

STATE OF LOUISIANA

NO. 17-KA-4

VERSUS

FIFTH CIRCUIT

MONROE WILSON

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 15-5287, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

November 15, 2017

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Robert M. Murphy,
Stephen J. Windhorst, and Hans J. Liljeberg

CONVICTION AND SENTENCE AFFIRMED

SJW

RMM

HJL

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Paul D. Connick, Jr.

Terry M. Boudreaux

Anne M. Wallis

Seth W. Shute

COUNSEL FOR DEFENDANT/APPELLANT,
MONROE WILSON

Katherine M. Mattes

WINDHORST, J.

On July 18, 2016, defendant, Monroe Wilson, pled guilty to one count of possession of twenty-eight grams or more, but less than two hundred grams of cocaine. Defendant was sentenced to five years imprisonment at hard labor and ordered to pay a \$50,000.00 fine. For the reasons that follow, we affirm defendant's conviction and sentence.

Procedural History

On October 5, 2015, the Jefferson Parish District Attorney filed a bill of information charging defendant, Monroe Wilson, with possession of a firearm while in possession of cocaine in violation of La. R.S. 14:95(E) (count one).¹ Defendant was arraigned on October 20, 2015, and pled not guilty.

On July 18, 2016, the State amended count one of the bill of information to possession of cocaine, "28g – 200g, a felony" in violation of La. R.S. 40:967 F. On the same date, defendant withdrew his not guilty plea and pled guilty to possession of twenty-eight grams or more, but less than two hundred grams of cocaine.² Thereafter, the trial court sentenced defendant to imprisonment at hard labor for five years and ordered defendant to pay a \$50,000.00 fine.³ The trial court ordered his sentence to run concurrently with case number 15-5568.

On August 17, 2016, defendant filed a motion to reconsider the mandatory fine. After a hearing, the trial court denied defendant's motion. This appeal followed.⁴

¹ Glenn M. Williams and Samantha Williams were charged with possession of cocaine in violation of La. R.S. 40:967 C in count two of the bill of information.

² At the same time, defendant also pled guilty to possession of less than fourteen grams of marijuana in case number 15-5568 (misdemeanor offense).

³ The trial judge also sentenced defendant to fourteen days in the Jefferson Parish Correctional Center on the misdemeanor marijuana conviction, in case number 15-5568.

⁴ After this appeal was filed, defendant filed a "Motion to Correct Mistaken Case Number" in the trial court in this case and in 15-5568. In those motions, the defendant noted that the incorrect case numbers were used on the waiver of rights forms in this case and in 15-5568. The trial court ordered that the incorrect case numbers on the waiver of rights forms in this case and in 15-5568 be corrected in the

Facts

Because defendant pled guilty, the underlying facts were not fully developed at a trial. Nevertheless, the State alleged in the amended bill of information that defendant violated La. R.S. 40:967 F in that he possessed cocaine, “28g – 200 g.” During the guilty plea colloquy, the trial court asked defendant what occurred on August 26, 2015 that caused him to plead guilty, and defendant responded that he was in possession of cocaine.⁵ Defendant further stated that the cocaine was in the amount of twenty-eight grams or more, but less than two hundred grams. Additionally, the trial court stated to defendant, “You understand that by pleading guilty you are telling the Court that you have in fact committed the crime to which you are pleading guilty; is that correct?” Defendant replied, “Yes, ma’am.”

Discussion

In his sole assignment of error, defendant contends that the mandatory \$50,000 fine was constitutionally excessive as applied to him. He contends that the fine is unconstitutional under the tests for excessiveness set forth by the United States Supreme Court and the Louisiana Supreme Court because it is (1) disproportionate to the gravity of the offense; (2) significantly harsher than fines imposed on other indigent people convicted of the same crime in the same jurisdiction, (3) significantly harsher than fines imposed on people convicted of the same crime in neighboring jurisdictions, (4) does not fit the nature of this offense and this offender, and (5) fails to advance any legislative purpose of punishment.

He asserts that not only does this fine fail to contribute to legitimate goals of

records. The trial court further ordered that the case number in this case on defendant’s waiver of rights form be amended to 15-5287, and that the case number in the misdemeanor marijuana waiver of rights form be amended to 15-5568. The corrected waiver of rights forms were ordered to be placed in the appropriate records. On April 4, 2017, defendant filed a motion to supplement the appellate record with the trial court’s order regarding the correction of the case numbers on the waiver of rights forms and the corrected waiver of rights form for this case (15-5287). The motion was granted and the record was supplemented.

⁵ Defendant also stated that he was in possession of marijuana as it relates to his guilty plea in case number 15-5568.

punishment, it actively works against the key goal of rehabilitation by hindering his re-entry into society. Defendant further contends that even without the well-established tests for constitutional excessiveness, the \$50,000 fine imposed on him is unconstitutional because he will not be able to pay it.

Defendant pled guilty to possession of cocaine in the amount of twenty-eight grams or more, but less than two hundred grams in violation of La. R.S. 40:967 F(1)(a), which provides:

Any person who knowingly or intentionally possesses twenty-eight grams or more, but less than two hundred grams, of cocaine ..., shall be sentenced to serve a term of imprisonment at hard labor of not less than five years, nor more than thirty years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars.

The transcript reflects that on July 18, 2016, defense counsel stated that defendant was going to withdraw his not guilty plea and plead guilty to possession of twenty-eight grams or more, but less than two hundred grams of cocaine. Defense counsel added that she and defendant reviewed and executed his guilty plea form and submitted it to the trial court. During the guilty plea colloquy, the trial court stated to defense counsel, "You realize I have to impose a fifty thousand dollar fine?" Defense counsel responded, "I know that. I saw that, Judge. I know. I understand." Defense counsel added that it was "ridiculous," after which the trial court stated that it did not have an opinion on the mandatory fine and the court only enforced the statute. During the colloquy, the trial court stated to defendant, "In addition to that you understand that I have to impose a fine of fifty thousand dollars?" Defendant replied, "Yes, ma'am." The trial court further asked defendant if he understood that in the event his guilty plea was accepted, he would be fined fifty thousand dollars, and defendant replied, "Yes, ma'am." The trial court accepted defendant's guilty plea and sentenced him to imprisonment at hard labor for five years and imposed a fine of \$50,000.

The waiver of rights form shows that defendant was pleading guilty to the crime of “R.S. 40:967 poss [sic] of over 28 grams but less than 200 grams of cocaine \$50,000 fine.” The form also indicates that in the event the trial court accepted this guilty plea, defendant would be sentenced to five years “DOC” and “\$50,000.” The form further provided that the State agreed not to file a habitual offender bill of information against defendant. It was signed by defendant, his attorney, and the trial court.

La. C.Cr.P. art. 881.2 A(2) precludes a defendant from seeking review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. State v. Washington, 05-211 (La. App. 5 Cir. 10/06/05), 916 So.2d 1171, 1173. Defendant’s sentence was imposed in accordance with the terms of the plea agreement set forth in the record at the time of the plea. Both the guilty plea colloquy and the waiver of rights form show that defendant understood and agreed that a \$50,000 fine would be imposed if his guilty plea was accepted. Defendant is precluded from seeking review of his sentence, which includes the fine. See State v. Laroux, 93-719 (La. App. 3 Cir. 02/02/94), 631 So.2d 730, 731-32, writ denied, 94-0577 (La. 06/03/94), 637 So.2d 498.

Error Patent Discussion

The record was reviewed for errors patent, according to the mandates of La. C.Cr.P. art. 920; State v. Oliveaux, 312 So.2d 337 (La. 1975); and State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990). Our review reveals no errors patent in this case which require correction.

Conclusion

For the reasons stated above, defendant’s conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-4

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE NANCY A. MILLER (DISTRICT JUDGE)
TERRY M. BOUDREAUX (APPELLEE) ANNE M. WALLIS (APPELLEE)

MAILED

KATHERINE M. MATTES (APPELLANT)
ATTORNEY AT LAW
TULANE CRIMINAL LAW CLINIC
6329 FRERET STREET
SUITE 130
NEW ORLEANS, LA 70118

HON. PAUL D. CONNICK, JR. (APPELLEE
)
SETH W. SHUTE (APPELLEE)
ASSISTANT DISTRICT ATTORNEYS
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
GRETNA, LA 70053