STATE OF LOUISIANA	*	NO. 2000-KA-1447
VERSUS	*	COURT OF APPEAL
WESLEY MAJOR	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-292, SECTION "J"
Honorable Leon Cannizzaro, Judge

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JUDGE

JOAN BERNARD ARMSTRONG

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge David S. Gorbaty)

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AFFIRMED.

STATEMENT OF CASE

By bill of information filed December 13, 1999, the defendant, Wesley Major, was charged with one count of possession of cocaine. At arraignment on December 16, 1999, he entered a not guilty plea. On December 20, 1999, counsel withdrew the motion for a preliminary hearing and all discovery motions after receiving a copy of the police report. Following trial on January 27, 2000, a six-member jury found the defendant guilty as charged. He was sentenced on March 27, 2000, to serve five years at hard labor. A motion to reconsider the sentence was denied; the motion for appeal was granted. The state then filed a multiple bill of information charging the defendant as a second felony offender based upon a 1987 guilty plea to possession of phencyclidine in case number 318-945 D. On April 26, 2000, he pled guilty as charged. After vacating the original sentence imposed, the district court resentenced the defendant to serve five years at hard labor. A second motion to reconsider the sentence was denied. The district court ordered that the multiple bill proceedings be incorporated in the

defendant's appeal.

STATEMENT OF FACTS

On November 20, 1999, Officers Glasser and Scanlan were working undercover in the Mid-City area of Orleans Parish. At approximately 1:30 a.m., the officers observed the defendant on the corner of Rocheblave and Bienville Streets standing next to a bicycle. The defendant nodded and waived at the officers, which they interpreted as a gesture to stop. Before stopping, the officers circled the block to alert the back-up officers that a narcotics transaction was possibly going to occur.

When they came upon the defendant the second time, he again waived and asked whether they were looking for something. Officer Glasser told him that they were looking for a $10.00 piece of crack cocaine. The defendant asked them whether they were the police, which Office Glasser denied. The defendant responded that they looked like police, and the officer told him that the deal was off and began to drive away. The defendant then asked whether they intended to smoke the cocaine. When Officer Glasser said yes, the defendant offered to purchase the cocaine only if they allowed him to get into the car and smoke it with them. Officer Glasser agreed to the conditions. The defendant indicated that he had to first

park his bike before purchasing the cocaine, and he left to run his errand.

Because the defendant sought to smoke the cocaine in the car with the officers, Officer Glasser decided that it would be safer to arrest the defendant for attempted distribution of cocaine rather than let him get inside of the car. Therefore, while the defendant was parking his bike, Officer Glasser drove around the block again to alert the back-up officers. He also broadcast a description of the defendant over the radio. The back-up officers arrested the defendant, and Officer Glasser identified him as the person who attempted to sell cocaine. After reading him his rights, a search incident to the arrest was conducted. During the search, a crack pipe was seized from the defendant's left front pocket. White residue was visible inside of the glass tube. Testing conducted on the residue established that it was cocaine.

ERRORS PATENT

A review of the record reveals no errors patent.

DISCUSSION

ASSIGNMENTS OF ERROR NUMBERS 1 AND 2

In these assignments of error, the defendant asserts that because the crackpipe was illegally seized, his counsel was ineffective in failing to file a motion to suppress the evidence.

Generally, the issue of ineffective assistance of counsel is more

properly addressed in an application for post-conviction relief filed in the trial court, where a full evidentiary hearing can be conducted. State v. Smith, 97-2221 (La. App. 4 Cir. 4/7/99), 734 So.2d 826, 834, writ denied, 99-1128 (La. 10/1/99), 747 So.2d 1138. Only if the record discloses sufficient evidence to rule on the merits of the claim does the interest of judicial economy justify consideration of the issues on appeal. Id. at 834-35. In the instant case, the evidence is sufficient to address defendant's claim.

The defendant's claim of ineffective assistance of counsel is to be assessed by the two-part test announced in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). See State v. Fuller, 454 So.2d 119 (La. 1984). The defendant must show that counsel's performance was deficient and that this deficiency prejudiced him. The defendant must make both showings to prove that counsel was so ineffective as to require reversal. State v. Sparrow, 612 So.2d 191, 199 (La. App. 4 Cir. 1992). Counsel's performance is not ineffective unless it can be shown that he or she made errors so serious that he or she was not functioning as the "counsel" guaranteed to the defendant by the Sixth Amendment of the federal constitution. Strickland, at 687, 104 S.Ct. at 2064. That is, counsel's deficient performance will only be considered to have prejudiced the defendant if the defendant shows that the errors were so serious that he was

deprived of a fair trial. To carry his burden, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694, 104 S.Ct. at 2068. It is not enough for an accused to make allegations of ineffectiveness; the accused must couple these allegations with a specific showing of prejudice. State v. Brogan, 453 So.2d 325, 328 (La. App. 3 Cir. 1984).

Here, the defendant argues that the crack pipe should have been suppressed because the search incident to his arrest went beyond a pat-down search for weapons.

A peace officer may lawfully arrest a person without a warrant when he has reasonable cause to believe that the person to be arrested has committed an offense. LSA-C.Cr.P. art. 213. Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a man of ordinary caution in the belief that the person to be arrested has committed a crime. State v. White, 28,095 (La. App. 2 Cir. 5/8/96), 674 So.2d 1018, 1023.

One exception to the warrant requirement is a search incident to a

lawful arrest made of a person and the area in his immediate control. Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034 (1969). When a lawful arrest is made on probable cause, a warrantless search incident thereto of a person and the area in his immediate control is permissible. State v. Andrishok, 434 So.2d 389, 391 (La. 1983).

In the instant case, Officer Glasser testified that the defendant approached, asking whether he and Officer Scanlan were looking for something. After learning that they were searching for crack cocaine, the defendant offered to obtain some only if he was permitted to enter the car and smoke it with them. Once the officers agreed to the conditions, the defendant left to retrieve the cocaine. It was then that the officers arrested him for attempted distribution of crack cocaine.

An attempt is defined in La. R.S. 14:27(A) as:

> Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Based on the defendant's actions, the officers had probable cause to arrest the defendant for attempted distribution of cocaine. Thus, the seizure of the crack pipe during the search incident to the arrest was legal.

Accordingly, counsel may not be deemed ineffective for failing to pursue a motion to suppress the evidence. These assignments of error are without merit.

For the foregoing reasons, we affirm the defendant's conviction and sentence.

AFFIRMED.