NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1543

STATE OF LOUISIANA

VERSUS

BYRON RENDELL JONES

Judgment Rendered: APR 2 4 2015

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On Appeal from
The 22nd Judicial District Court,
Parish of St. Tammany,
State of Louisiana
Trial Court No. 487129
The Honorable Allison H. Penzato, Judge Presiding

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

CRAIN, J.

The defendant, Byron Rendell Jones, pled guilty to possession of carisoprodol, possession of oxycodone, and two counts of distribution of cocaine. *See* La. R.S. 40:967A(1), 40:967C, and 40:969C. He then admitted the allegations of a habitual offender bill of information filed relative to the cocaine-related convictions. On remand following an earlier appeal to this court[1], the trial court resentenced the defendant as a habitual offender to concurrent sentences totaling fifteen years at hard labor, with two years to be served without benefit of parole, probation, or suspension of sentence. The defendant now appeals challenging the voluntariness of his guilty pleas. We affirm the convictions, habitual offender adjudications, and sentences.

VOLUNTARINESS OF GUILTY PLEAS

At the time the defendant pled guilty, the trial court recognized that the guilty plea resulted from prior discussions between defense counsel, the district attorney, and the court. At that time, the trial court stated, "The substance of that plea agreement will be disclosed when I impose your sentence, and if it's not in accordance with [your] understanding, you'll be allowed to withdraw your plea of guilty at that time." The defendant then admitted the allegations of the habitual offender bill of information and was sentenced. After the sentence was imposed, counsel for the defendant stated, "Your Honor, I'd remind the Court that pursuant to pretrial discussions with both the District Attorney and the Court that the defense has 60 days to bring forward any new information that it feels would be relevant to this matter," and the trial court agreed.

The defendant now argues that his guilty pleas were not voluntary because the plea bargain agreement contained a condition that provided him with only "an illusion of possible benefit." Specifically, he contends that allowing him sixty

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[1] *State v. Jones*, 13-0705 (La. App. 1 Cir. 12/27/13), 2013WL6858353, p.2

days to bring forward any new, relevant information did not confer an actual benefit, because it did not allow him to change his convictions, habitual offender adjudications, or sentences.

A guilty plea is a conviction and, therefore, should be afforded a great measure of finality. A defendant may not withdraw a guilty plea simply because the sentence imposed is heavier than anticipated. It is not unreasonable for a trial court to deny a defendant the luxury of gambling on his sentence by allowing him to withdraw his plea when the sentence is not to his liking. However, a guilty plea is constitutionally infirm if a defendant is induced to enter the plea by a plea bargain, or what he justifiably believes to be a plea bargain, and that bargain is not kept. In such cases, the guilty plea was not given freely and knowingly. *State v. Parker*, 12-1550 (La. App. 1 Cir. 4/26/13), 116 So. 3d 744, 750, *writ denied*, 13-1200 (La. 11/22/13), 126 So. 3d 478.

In arguing that the condition allowing the defendant sixty days to present new, relevant information was of only illusory benefit, the defendant suggests that the extra time period could not have affected evidence of his guilt or innocence because a factual basis for the pleas was stipulated, that any evidence that may have supported excluding his predicate conviction should have been discovered before he admitted the truth of the habitual offender bill of information, and if the extension was intended to allow additional time to file a motion to reconsider sentence, that was of no possible benefit because he received the minimum habitual offender sentences. The defendant also complains that the trial court would have had to grant a timely filed motion to reconsider sentence for him to have received any benefit.

While we do not express an opinion as to whether the sixty-day period could have been used to attack either the factual basis for the defendant's guilty pleas or the evidence of his habitual offender status, it certainly could have benefitted the defendant by operating as an extension of the usual thirty-day time period for filing a

motion to reconsider sentence. *See* La. Code Crim. Pro. art. 881.1A(1). The defendant could have used that extended period of time to attempt to show that his minimum sentences were nothing more than the purposeful imposition of pain and suffering, and were grossly out of proportion to the severity of his crimes. *See State v. Dorthey*, 623 So. 2d 1276, 1280-81 (La. 1993). However, the defendant made no such effort. His failure to file a motion to reconsider sentence during the extended sixty-day period does not mean his plea bargain agreement provided only the illusion of possible benefit. He could have acted but chose not to. This argument is without merit.

The defendant's guilty pleas are constitutionally sound. He was informed of his constitutional rights under *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed. 2d 274 (1969), acknowledged his ability to understand his pleas, approved of his counsel's performance, and was informed of the possible penalties he could receive for each of his convictions. The record establishes that the defendant's guilty pleas were knowingly and voluntarily made.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.