

STATE OF LOUISIANA

*

NO. 2002-KA-1565

VERSUS

*

COURT OF APPEAL

OATON A. DYSON

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 417-936, SECTION "C"
HONORABLE SHARON K. HUNTER, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, Judge
Max N. Tobias Jr.)

Harry F. Connick, District Attorney
Donna R. Andrieu, Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Pamela S. Moran
LOUISIANA APPELLATE PROJECT
P.O. Box 840030
New Orleans, LA 701840030
COUNSEL FOR DEFENDANT/APPELLANT

On November 9, 2000, Oaton A. Dyson was charged by bill of information with possession of cocaine, in violation of La. R.S. 40:967(C). At his arraignment on November 22nd he pleaded not guilty. After a hearing on December 15th the trial court found probable cause and denied the motion to suppress the evidence. He was tried by a six-person jury and found to be guilty as charged on March 20, 2001. The state filed a multiple bill charging him as a third felony offender, and after being advised of his rights and pleading guilty to the bill, he was sentenced to serve forty-two months at hard labor without benefit of probation or suspension of sentence under La. R.S. 15:529.1. He was granted an out-of-time appeal on May 2, 2002.

At trial the following facts were adduced. Officers Marcell Foxworth, Jeffrey Roach, Corey Brown and Ernest Bickham were on a normal patrol on October 6, 2000, at about 9:30 p.m. when they observed what appeared to be a drug transaction between a man and woman who were standing at the corner of Dumaine and North Salcedo Streets. The man was in the process of handing a small object to the woman who was offering him currency. As the officers got out of the car, the man turned and ran, and the transaction was interrupted. When the officers approached the woman, later identified as Bertha Smith, she dropped a clear glass pipe. After a search incident to

arrest, she was found to be carrying \$20. The officers chased the man, later identified as the appellant, down a driveway along the side of a house. He discarded an object which Officer Brown retrieved. The object proved to be a plastic bag containing many pieces of crack cocaine. The appellant tripped and fell; Officer Brown, who was following him closely, also fell. In trying to get up, the appellant shoved the officer to the ground. The appellant was apprehended. Both men were injured and transported to the hospital. Officer Brown suffered lacerations below his right eye and to his lip; the appellant had bruises and scratches.

Criminalist John Palm, Jr., an expert in the analysis of controlled dangerous substances, testified that he examined the plastic bag of rocks and glass pipe taken as evidence in this case. He performed a color test, crystal test, and gas chromatographic and mass spectro examination on several of the rocks found in the plastic bag, and they all proved to be crack cocaine. He performed all the tests except the color test on the residue in the glass pipe, and it too proved to be crack cocaine. The weight of the cocaine in the plastic bag was 14.4 grams.

Clara Smith, the appellant's twenty-year-old cousin, and Alex Smith, her fourteen-year-old brother, testified that Bertha Smith is their mother and that Oaton Dyson, their cousin, lives with them at 820 North Salcedo Street.

On the night in question Clara was in the house when Alex burst in to tell her that their mother had been arrested. Clara went to the porch and realized that the police had Oaton on the side of the house. Clara maintained that when Alex told her the police had their mother, Oaton Dyson was in the house in his bedroom. Clara did not see Oaton Dyson leave the house, but the next time she saw him, he was being arrested by the police. Alex, who was outside at the time of the arrest, saw the officers stop and call to his mother. When she approached the police car, they searched her and then arrested her. Bertha Smith was not with Oaton Dyson when the police stopped her. However, Alex testified that Oaton Dyson was not in the house when Alex ran inside to alert Clara. Alex stayed inside after his mother was arrested, and he heard something “rattling” on the side of the house when Dyson was arrested.

Our review of the record discloses no errors patent.

In a single assignment of error, 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, 2000-0051 (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.

Accordingly, for reasons cited above, the appellant's conviction and sentence are affirmed.

AFFIRMED