

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KA 1511

STATE OF LOUISIANA

VERSUS

TIMOTHY WILLARD ABRAMS

Judgment Rendered: APR 24 2015

On appeal from the
Twenty-Second Judicial District Court
In and for the Parish of Washington
State of Louisiana
Docket Number 13 CR8 123726, Division G

Honorable Scott Gardner, Judge Presiding

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Defendant/Appellant
Timothy Abrams

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ

GUIDRY, J.

Defendant, Timothy Willard Abrams, was charged by bill of information with possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1. He pled not guilty and, following a jury trial, was found guilty as charged. The trial court denied defendant's motion for new trial and sentenced him to ten years at hard labor, without benefit of parole, probation, or suspension of sentence and imposed a \$1,000 fine. Subsequently, the state filed a habitual offender bill of information, which alleged defendant to be a third-felony habitual offender.¹ Defendant stipulated to the contents of the habitual offender bill, and the trial court adjudicated him a third-felony habitual offender. The trial court vacated defendant's previous sentence and resentenced him to thirteen years and eight months at hard labor without benefit of parole, probation, or suspension of sentence. The trial court also denied defendant's motion to reconsider sentence. Defendant now appeals, alleging a single assignment of error related to the trial court's denial of his motion for new trial. For the following reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On September 5, 2013, Bogalusa Police Detective Wendell O'Berry was investigating a burglary unrelated to the facts of the instant case. In doing so, Detective O'Berry reviewed an electronic database of Bogalusa-area pawn shop transactions. As he reviewed these transactions, Detective O'Berry noticed the name "Timmy Willard Abram." He recognized this name as an alias used by defendant, who he knew to be a convicted felon. From the information available in the database, Detective O'Berry confirmed defendant's identity as the individual who had gone to

¹ The habitual offender bill of information alleged the following two predicate convictions: 1) an October 11, 1999 conviction for theft over \$500, under Washington Parish docket number 99-CR2-74999; and 2) an August 13, 2003 conviction for distribution of a schedule II controlled dangerous substance (cocaine), under Washington Parish docket number 02-CR2-85983.

Doug's Pawn Shop to pawn a .22 caliber Iver Johnson Model 55 handgun on August 29, 2013. Detective O'Berry also verified that defendant had previously been convicted for possession of cocaine in August 2005 under Washington Parish docket number 05-CR3-98125.

The following day, on the basis of this information, Detective O'Berry went to Doug's Pawn Shop in an effort to locate the handgun. However, defendant's mother had already paid to retrieve the handgun. Detective O'Berry was successful in securing a copy of the pawn ticket with defendant's signature. With this evidence, Detective O'Berry secured a warrant for defendant's arrest. Defendant was eventually arrested on September 25, 2013. At trial, defendant and his mother both testified and admitted that defendant had taken the gun to be pawned on August 29, 2013. They explained that defendant did so on his mother's behalf because she was ill at the time. Defendant was found guilty as charged.

MOTION FOR NEW TRIAL

In his sole assignment of error, defendant contends that the trial court erred in denying his pro se motion for new trial, which was predicated on a claim of ineffective assistance of counsel. The motion for new trial alleged that trial counsel was ineffective for failing to request a sanity hearing or psychological evaluation, despite the fact that defendant had attempted to commit suicide prior to trial. The motion also alleged that defendant told his attorney that he did not understand the proceedings of the trial, and also that defense counsel did not take adequate time to confer with defendant or to investigate the case. Appellate counsel argues that the trial court erred in denying the motion for new trial without considering documentation that defendant allegedly attached to it.

Defendant was found guilty as charged on January 10, 2014. On February 2, 2014, defendant filed his pro se motion for new trial with the trial court. The trial court initially sentenced defendant on February 12, 2014.

On February 14, 2014, the parties again convened in court, apparently because of the discovery that defendant had filed a pro se motion for new trial prior to his sentencing. At that time, defendant's trial counsel requested a psychiatric evaluation on the basis that defendant had made a post-trial suicide attempt. Defense counsel also informed the court at that time that he had just learned from defendant of his pretrial suicide attempt. Together, the court and attorneys located defendant's pro se motion for new trial. Defense counsel indicated that he had not brought up defendant's psychological status prior to trial because he was unaware of the pretrial suicide attempt. Defense counsel also noted the arguments regarding defendant's communication of his inability to understand the proceedings and his own pretrial preparation, but he did not offer any comments on those contentions.

The state offered no argument one way or the other regarding defense counsel's post-trial request for a psychiatric evaluation. The state did argue that it was ironic for defendant to claim in his motion for new trial that he was unable to understand the proceedings, only to later file a pro se motion for new trial. The state also noted that defendant testified on his own behalf and "offered a clear and articulate argument of why he should be found not guilty."

The pro se motion for new trial itself stated that on November 23, 2013, defendant swallowed several razor blades. According to the motion, University Hospital of New Orleans "ordered" that defendant needed a psychological evaluation. According to defendant, that evaluation was never conducted. The pro se motion references an attached Exhibit A as the alleged "order" from University Hospital, but the record contains no evidence of this exhibit. Subsequent to defendant's initial filing of the instant appeal, the record was supplemented with two documents – one which appears to be an incident report from defendant's pretrial suicide attempt and another which appears to be a minute entry from a disciplinary

procedure instituted against defendant as a result of the incident.² The latter document indicates that defendant was transferred to University Hospital “for further treatment” following his initial treatment at Riverside Medical Center. This treatment “resulted in a sit down which involved a Hospital Sitting Services (W & L Security, INC).” Neither of these documents was labeled as Exhibit A, and neither appears to be the document to which defendant referred in his pro se motion. Defendant has not caused the record to be supplemented with the alleged Exhibit A.

In denying defense counsel’s motion for a psychiatric evaluation, the trial court found that motion to be based upon hearsay and self-serving statements made by defendant. The trial court noted that it found defendant to be affable and alert throughout trial and that defendant gave coherent testimony and assisted counsel with his defense. In denying defendant’s motion for new trial, the trial court noted that the case was well argued by defendant and his counsel. The trial court never referenced the alleged Exhibit A that defendant referenced in his pro se motion for new trial. Subsequent to these rulings, the trial court vacated defendant’s initial sentence and resentenced him. In vacating the earlier sentence, the trial court stated that the pro se motion for new trial had not been filed into the record at the time of defendant’s initial sentencing, but it was present in a folder for the court’s review.

Initially, we note that defendant does not ask us to review the trial court’s ruling denying his counsel’s motion for a post-trial psychological examination. Therefore, we need not address that issue here. Rather, defendant only argues that the trial court erred in denying his motion for new trial. As described above, that motion presented several arguments that trial counsel was ineffective. In his brief, defendant argues that the results of the proceedings on his pro se motion for new

² Defendant’s appellate counsel notes in the brief filed with this Court that she is aware of defendant’s November 24, 2013 suicide attempt because she received a copy of the jailhouse discipline report and request for restitution. She appears to be referencing these very documents.

trial might have been different had the trial court “indicated the motion had been read and noted that there were supposed to be/were attachments.”

A claim of ineffective assistance of counsel is generally relegated to post-conviction proceedings, unless the record permits definitive resolution on appeal. State v. Miller, 99-0192, p. 24 (La. 9/6/00), 776 So. 2d 396, 411, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001); see also State v. Williams, 632 So. 2d 351, 361 (La. App. 1st Cir. 1993), writ denied, 94-1009 (La. 9/2/94), 643 So. 2d 139.

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish that his trial attorney was ineffective, a defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Secondly, the defendant must prove that the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for the defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. State v. Serigny, 610 So. 2d 857, 859-60 (La. App. 1st Cir. 1992), writ denied, 614 So. 2d 1263 (La. 1993).

It is well settled that decisions related to investigation, preparation, and strategy require an evidentiary hearing and cannot possibly be reviewed on appeal. See State v. Martin, 607 So. 2d 775, 788 (La. App. 1st Cir. 1992). None of

defendant's claims of ineffective assistance of counsel are supportable using only the record before us. According to trial counsel's own statements at the post-trial hearing, he was unaware of defendant's pretrial suicide attempt. In addition, while defendant references a purported document from University Hospital that recommends psychological evaluation, no such document appears in the record (even after supplementation), and it was not referenced in the post-trial hearing. Therefore, we are unable to discern whether trial counsel's failure to discover this purported document is due to deficient performance or to its nonexistence. Defendant's second and third claims of ineffective assistance of counsel, which address his pretrial communications to his attorney and his attorney's trial preparation, also have no overt support in the record.³ Only in an evidentiary hearing in the district court, where defendant could present evidence beyond that contained in the instant record, could these allegations be sufficiently investigated.⁴ See State v. Albert, 96-1991, p. 11 (La. App. 1st Cir. 6/20/97), 697 So. 2d 1355, 1364.

This assignment of error lacks merit or is otherwise unable to be properly reviewed on appeal.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

³ We note, however, that these allegations might be more easily found to be meritless, given that defendant participated coherently in his trial and that the facts were straightforward and uncontroverted, even by defendant's own testimony.

⁴ Defendant would have to satisfy the requirements of La. C. Cr. P. art. 924 *et seq.* in order to receive such a hearing.