

**STATE OF LOUISIANA**

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**NO. 2002-KA-0263**

**VERSUS**

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**COURT OF APPEAL**

**TERRANCE HARBOR**

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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. 423-354, SECTION "I"  
HONORABLE RAYMOND C. BIGELOW, JUDGE

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**JAMES F. MCKAY III**  
**JUDGE**

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(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris,  
Sr., Judge Michael E. Kirby)

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## **CONVICTION AND SENTENCE AFFIRMED; MOTION GRANTED**

On July 24, 2001 the State filed a bill of information charging the defendant-appellant with one count of simple possession of cocaine, a violation of La. R.S. 40:967(C). The defendant entered a not guilty plea at his arraignment on August 14, 2001. On September 6, 2001 the trial court conducted a hearing on the motion to suppress evidence filed by the defendant. After hearing testimony from two State witnesses, the court denied the motion and found probable cause to sustain the charge. On September 18, 2001 a six-person jury found the defendant guilty as charged.

The State immediately filed a multiple offender bill of information charging the defendant as a second offender. On October 2, 2001 the defendant appeared with new counsel and entered a plea of guilty to the multiple bill after being advised of his rights and executing a written waiver of rights form. The court then sentenced the defendant under La. R.S. 15:529.1 to thirty months at hard labor and recommended the intensive incarceration and intensive parole program. The defendant's motion for an appeal and his request for an appeal bond were granted.

At trial, Officers Michael Sam and Melissa Robinson recounted that they conducted a traffic stop of the defendant's truck at approximately 2:30 a.m. on April 21, 2001. The stop was initiated because the truck did not

have the proper lighting on its license plate. Furthermore, the defendant was not wearing his seatbelt.

After the defendant pulled over, the officers approached his truck and immediately smelled the odor of burnt marijuana. Also, because Officer Sam had illuminated the interior of the truck with his flashlight for safety reasons, he was able to see a hand-rolled cigarette, which appeared to be a marijuana joint, on the lip of the open ashtray. The officers removed the defendant from the truck and placed him under arrest for possession of marijuana. Officer Sam conducted a search of the defendant incident to the arrest and, in the coin pocket of the defendant's pants, he found a piece of paper with white powder which appeared to be cocaine on it. The defendant was arrested for possession of cocaine. Subsequent testing of the powder by a criminalist with the New Orleans Police Department established that the white powder was cocaine. Also, testing of the hand-rolled cigarette seized from the ashtray showed that it was marijuana.

The defense presented no witnesses at trial.

Counsel for the appellant has filed a brief requesting a review of the record for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So. 2d 528 (La. App. 4 Cir. 1990).

Counsel filed a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed him that he had the right to file a brief in his own behalf. The defendant filed a one-page pleading styled as a supplemental brief in which he recounts the facts of the case but assigns no errors and makes no arguments. Thus, this Court's review is limited to errors patent on the face of the record. La. C.Cr.P. art. 920.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcript in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 40:967(C), and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at arraignment, the motion hearing, during the trial, and at sentencing. The jury verdict and the defendant's sentence are legal in all respects. Furthermore, a review of the trial transcript shows that the State

provided sufficient evidence to prove beyond a reasonable doubt that the defendant possessed cocaine, a violation of La. R.S. 40:967(C).

Our independent review reveals no non-frivolous issue and no trial court ruling, which arguably supports the appeal.

The defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

**CONVICTION AND SENTENCE AFFIRMED; MOTION  
GRANTED**