

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-0521**
VERSUS * **COURT OF APPEAL**
DARRYL CASIMIER * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 368-931, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * *
Judge Terri F. Love
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(Court composed of Judge Miriam G. Waltzer, Judge Terri F. Love, Judge David S. Gorbaty)

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**CONVICTION AFFIRMED; SENTENCE VACATED AND
REMANDED
STATEMENT OF CASE**

On March 25, 1994, the State charged Darryl Casimier with possession with intent to distribute cocaine, a violation of La. R.S. 40:967. At his arraignment on April 11, 1994, the defendant pled not guilty. On September 19, 1996, the jury convicted him of simple possession of cocaine. The judge sentenced the defendant on October 18, 1996 to five years, without benefit of parole, probation or suspension of sentence. That same day, the State filed a multiple bill of information charging the defendant as a fourth felony offender. On December 13, 1996, the court held the multiple bill hearing but continued the matter to allow the defense to obtain the defendant's *Boykin* transcripts. On February 9, 1999, the defendant's original sentence was vacated and the court sentenced him as a multiple offender to twenty years with credit for time served. The court granted his motion for out-of-time appeal on April 16, 1999.

STATEMENT OF FACT

On February 22, 1994, at approximately 3:45 p.m., Officer Charles

Watkins and his partner, Officer Felix Joseph, conducted surveillance of 1830 Thayer Street, Apartment 3E of the Fischer Housing Development, in response to information about narcotics activity at that address. During a thirty to thirty-five minute interval, Officer Watkins observed what he believed were three drug transactions. On each occasion, the subject knocked on the apartment door, and briefly spoke to the defendant. The defendant in turn handed each subject an object in exchange for currency. Officer Watkins radioed this information to Detective Jeff Robertson to apply for a search warrant. Officer Watkins, along with Detectives Vitrano and Robertson, executed the warrant, entering the residence, advising the defendant of his rights and announcing their intention to search the apartment. Detective Vitrano arrested the defendant after finding powdered cocaine in a kitchen cabinet, and in the search incident to the defendant's arrest, Detective Vitrano seized crack cocaine and \$395 from the defendant's pockets. The officers also found a fully loaded .357 revolver and two scanners in the apartment. Officer Watkins recovered the defendant's driver's license and bank statement, each listing 1830 Thayer Street as the defendant's residence. After completing their search, the officers transported the defendant to police headquarters for booking.

Testing performed by Officer John Palm, an expert in analysis and

identification of controlled substances, confirmed that the contraband seized from the defendant and his residence was cocaine.

Vanesa Brown and Tonya Rose testified that they knew the defendant from the neighborhood. On the day the defendant was arrested, the women were walking in the housing development courtyard, saw the defendant walking toward the 1830 Thayer building, and noticed several police officers enter the area. A group of people in the area fled upon seeing the police; however, the defendant did not run. The officers grabbed the defendant, threw him against the wall, and handcuffed him.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1

In this assignment, the defendant claims counsel was ineffective because his attorney withdrew his motion to suppress evidence. He argues that because the State procured the evidence pursuant to a search warrant issued without probable cause, the motion to suppress should have been granted.

Generally, the issue of ineffective assistance of counsel is a matter more properly addressed in an application for post conviction relief, filed in the trial court where a full evidentiary hearing can be conducted. *State v. Prudholm*, 446 So. 2d 729 (La. 1984); *State v. Johnson*, 557 So. 2d 1030

(La. App. 4 Cir. 1990); *State v. Reed*, 483 So. 2d 1278 (La. App. 4 Cir. 1986). Only if the record discloses sufficient evidence to rule on the merits of the claim do the interests of judicial economy justify consideration of this issue on appeal. *State v. Seiss*, 428 So. 2d 444 (La. 1983); *State v. Ratcliff*, 416 So. 2d 528 (La. 1982); *State v. Landry*, 499 So. 2d 1320 (La. App. 4 Cir. 1986); *State v. Garland*, 482 So.2d 133 (La. App. 4 Cir. 1986).

In this case, there is nothing in the record to explain defense counsel's withdrawal of the motion to suppress. Moreover, the defendant has not supplemented the record with the appropriate exhibits; hence, we are unable to determine whether trial counsel's decision was tactical or amounts to ineffective assistance. The defendant's claim should be raised in an application for post-conviction relief where an evidentiary hearing on defendant's claim can be conducted.

ASSIGNMENT OF ERROR NUMBER 2

In his second assignment of error, the defendant argues that the trial court erred in denying his motion to quash the multiple bill as untimely according to *State v. Broussard*, 416 So. 2d 109 (La. 1982).

La. R.S. 15:529.1(D) provides that a defendant may be charged as a multiple offender if at any time after either conviction or sentence, it appears that a person convicted of a felony has previously been convicted of another

felony. The statute does not contain a prescriptive period, but in *State v. Broussard*, 416 So. 2d 109 (La. 1982), the Supreme Court held that a multiple bill must be filed within a reasonable time after the State becomes aware of the defendant's prior felony record. The court stated that upon conviction, a defendant was entitled to know the full consequences of the verdict within a reasonable time, and proceedings to sentence a defendant as a habitual offender should not be unduly delayed. As stated in *State v. Morris*, 94-0553 (La. App. 4 Cir. 11/17/94), 645 So.2d 1295, application of the *Broussard* doctrine is a fact-specific inquiry which depends upon the particular circumstances of each case.

In *Broussard*, the district attorney filed the habitual offender bill thirteen months after sentencing the defendant and three months before the defendant was eligible for parole, and offered no justification for the delay. The Court found the delay to be "unreasonable" and declared that "upon conviction a defendant is entitled to know the full consequences of the verdict within a reasonable time. Since the enhancement of the penalty provision is incidental to the latest conviction, the proceeding to sentence under that provision should not be unduly delayed." *Id.* at 111.

In this case, the defendant was convicted on September 19, 1996. On October 18, 1996, the court sentenced the defendant, and the State filed the

multiple bill. Judge Julian Parker conducted the initial multiple bill hearing on December 13, 1996, but continued the matter to allow the defense to obtain *Boykin* transcripts. On November 20, 1998, after thirteen months of delay, occasioned in large part by the court reporter's failure to produce the *Boykin* transcripts, Judge Julian Parker recused himself, and the matter was reallocated. Approximately two and one-half months later, on February 9, 1999, Judge Patrick Quinlan sentenced the defendant as a multiple offender. Because the State filed the multiple bill one month after the defendant's conviction on the present charge, and considering that the delay between the filing of the multiple bill and the defendant's sentencing as a multiple offender was not due to the State's action or inaction, the trial court did not err in denying the motion to quash the multiple bill. This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 3

By his final assignment, the defendant argues the trial court adjudicated him a fourth felony offender on insufficient evidence.

Pretermiteing a consideration of the sufficiency of the evidence at the multiple bill hearing, although the defendant was sentenced as a multiple offender, there is no indication in the record that he was ever adjudicated so by the court. Therefore, his sentence is illegal and must be vacated.

CONCLUSION

For the foregoing reasons, we affirm the defendant's conviction on the simple possession of cocaine charge, but vacate his sentence and remand, on the basis of the trial court's failure to adjudicate him a multiple offender.

**CONVICTION AFFIRMED; SENTENCE VACATED AND
REMANDED**