

STATE OF LOUISIANA

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NO. 2002-KA-1392

VERSUS

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COURT OF APPEAL

JERMAINE K. MORRIS

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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. 427-041, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G.
Waltzer, Judge Michael E. Kirby)

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On December 28, 2001, the State filed a bill of information charging the defendant-appellant Jermaine Morris with one count of possession of heroin, a violation of La. R.S. 40:966(C). The defendant entered a not guilty plea at his arraignment on January 14, 2002. On January 22, 2002, the defendant's counsel received a copy of the police report and withdrew the motion for a preliminary hearing and all discovery motions. The defendant was tried before a twelve-person jury on February 4, 2002. The jury returned a responsive verdict of guilty of attempted possession of heroin. The court ordered a presentence investigation report. On April 4, 2002 the court sentenced the defendant to serve four years at hard labor. The defendant filed a motion to reconsider sentence, which was denied, and a motion for appeal, which was granted.

The State filed a multiple bill of information to which the defendant entered a not guilty plea. On April 18, 2002 the court amended the defendant's sentence to reflect that it was under the provisions of La. R.S. 15:574.5, the About Face Program, and granted the defendant one year from that date to file a motion to reconsider sentence. Thereafter, on August 8, 2002, the defendant withdrew his former plea of not guilty to the multiple bill and admitted that he was a third offender. The court vacated and set aside the previous sentence and resentenced the defendant to serve four

years at hard labor under the provisions of the About Face Program. The court again granted the defendant one year from that date in which to file a motion to reconsider sentence.

At trial, the State presented two witnesses, Officers Daniel Lohman and Ronald Stevens, to establish the defendant's guilt. The officers testified that they were assigned to the Special Operations Division of the New Orleans Police Department on December 6, 2001. The officers were driving on North Claiborne Avenue when they observed the defendant disregard the stop sign at Bayou Road and N. Claiborne. The officers activated the lights and siren on their unit and pulled the defendant over. Officer Lohman used a loudspeaker to order the defendant to exit his car and walk toward the police unit. As the defendant complied, Officer Lohman saw the defendant drop a small piece of foil to the ground. Officer Lohman detained the defendant while Officer Stephens retrieved the foil, opened it, and observed an off-brown powder substance that he recognized to be consistent with heroin. The defendant was placed under arrest and advised of his rights. The defendant informed the officers that he had purchased the heroin from a barroom in the Treme area. After initially indicating he would assist the officers in locating the person who sold him the heroin, the defendant decided not to cooperate.

Both officers testified that the area where the defendant dropped the foil was free of litter and debris.

The defense and the State stipulated that, if called as a witness, Glenn Gilyot, who is an expert in the testing and analysis of controlled dangerous substances, would testify that he tested the substance in the State's exhibit and that it was positive for heroin.

The defense presented no witnesses.

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 on his own behalf. He 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 available transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 40:966 relative to simple possession of heroin, and an assistant district attorney signed the bill. The defendant was present and represented by counsel at arraignment, 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 committed the crime of attempted possession of heroin, the crime for which the jury convicted him. Finally, the transcript of the multiple offender hearing reflects that the trial court advised the defendant of his right to a hearing and that by pleading guilty to the allegations in the bill he was waiving his rights to confront and cross-examine witnesses, to subpoena witnesses, and to not incriminate himself.

Counsel for the appellant correctly notes that the trial court erred in failing to advise him of the prescriptive period for post-conviction relief under La C.Cr.P. art. 930.8. However, this court has repeatedly held that this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State v. Handy, 2001-0051

(La. App. 4 Cir. 1/24/01), 779 So. 2d 103, 104, writ denied, 2001-1896 (La. 3/28/02), 812 So. 2d 651; State v. Moore, 99-2684 (La. App. 4 Cir. 12/20/00), 777 So. 2d 600, 608, writ denied, 2001-0365 (La. 12/14/01), 803 So. 2d 986; State v. Echols, 99-2226 (La. App. 4 Cir. 10/4/00), 774 So. 2d 993, 997, writ denied, 2000-3058 (La. 10/5/01), 798 So. 2d 962.

In the interest of judicial economy, we note for appellant that La. 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.

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.

AFFIRMED