

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-1205**
VERSUS * **COURT OF APPEAL**
CARLA MUELLER * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 424-523, SECTION "J"
Honorable Leon Cannizzaro, Judge
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Judge Miriam G. Waltzer
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(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer,
Judge Patricia Rivet Murray)

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AFFIRMED.

On 7 September 2001, Carla Mueller was charged by bill of information with possession of cocaine in violation of LSA - R.S. 40:967 (C).

She pleaded not guilty at her arraignment on 12 September. However, after trial on 26 September a six-person jury found her guilty as charged. The state filed a multiple bill charging Mueller as a third felony offender, and on 30 May 2002, after a being advised of her rights and pleading guilty to the bill, she was sentenced to serve forty months at hard labor under LSA - R.S. 15:529.1(A)(1)(b)(i). The defendant's motion for reconsideration of sentence was denied, and her motion for an appeal was granted.

Officers Melvin Williams, Bryant Louis, and Regina Barr testified at trial as to the arrest of the defendant. On 2 September 2001, Officers Williams and Louis, who were on a routine patrol, noticed the defendant at the intersection of Martin Luther King Boulevard and Dryades Street; she was talking with a man and he appeared to be showing her an object in his hand. When the defendant saw the police officers, she tucked something in

her waistband, turned and walked across Dryades Street. The man walked up Martin Luther King Boulevard. The officers believed they had interrupted a drug transaction, and they stopped Mueller, who appeared very nervous. The officers radioed for a woman officer to conduct a pat down. Officer Regina Barr arrived and in the course of the pat down discovered that the defendant had a crack pipe in her waistband. The pipe was burned at one end and contained a visible residue.

Officer Glen D. Gilyot, an expert in testing and analysis of controlled dangerous substances, testified that he tested the residue found in the glass pipe taken from the defendant, and it proved to be crack cocaine.

Counsel filed a brief requesting a review 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. 4th 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.

However, counsel complains that the trial court failed to advise defendant of post-conviction relief provisions under LSA - C.Cr.P. art. 930.8. This article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State ex rel. Glover v. State, 93-2330, 94-2101, 94-2197, p. 21 (La. 9/5/95), 660 So.2d 1189, 1201, abrogated in part on other grounds, State ex rel. Olivieri v. State, 2000-0172, 2000-1767 (La. 2/21/2001), 779 So. 2d 735. In the interest of judicial economy, we note for defendant that LSA - C.Cr.P. art. 930.8 generally requires that applications for post-conviction relief be filed within two years of the finality of a conviction.

A copy of the brief was forwarded to defendant, and this Court informed her that she had the right to file a brief in her own behalf. She has not done so. As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of LSA - R.S. 40:967(C), and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, jury selection, trial, and sentencing. A review of the trial transcript reveals that the State proved the offense beyond a reasonable doubt. The sentence is legal in all respects. Our

independent review reveals no non-frivolous issue and no trial court ruling, which arguably supports the appeal. Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

AFFIRMED.