure to preserve the issue notwithstanding, we address defendant's contention that the charges he pled guilty to did not appear on bills of information. The record before us indicates the State filed a bill of information (Docket No. 25266) charging defendant with attempted second degree murder. Prior to trial, defendant filed a pro se motion to quash, referencing docket numbers 25266-7. Below these docket numbers, defendant listed the offenses he was charged with as attempted second degree murder, aggravated criminal damage, illegal use of a weapon, and possession of a controlled substance. In his pro se motion, defendant maintains that the bill of information should be quashed and the charges against him dismissed because there is insufficient evidence to prove any of these charges. Following a hearing on the matter, the trial court denied the pro se motion to quash.

At trial, following the direct examination of the first witness, the trial court took a recess. When the parties returned defendant agreed to withdraw his not guilty plea and plead guilty in exchange for the State's amending the second degree murder charge to aggravated criminal damage to property. Defendant also agreed to plead guilty to two other charges pending against him. The State also agreed not to file a habitual offender bill of information against defendant. At the *Boykin* examination which then followed, defendant was informed of each of the charges against him, the elements of each crime, the factual bases for the crimes, and the sentences he would be receiving. Defendant was fully informed of his rights by the trial court and voluntarily and knowingly waived his right against self-incrimination, his right to a jury trial, and his right to confrontation. See *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Fields*, 95-2481 (La. App. 1st Cir. 12/20/96), 686 So.2d 107, 109.

The following exchange indicates defendant was informed of each charge against him and the corresponding docket number when he pled guilty:

THE CLERK:

*State of Louisiana versus Mark Perkins 25037*, you are charged with illegal possession of stolen firearms.

How do you plead?

THE DEFENDANT:

Guilty.

THE CLERK:

You are also charged under Docket No. 25266 with aggravated criminal damage to property.

How do you plead?

THE DEFENDANT:

Guilty.

THE CLERK:

You are charged with Docket No. 25267 with possession of a Schedule II controlled dangerous substance.

How do you plead?

THE DEFENDANT:

Guilty.

When sentenced at the *Boykin* hearing, defendant was again informed of each of the bills of information his convictions were based upon:

The Court accepts your plea and the plea bargain and . . . it is the sentence of the Court that you be committed to the Department of Corrections for a period of seven and a half . . . years with credit for time served on case No. 25266; five . . . years in the Department of Corrections with credit for time served on case No. 25267; five . . . years in the Department of Corrections with credit for time served on case No. 25037.

The record further indicates defendant and defense counsel signed a waiver of rights form:

Mr. Perkins, I'll ask that you and your attorney sign this form acknowledging that you have been advised of all of your constitutional rights, that you waive your constitutional rights and you've been advised of the plea bargain, that you are, in fact, in agreement with this plea bargain. (WHEREUPON THE DEFENDANT/DEFENSE COUNSEL COMPLY WITH THE REQUEST OF THE COURT).

We note as well that about six months prior to his trial, defense counsel filed on behalf of defendant a motion and order for preliminary examination. In the caption, defense counsel listed five separate docket numbers regarding defendant, including numbers 25037, 25266, and 25267. Accordingly, it is clear defendant was at all times well aware of the bills of information that had been filed and the charges the State had brought against him.

Finally, we note that by request of this court, the appellate record has been supplemented with the bills of information for illegal possession of stolen firearms (Docket No. 25037) and possession of cocaine (Docket No. 25267), both of which

clearly indicate the charges against defendant. The record has also been supplemented with the waiver of rights form signed by defendant and defense counsel at the aforementioned *Boykin* hearing. The waiver of rights form lists the three crimes defendant was charged with and their corresponding docket numbers. Defendant initialed and signed the form, indicating that he had been advised of his rights and that he was pleading guilty to all three charges against him.

The assignment of error is without merit.

**DECREE**

For these reasons, we affirm the convictions and sentences of defendant, Mark Perkins.

**CONVICTIONS AND SENTENCES AFFIRMED.**