

STATE OF LOUISIANA

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NO. 2001-KA-2081

VERSUS

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COURT OF APPEAL

KENNETH CRAFT

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 395-843, SECTION "C"
Honorable Sharon K. Hunter, Judge

Charles R. Jones
Judge

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones and Judge Patricia Rivet Murray)

Harry F. Connick
District Attorney
Val M. Solino
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR PLAINTIFF/APPELLANT

SENTENCE VACATED;
REMANDED

On February 20, 1998, Kenneth Craft was charged with possession of cocaine with intent to distribute, in violation of La. R. S. 40:967(A). A motion hearing was held on May 6th, and on May 22nd. The district court found that probable cause existed to bind him over for trial, and denied his Motion to Suppress the Evidence. On February 23, 2000, the day set for trial, Craft entered a plea of guilty as charged. The district court deferred his sentence and placed him in the drug court probation program established by La. R.S. 13:5301-5304. The state objected to the sentence and filed the instant appeal.

The State argues that the district court erred in suspending Craft's sentence and placing him on probation because La. R.S. 40:967(A), the statute under which he was convicted, requires that a five-year term of imprisonment be served without benefit of parole, probation, or suspension of sentence. Moreover, La. R.S. 13:5301-5304, which sets up the drug court probation program, requires that the district attorney recommend a defendant for the program; however, in this case there was no such recommendation. Therefore, the State argues, the district court is without authority to suspend Craft's sentence because he is ineligible for probation by law.

In State v. Taylor, 99-2935 (La. 10/17/00), 769 So.2d 535, the Louisiana Supreme Court considered the same argument at issue here. In that case, the Supreme Court held that a district court is not authorized by La. R. S. 13:5301-5304 to place the defendant in the drug court program without the recommendation of the district attorney. Therefore, in the instant case, we vacate Craft's sentence and remand for re-sentencing.

However, upon remand the district court may consider whether Craft's guilty plea was made in consideration of a suspended sentence; for in such a case, the district court shall allow Craft the opportunity to withdraw his plea of guilty. Additionally, the district court may consider whether the minimally mandated sentence is constitutionally excessive in this particular defendant's circumstances under State v. Dorthey, 623 So.2d 1276 (La. 1993), and State v. Fobbs, 99-1024 (La. 9/24/99), 744 So.2d 1274.

Accordingly, for the reasons cited above, Kenneth Craft's sentence is hereby vacated. The matter is remanded to the district court for re-sentencing.

SENTENCE VACATED;
REMANDED

