

STATE OF LOUISIANA

*

NO. 2000-KA-1446

VERSUS

*

COURT OF APPEAL

RENETTA D. WELLS

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 412-084, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge
David S. Gorbaty)

HARRY F. CONNICK, DISTRICT ATTORNEY
DUANE A. EVANS, ASSISTANT DISTRICT ATTORNEY
NEW ORLEANS, LA 70119
COUNSEL FOR PLAINTIFF/APPELLANT

HOLLI HERRLE-CASTILLO
LOUISIANA APPELLATE PROJECT
MARRERO, LA 70073
COUNSEL FOR DEFENDANT/APPELLANT

Renetta D. Wells, also known as Samantha Youngblood, was charged by bill of information on January 20, 2000, with distribution of cocaine, a violation of La. R.S. 40:967(B). At her arraignment on January 25th she pleaded not guilty. After trial on February 8th a twelve-member jury found her guilty of attempted distribution of cocaine. She was sentenced on April 10th to serve six years at hard labor; her sentence was suspended, and she was placed on five years of active probation with special conditions. Both the State and the defendant filed motions to reconsider the sentence and for appeals. The motions to reconsider the sentence were denied and the motions for an appeal were granted.

At trial Sergeant Michael Glasser testified that on November 17, 1999, he was part of an undercover operation in the Treme section of New Orleans. The sergeant and his partner, Sergeant Cindy Scanlan, were in plain clothes and driving an unmarked car on North Robertson Street near Kerlerec Street, about 9 p.m. when he noticed Renetta Wells standing on the corner of Esplanade Avenue and North Robertson Street. As he approached, she waved and asked, "What's up?" Sergeant Glasser stopped and said he was looking for a "dime," and Wells responded, "Well, this is where you get it," and she told him to back up into a driveway area. She took ten dollars

and gave him her beer and her purse as collateral while she went to a house in the 1300 block of Esplanade Avenue. When she returned, she handed Sergeant Scanlan two pieces of crack cocaine and asked for five dollars for her effort; the officers gave her the additional money. Meanwhile the officers radioed her description to their backup team. After she had been detained, Sergeant Glasser drove back into the area to confirm that the right person had been stopped. The officer identified the defendant in court and named her as the woman from whom he purchased crack cocaine.

Detective Jonathan Frost testified that he was working with Sergeant Glasser as a support officer on November 17, 1999, when he arrested Renetta Wells. The detective stated that after receiving the description and learning that the sale was completed from Sergeant Glasser, he walked up to the defendant and ordered her to stop. She immediately dropped an object from her right hand; it was a glass pipe containing a residue. The five-dollar bill she received was recovered; it had been photocopied prior to the operation.

The parties stipulated that the residue in the glass pipe as well as the rocks the defendant sold to the officers were tested and proved to be crack cocaine.

Renetta Wells, who was twenty-four at the time of trial, testified that

on the night she was arrested she was living on the street. She described the events just as the sergeant did; she admitted obtaining the drug for the officer and having a crack pipe. Additionally she explained that she asked for five dollars so that she could buy some cocaine for herself. Under cross-examination, Wells admitted using the names Samantha Youngblood and Kim Youngblood.

Both parties appealed this decision.

Defense counsel filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So. 2d 528 (La. App. 4 Cir. 1990). Counsel filed a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because she believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed her that she had the right to file a brief in her own behalf. She has not done so.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcript in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 40:967, and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, trial, and sentencing. A review of the trial transcript reveals that the State proved the offense beyond a reasonable doubt. Other than the assignment of error raised by the State, which is also an appellant in this case, our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal by Ms. Wells.

However, a review of the record indicates that the sentence is illegally lenient, and the State has addressed the issue in its brief. Accordingly, we shall consider the issue. State v. Fraser, 484 So. 2d 122 (La. 1986).

In its brief the State complains that the trial court erred in suspending the sentence. Renetta Wells was convicted of attempted distribution of cocaine under La. R.S. 40:979 and R.S. 40:967(B). La. R.S. 40:979, the attempt statute for drug offenses, provides for a sentence not to exceed one-half of the punishment prescribed for the completed offense. The sentence for attempted distribution of cocaine is therefore two and one-half years to fifteen years, or one-half of the sentencing range set forth La. R.S. 40:967

(B). State v. Laprime, 521 So. 2d 538 (La. App. 4 Cir. 1988). Further, La. R.S. 40:967(B)(4)(b) provides that the first five years, i.e., the minimum term, must be served without the benefit of probation, parole, or suspension of sentence. La. R.S. 40:979(A) requires that any person who commits an attempt shall be imprisoned in the same manner as for the offense attempted. Therefore, La. R.S. 40:979 requires that the defendant's sentence be served without the benefit of parole, probation, or suspension of sentence for the minimum term, or two and one-half years. State v. Thomas, 95-2348 (La. App. 1 Cir. 12/20/96), 686 So. 2d 145, writ denied 97-0192 (La. 3/14/97), 690 So. 2d 36. Thus, the sentence is illegal.

The trial court suspended the defendant's sentence in order to place her in the intensive probation/drug court program. This case must be remanded for resentencing. At that time the trial court may consider whether the minimally mandated sentence is constitutionally excessive in this particular defendant's circumstances under State v. Dorthey, 623 So. 2d 1276 (La. 1993), and State v. Fobbs, 99-1024 (La. 9/24/99), 744 So. 2d 1274.

Accordingly, the defendant's conviction is affirmed. Her sentence is vacated, and the case remanded for resentencing.

CONVICTION AFFIRMED; SENTENCE VACATED AND

CASE REMANDED FOR RESENTENCING.