

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 1083

STATE OF LOUISIANA

VERSUS

RACHEL GILLIS

Judgment Rendered: DEC 23 2015

* * * * *

On Appeal from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 547255

The Honorable Scott Gardner, Judge Presiding

* * * * *

James G. Burke, III
Covington, Louisiana

Attorneys for Appellant,
Rachel Gillis

Bruce G. Whittaker
New Orleans, Louisiana

Warren Montgomery
District Attorney
Covington, Louisiana

Attorneys for Appellee,
State of Louisiana

Kathryn W. Landry
Baton Rouge, Louisiana

* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

[Handwritten signatures and notes]
V 6 W by [Signature]
JEW by [Signature]

DRAKE, J.

The defendant, Rachel Gillis, was charged by bill of information with driving while intoxicated (“DWI”), third offense, a violation of Louisiana Revised Statutes 14:98(D) (prior to revision by 2014 La. Acts, Nos. 175, §1; 385, § 1; and 386, § 1). She entered a plea of not guilty and filed a motion to quash, alleging that the ten-year cleansing period had lapsed prior to her arrest for the instant offense. Following a hearing, the district court denied the motion. The defendant then withdrew her previously entered plea of not guilty and entered into a plea agreement, reserving her right to appeal the denial of her motion to quash pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976). She was sentenced to five years at hard labor. Her sentence was suspended, and she was placed on probation for a term of five years, subject to the district attorney’s recommendation that she complete the sobriety court program.¹ The defendant was also ordered to complete substance abuse and driver improvement programs, pay a fine of two-thousand dollars, complete thirty eight-hour days of community service, prepare a written admission and apology, complete the MADD Victim Impact Panel, operate no motor vehicle while on probations, have a SCRAM device at all times (until deemed otherwise by the judge supervising sobriety court), be subject to home incarceration with electronic monitoring and substance abuse evaluation, pay \$100.00 to the Indigent Defender Fund, and pay \$100.00 to the Judicial Expense Fund. The defendant now appeals the denial of her motion to quash. For the following reasons, we reverse the defendant’s conviction and vacate her sentence.

FACTS

Because the defendant entered a guilty plea, the facts surrounding the instant offense were not fully developed. According to the bill of information and

¹ The trial court also sentenced the defendant to 48 hours in the parish jail, without benefit of probation, parole or suspension of sentence, which sentence the trial court deemed to be satisfied.

Boykin² hearing, on March 11, 2014, the defendant was arrested for DWI (third offense). Her prior convictions include a February 24, 1999 guilty plea to DWI (first offense) in the Twenty-Second Judicial District Court (“22nd JDC”), Parish of St. Tammany, under docket number 298367, and a January 18, 2001 guilty plea to DWI (first offense) in the 22nd JDC, Parish of St. Tammany, under docket number 307990.

The defendant filed a motion to quash on June 6, 2014, noting that she filed formal discovery to receive copies of the transcripts and records, a review of which could reveal defects. She reserved her right to file a supplemental memorandum addressing any defects discovered after her review of the materials. On October 31, 2014, the defendant filed a second motion to quash, wherein she argued that both of her predicate offenses were outside of the ten-year cleansing period and should be quashed.

The State filed an answer to the motion, arguing that because the defendant withdrew her guilty plea entered on February 24, 1999, and reentered same on March 14, 2001, after she had completed two years of probation for that offense, the cleansing period was ten years from the date of her reentry of her plea. The State claimed that for purposes of a “running total,” the new cleansing date would be March 14, 2011 (ten years from the date of reentry of her plea), rather than ten years from the date she completed probation. The State further argued that applicable time periods should be excluded from the defendant’s second predicate. It claimed that because the defendant was arrested on June 13, 1999, on her second predicate offense and not convicted until January 18, 2001, she awaited trial for approximately nineteen months. According to the State’s argument, the time that the defendant spent awaiting trial should be excluded from the cleansing period

² **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

and added to her “running total,”³ which would push the cleansing period date to October 14, 2012. Because the defendant was then sentenced to imprisonment for a term of six months, suspended, and placed on probation for two years on her second predicate offense, the State argued that those two years should also be added to the “running total,” making the final cleansing date October 14, 2014.

On February 23, 2015, the district court denied the motion to quash, stating only that it had “researched the cleansing period applicable.”

MOTION TO QUASH

In her sole assignment of error, the defendant argues that the district court erred in denying her motion to quash. The defendant contends that the ten-year cleansing period had expired before her arrest for the instant offense. She argues that there was no showing that she was on probation, parole, or incarcerated after January 18, 2003, and thus, the cleansing period would commence on January 19, 2003, and end on January 19, 2013, more than one year before she committed the instant offense on March 11, 2014.

When a district court denies a motion to quash, factual and credibility determinations should not be reversed in the absence of a clear abuse of the district court’s discretion. See State v. Odom, 2002-2698 (La. App. 1st Cir. 6/27/03), 861 So.2d 187, 191, writ denied, 2003-2142 (La. 10/17/03), 855 So.2d 765. However, a district court’s legal findings are subject to a de novo standard of review. See State v. Smith, 99-0606 (La. 7/6/00), 766 So.2d 501, 504.

The defendant’s predicate offenses were committed on November 22, 1998 (predicate number one), and June 13, 1999 (predicate number two), and the instant offense was committed on March 11, 2014. Louisiana Revised Statutes 14:98(F)(2) (prior to revision by 2014 La. Acts, Nos. 175, § 1; 385, § 1; and 386, § 1) provided that a prior conviction did not include a conviction for an offense if

³ We disagree with the State’s method of calculation and argument that the time the defendant spent awaiting trial should be added to her “running total.”

committed more than ten years prior to the commission of the crime for which the defendant was being tried. Accordingly, an initial ten-year cleansing period in this case, determined on a strictly calendar basis, would comprise the period of time beginning with the date of the commission of the offense for which the defendant is being tried, March 11, 2014, and ending with the same month and day ten years earlier, March 11, 2004. See State v. Warren, 2011-1262 (La. App. 1st Cir. 2/10/12), 91 So.3d 981, 982-83.

In determining the ten-year cleansing period, the periods of time during which the offender was awaiting trial, under an order of attachment for failure to appear, or on probation or parole for a DWI offense, or incarcerated in a penal institution in this or any other state are excluded in computing the ten-year period. See La. R.S. 14:98(F)(2) (prior to amendment).

Based upon the bill of information, the record in this matter, and the court records in two previous matters, the following information was ascertained regarding the defendant:

1st charge: (1) November 22, 1998 arrest for DWI;
(2) February 24, 1999 guilty plea to DWI (guilty plea was withdrawn);
(3) March 14, 2001 guilty plea reentered for November 22, 1998 arrest following two years' probation;
(4) Ten-year cleansing period would normally begin March 14, 2001;
(5) Due to charge number 2, the actual ten-year cleansing period began January 18, 2003.

2nd charge: (1) June 13, 1999 arrest for DWI;
(2) January 18, 2001 guilty plea to DWI for June 13, 1999 arrest;
(3) January 18, 2001 two year probation is over on January 18, 2003;
(4) Ten-year cleansing period begins on January 18, 2003.

3rd charge: (1) March 11, 2014 arrest for third offense DWI.

The ten-year cleansing period for predicate numbers one and two began on January 18, 2003, and terminated on January 18, 2013. Therefore, at the time the defendant was arrested on the instant offense, March 11, 2014, the cleansing period

had lapsed, and her predicate convictions could not be used to enhance the instant offense. This assignment of error has merit. Accordingly, we reverse the defendant's conviction, vacate her sentence, and remand for further proceedings.

**CONVICTION REVERSED; SENTENCE VACATED; AND
REMANDED TO TRIAL COURT.**