

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0247**
VERSUS * **COURT OF APPEAL**
ERIC CARR * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 423-033, SECTION "C"
Honorable Sharon K. Hunter, Judge

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Judge Terri F. Love

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(Court composed of Judge Steven R. Plotkin, Judge James F. McKay III,
Judge Terri F. Love)

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AFFIRMED

Eric Carr was charged by bill of information on July 12, 2001, with possession of cocaine in violation of La. R.S. 40:967(C). He pleaded not guilty at his arraignment on July 17th. After a hearing, the trial court found probable cause to bind the defendant over for trial and denied the motions to suppress the statements and the evidence. After being advised of his right to a jury trial, the defendant elected to proceed with a judge trial and was found guilty as charged. He was sentenced on September 24, 2001, to serve seventeen months at hard labor. The State filed a multiple bill, and after a hearing, Carr was found to be a third felony offender. His earlier sentence was vacated, and he was sentenced on November 8, 2001, to serve seven years at hard labor under La. R.S. 15:529.1(A)(1)(b)(i).

At trial Officers Robinson Del Castillo and Christopher Buckley testified that at about 8 p.m. on June 17, 2001, they were on proactive patrol at the intersection of North Robertson and Gordon Streets when they observed the defendant and another man in a hand-to-hand transaction in which currency and a small object were about to be exchanged. The officers

were only fifteen feet from the defendant, and they saw him in the process of receiving currency. However, when Carr observed the police car, he discarded the small object he had been holding and gave the money back to the other man. Officer Buckley followed the two men who started to walk quickly down an alley; the officer detained both men and advised them of their rights. Officer Castillo retrieved a rock dropped by the defendant. Carr told Officer Castillo that he had another rock in his right pants' pocket.

The parties stipulated that the evidence taken from Carr was tested. One piece of white rock proved to be cocaine, the other rock was not cocaine.

In a single assignment of error, the defendant claims the trial court erred in adjudicating him a third offender because the State failed to prove that the cleansing period between this second and third convictions had not elapsed.

La. R.S. 15:529.1(C) provides:

This Section shall not be applicable in cases where more than ten years have elapsed since the expiration of the maximum sentence or sentences of the previous conviction or convictions, or adjudication or adjudications of delinquency, and the time of the commission of the last felony for which he has been convicted. In computing the period of time as provided herein, any period of servitude by a person in a penal institution, within or without the state, shall not be included in the computation of any of said ten-year periods.

In State v. Martello, 98-2066 (La. App. 4 Cir. 11/17/99), 748 So.2d 1192, this court set out the standard for reviewing an issue involving the cleansing period:

The expiration of the previous sentence is determined by the date of the actual discharge from supervision by the Department of Corrections. State v. Lorio, 94-2591, p. 4 (La. App. 4 Cir. 9/28/95), 662 So.2d 128, 130. Generally, the State has the burden of proving that the ten-year cleansing period of La. R.S. 15:529.1 has expired. State v. Langlois, 96-0084, p. 14 (La. App. 4 Cir. 5/21/97), 695 So.2d 540, 548, writ granted, remanded, on other grounds, 97-1491 (La. 11/14/97), 703 So.2d 1281.

Id. at p.14, 1201-02.

The defendant argues that the State failed to prove ten years had elapsed between the expiration of his sentence for his conviction on May 7, 1991, and his most recent offense of June 17, 2001.

In State v. Falgout, 575 So.2d 456 (La. App. 4th Cir.1991), as in this case, the State failed to introduce evidence to establish the date the defendant had been released from State supervision after serving a sentence for a predicate felony. In Falgout this Court calculated the earliest possible release date for the defendant—taking into consideration that he would not have been eligible for good time, and would have had to serve at least one-third of his sentence before being eligible for parole—and concluded that the cleansing period had not elapsed at the time of the commission of the

offense for which the defendant received the enhanced sentence pursuant to La. R.S. 15:529.1.

In 1991 the defendant received a term of five years; his sentence was suspended, and he was placed on three years of active, supervised probation. According to the docket master that is part of the record, his probation was revoked on February 11, 1993, and he was ordered to serve out his sentence. The defendant was under the supervision of the Department of Corrections while he was on probation in 1991, and then he was imprisoned in 1993. Thus, the record reflects that the ten-year cleansing period did not elapse between the convictions in 1991 and 2001.

Accordingly, the defendant's conviction and sentence are affirmed.

AFFIRME

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