STATE OF LOUISIANA	*	**NO. 2001-KA-1067**
VERSUS	*	**COURT OF APPEAL**
JOSEPH PATTERSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 417-518, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE
* * * * * *
JUDGE MICHAEL E. KIRBY
* * * * * *

(Court composed of Judge Steven R. Plotkin, Judge Patricia Rivet Murray, Judge Michael E. Kirby)

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On October 19, 2000, the defendant, Joseph Patterson, was charged by bill of information with two counts of armed robbery, violations of La. R.S. 14:64.

At his arraignment on October 24, 2000, he pleaded not guilty. Probable cause to bind the defendant over for trial was found and the motions to suppress the statement, the evidence, and the identification were denied at a hearing on January 12, 2001. After trial on March 22, 2001, a twelve-member jury found the defendant guilty as charged on both counts. On March 29, 2001, the defendant was sentenced to serve two ninety-nine year terms consecutively and without benefit of parole, probation or suspension of sentence. The State filed a multiple bill charging defendant as a third felony offender on count one, and after a hearing at which the State proved the charge, the trial court vacated the first sentence and re-sentenced defendant to life imprisonment without benefits of parole, probation or suspension of sentence under La. R.S. 15:529.1; the sentence is to be served consecutively to the ninety-nine year term on count two. His motion to reconsider the sentences was denied, and his motion for an appeal was granted.

At trial Ms. Heidi Stansbury, a twenty-two year old victim, testified that she was working at Young's Dry Cleaners on August 22, 2000, at about

5 p.m. when her colleague, Ms. Stacie Jones, called to her. (Ms. Jones worked in the adjacent but separate section of the business, which was a laundry). Ms. Stansbury looked up to see a man behind Stacie Jones holding a gun to her back. The man, later identified as the defendant, Joseph Patterson, pointed the gun at Ms. Stansbury and "told me he was going to shoot me if I did anything stupid." The defendant wanted her to open the cash register, but she told him there was no money on that side of the store. He took her purse, which contained $150. He then grabbed both Ms. Stansbury and Ms. Jones by the back of their collars and dragged them through the back and into the other side of the business. When he found there was no money on that side, he brought them back to the first side. He wore two red bandannas, one over his mouth and nose, and the other over his head. Ms. Stansbury noticed that he had cornrows and facial hair. She also noted his "pretty eyes." The defendant ordered the young women to get down on the floor, and while she was crouched on the floor, Ms. Stansbury observed that the defendant had on white socks and black shoes with black shoestrings. He kept the gun at the back of her head while she was on the floor. Ms. Stansbury said she thought she was going to die during the ordeal. When a customer came in, the defendant kicked Ms. Stansbury in the ribs and pushed her under a clothes rack so that she could not be seen.

Ms. Jones spoke to the customer, and when the telephone rang the first time, Ms. Jones answered. Ms. Stansbury answered the second call by saying only "hello" instead of the company name. The caller was Dale Velez, the owner of the business who identified himself; Ms. Stansbury then answered, "Dale's not here." Mr. Velez immediately asked if a robbery was in progress, and Ms. Stansbury answered affirmatively. He told her the police were on their way and she hung up. The defendant asked who called and was told it was a customer. For a time, he kept her in the back of the store with a gun to her chest questioning her about the alarm system. The defendant was standing to her left, and Ms. Jones to her right when the police approached. Ms. Jones pulled her to the right to run, but the defendant held on to her saying she must come with him. However, she got free and ran out the front door. When she next saw the defendant, he was in police custody and she identified him immediately. She recognized his eyes, his clothing, and his shoes.

Ms. Stacie Jones testified that she was working at the counter at Young's Cleaners when a young man with bandannas around his head and mouth walked into the shop. He pointed a gun at her and told her to open the cash register. When she told him she could not open the register and that the woman who could do so was gone, he forced her to go to the other side

of the business where Heidi Stansbury was working. He asked where the safe was and finally took money from the purses of both women. When the telephone rang the first time, Ms. Jones answered it and spoke to Dale Velez; she managed to inform him of the robbery in progress. Ms. Jones said she noticed her assailant's eyes, which were "big, brown eyes, pretty eyes." She said that when the defendant forced her to kneel down next to Heidi Stansbury, she was certain he was going to kill them, and her "life flashed in front of [her]." When she first saw her assailant in court, Ms. Jones admitted that she began to cry because of the fear that overwhelmed her.

Mr. Dale Velez, the owner of Young's Dry Cleaners, testified that on the day in question he called his office and found a robbery in progress. Stacie Jones answered his first call and whispered into the telephone that they were being robbed; she then hung up. When he called back, he learned from Heidi Stansburg that one robber was in the building. Mr. Velez stated that his building has back doors that are always locked by 5 p.m., and the only way to exit after that time is through the front door. Prior to August 22nd, there was no hole in his roof; however, after that day the skylight was broken. When Mr. Velez arrived at his business about 5:40 p.m. on August 22nd, the police were in his building.

Officer Jeffrey Vappie told the court that he and his partner, Corey Robertson, were the first on the scene to investigate the armed robbery at the cleaners. As they pulled up, two women ran from the building, and one warned that a man with a gun was inside. Then while they prepared to enter the building, they saw a man on the roof wearing a red bandanna on his face and head. The man jumped from the roof into the yard and ran into the next street. Officer Vappie attempted to pursue, but he could not apprehend the defendant.

Mr. Bernard Welb, the owner of Southshore Seafood, which is located next door to Young's Cleaners, testified that he observed a man on the roof of the building next door on August 22nd. One of the police officers was pointing his gun at the man who said, "Please don't shoot me." Mr. Welb walked to the front of the building to inform the other officers that the man was on the roof in the back. About forty minutes later, Mr. Welb saw the man in a police car.

Officer Danny Riley of the K-9 team testified that he received a description of the defendant and proceeded to search for him. The officer found the defendant in a residential area. When Officer Riley and his dog entered the backyard of a home, the defendant stood up, saying, "I got rid of the gun. Don't shoot me."

Officer Jerome Laviolette testified that he too was part of the investigation of the robbery of the cleaners. He observed a man on the roof of the building jump down onto a van parked behind the building and then run to the 5300 block of Eads Street where he was apprehended. A search of the defendant revealed that he had $1500 on his person. Money was also found in the yard where he was hiding; an envelope containing fourteen dollars and another containing fifty-nine dollars were introduced at trial.

Sergeant Charles Little testified that after the defendant was handcuffed and turned over to him, the sergeant informed him of his Miranda rights. When the sergeant indicated they were returning to the cleaners so that the victims could identify the defendant, the defendant said, "You don't have to take me back there, man. I robbed the place. I'll do my time." Then he added, "I'll even tell you what I did with the gun." The sergeant returned to the scene, and the victims positively identified the defendant as the man who held them at gunpoint and robbed them. Once inside the dry cleaners, the defendant pointed out his gun hidden on the top of a high stack of boxes.

A review of the record for errors patent reveals none.

The defendant makes two assignments of error: (1) he received ineffective assistance of counsel at the multiple bill hearing because his

attorney failed to file a motion to quash the bill, and (2) his consecutive sentences are excessive.

On his first assignment of ineffective assistance of counsel, the defendant argues that the State failed to introduce documentation showing that he had been advised of his Boykin rights prior to each of his previous guilty pleas, and the defense attorney did not attack the State's evidence presented at the habitual offender proceeding pertaining to his 1992 and 1993 convictions for possession of stolen vehicles, and thus preserve the issues for appeal.

"As a general rule, claims of ineffective assistance of counsel are more properly raised by application for post conviction relief in the trial court where a full evidentiary hearing may be conducted if warranted." State v. Howard, 98-0064, p. 15 (La. 4/23/99), 751 So. 2d 783, 802. However, where the record is sufficient, the claims may be addressed on appeal. State v. Wessinger, 98-1234, p. 43 (La. 5/28/99), 736 So. 2d 162, 195; State v. Bordes, 98-0086, p. 7 (La. App. 4 Cir. 6/16/99), 738 So. 2d 143, 147. Ineffective assistance of counsel claims are reviewed under the two-part test of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). State v. Brooks, 94-2438, p. 6 (La. 10/16/95), 661 So. 2d 1333, 1337 (on rehearing); State v. Robinson, 98-1606, p. 10 (La. App. 4 Cir.

8/11/99), 744 So. 2d 119, 126. In order to prevail, the defendant must show both that: (1) counsel's performance was deficient; and (2) he was prejudiced by the deficiency. Brooks, 661 So. 2d at 1337; State v. Jackson, 97-2220, p. 8 (La. App. 4 Cir. 5/12/99), 733 So. 2d 736, 741. Counsel's performance is ineffective when it is shown that he made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Strickland 466 U. S. at 686, 104 S.Ct. at 2064; State v. Ash, 97-2061, p. 9 (La. App. 4 Cir. 2/10/99), 729 So. 2d 664, 669. Counsel's deficient performance will have prejudiced the defendant if he shows that the errors were so serious as to deprive him of a fair trial. To carry his burden, the defendant must show that there is a reasonable probability that, but for counsel's deficient performance the result of the proceeding would have been different; “[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 693, 104 S.Ct. at 2068; State v. Guy, 97-1387, p. 7 (La. App. 4 Cir. 5/19/99), 737 So.2d 231, 236.

Because the record contains the documentation produced by the State at the habitual offender proceeding, this ineffectiveness of counsel claim may be resolved on appeal.

In State v. Alexander, 98-1377 (La. App. 4 Cir. 2/16/00), 753 So.2d

933, writ denied, 2000-1101 (La. 4/12/01), 790 So.2d 2, this Court considered the State's burden of proof at a multiple offender hearing and stated:

> LSA-R.S. 15:529.1 D(1)(b) states that the district attorney has the burden of proving beyond a reasonable doubt any issue of fact and that the presumption of regularity of judgment shall be sufficient to meet the original burden of proof. In State v. Shelton, 621 So.2d 769, 779-780 (La.1993), the Supreme Court stated:
>
> > If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that defendant was represented by counsel when they were taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one which reflects a colloquy between judge and defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than the "perfect" transcript, for example, a guilty plea form, a minute entry, an "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three Boykin rights. (footnotes omitted).

98-1377 at pp. 5-6, 753 So.2d at 937.

In the case at bar, the defendant has two prior offenses. The defendant does not contest the issue of identity. However, he does claim that he was not represented by counsel or given his Boykin rights in his two prior pleas. For case number 354-877, where he pleaded guilty to violating La. R.S. 14:69 on April 16, 1992, the State presented the arrest register, the waiver of constitutional rights/plea of guilty form, the docket master, and the minute entry. The waiver of rights document is initialed in the appropriate places indicating that defendant was given his Boykin rights, understood the nature of the charge against him, and was freely and voluntarily waiving those rights and pleading guilty as charged; it is also signed by the defendant, his attorney, and the judge. The minute entry states that

> [t]he Court questioned the defendant and was satisfied that he defendant understood his rights and that there was a basis in fact for the plea. The Court accepted the plea, signed the form and entered it into the record.

For his 1993 conviction for a violation of La. R.S. 14:69, case number 365-816, the State introduced a waiver of constitutional rights/plea of guilty form signed and initialed by the defendant, indicating that he understood the nature of the charge against him, as well as his Boykin rights, and was freely and voluntarily waiving those rights and pleading guilty as charged. The

State also produced a docket master for Orleans Parish case #365-816 indicating that the defendant was attended by counsel, on October 22, 1993, and after a preliminary hearing where the trial court found probable cause and denied the motion to suppress, the defendant withdrew his earlier plea and entered a plea of guilty as charged; he also pleaded guilty at that time to a multiple bill charging him as a second offender, and he was then sentenced to five years at hard labor. The minute entry of October 22, 1993, which is numbered "page one," reflects that the defendant was present with his counsel during the preliminary hearing. The bottom half of the page contains the heading "Later:"; however, the bottom half of the page is empty, and there is no page two in the record.

At the sentencing hearing, after the documents were introduced, the defense attorney asked the court to "look at the Boykin form" because the defendant "did not know his rights." The defendant also asserted that he had not been represented by counsel at those hearings. The judge then examined the evidence submitted for both prior offenses. As to case number 354-877, the court examined the documents and found that the defendant was represented by counsel and that his Boykin rights were explained to him. As to case number 365-816 the judge noted that Craig Cowart signed the waiver of Constitutional Rights form as did the trial court whose name could not be

deciphered. On examining the documents, the judge said,

> my review of the certified documents in this case prove that there was a proper Boykin hearing on 22nd day of October 1993 as indicated by document master [sic] dated October 22, 1993.

Thus, at the multiple bill hearing, the defense attorney argued the very points that the defendant is now claiming his attorney failed to raise. Furthermore, the trial court considered the defendant's arguments and rejected them.

The defendant cites State v. Everett, 98-2156 (La. App. 4 Cir. 4/12/00), 761 So. 2d 58, in support of his argument that trial counsel was ineffective. However, in Everett defense counsel did not object to the multiple bill, and there was no discussion of the evidence presented by the State. Furthermore, the State did not offer a waiver of rights form for one of the predicate offenses, and the minute entry failed to specify which rights the defendant waived. This case can be distinguished from Everett in that here the State presented a waiver of rights form which lists the rights waived, and the defendant initialed and signed the document in the appropriate places. More importantly, here the judge heard the defendant's arguments, and then according to the procedure set out in State v. Shelton, 621 So.2d 769, 779-780 (La. 1993), the judge weighed the evidence and determined that the State had met its burden of proof.

Because the Boykin issue was argued at the hearing, Patterson was not

prejudiced by any deficiency on the part of his counsel. The outcome of this case would be no different if defense counsel had filed a motion to quash the multiple bill. Accordingly, we find no merit in defendant's argument that his counsel was ineffective.

Furthermore, we find that the trial court correctly held that both the defendant's pleas were informed and voluntary on the basis of a review of the record. The record indicates that the October 22, 1993, minute entry when read with the docket master indicates that the defendant was represented by counsel at the pleas. There is a guilty plea/waiver of rights form signed by the defendant, his attorney, and the judge.

In his second assignment of error, the defendant maintains that the trial court erred in imposing consecutive sentences and therefore, those sentences are excessive. He received a sentence of life imprisonment as a third felony offender without the benefit of probation, parole or suspension of sentence on count one; that sentence is to run consecutively to a ninety-nine year term without benefits on count two.

The defendant received the mandatory sentence pursuant to La. R.S. 15:529.1(A)(1)(b)(ii) because he had two prior felony convictions, and his most recent convictions were for armed robberies, crimes of violence under La. C.Cr.P. art. 14:2 (w). He also received the maximum term for the

second count of armed robbery, and the two sentences are to run consecutively.

The statute governing concurrent and consecutive sentences, La. C.Cr.P. art. 883, provides:

> If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. Other sentences of imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently. (Emphasis added)

Louisiana law favors concurrent sentences; however, a trial judge retains the discretion to impose consecutive sentences on the basis of other factors, including the offender's past criminality, violence in the charged crimes, or the risk that the defendant poses to the general safety of the community. State v. Thomas, 98-1144 (La. 10/9/98), 719 So. 2d 49. When consecutive sentences are imposed for crimes arising out of the same act, the trial judge must articulate particular justification for such a sentence beyond a mere articulation of the standard sentencing guidelines set forth in La. C.Cr.P. art. 894.1. State v. Pittman, 604 So. 2d 172 (La. App. 4 Cir. 1992). Consecutive sentences for crimes arising out of the same act are not per se

excessive if the trial judge considers other appropriate factors in imposing sentence. Id.

At sentencing the trial court commented:

> The facts and circumstances of this case reviewed with Article 894.1 of the Louisiana Code of criminal [sic] procedure lead the court to draw the following conclusions. First of all, that Mr. Patterson has been convicted in this case of two felony counts . . . both counts of violence. That during the course of this armed robbery, he threatened to kill his victims. The court further finds there is an undue risk that during the period of any suspended sentence or probationary period that the defendant will commit another crime . . . . I find that the defendant is in need of correctional treatment or a custodial environment that can be provided most effectively by commitment to the Louisiana State Penitentiary.
>
> The court further finds that any lesser sentence will deprecate from the serious nature of the defendant's crime especially in light of the prior criminal history. I find that your conduct during the commission of the offense manifested deliberate cruelty to these victims.
>
> Furthermore, I noted when the foreperson of the jury returned with this verdicts [sic], the two victims . . . held on to each other and cried but they sort of had a look of what I can only describe . . . as what I have seen in documentaries of the soldiers that suffered from what was called during World War two [sic], the word shell shot [sic] and the only time I have ever seen two people engaged in this type of embrace is when I have seen films of the Vietnam war [sic] when little children who had witnessed bombings of villages or mass assassinations . . .exhibited the same type of behavior I saw . . . being expressed by Stacy Jones and Hydee [sic] Stansbury. When I left the court, I

> further saw them doing the same thing out in the hallway. This leads me to believe that not only did you take . . . the little bit of money they had in their purse but you also robbed them of some of their human dignity.
>
> I find this to be . . . particularly cruel and I further find that you knowingly created a risk of death or great bodily harm to more than one person. I find that you used threats of actual violence in the commission of the offense and that you used actual violence. I find that you fled from the police to try to avoid apprehension and you only gave up because you didn't want to tangle with the K-9 dog. I find that you are [sic] offense result in the significant, permanent psychological injury to the victims in this case. I find that you used a dangerous weapon. . . a gun in the commission of the offense.
>
> Mr. Patterson was born on January 17, 1975. He has no listed occupation. Stamped on the gentlemen's [sic] arrest register copy for D.A's [sic] office are the words "career criminal." Mr. Joseph Patterson has an extensive criminal history that includes the following: an arrest on August 31, '99 for offenses of aggravated assault, simple assault and simple criminal damage to property; an arrest on tenth day of March 2000 for the offense of first degree murder . . .; an arrest on August 1, 2000 for possession of a firearm or carrying a concealed weapon by a person convicted of certain felonies . . . . He has an arrest dated October 22, 1993 for possession of stolen things; [and] a conviction. . . .

The trial judge adequately articulated the basis for his decision to make defendant's sentences consecutive, rather than concurrent. He cited defendant's prior criminal history, his cruelty to the victims, and the

psychological damage he inflicted upon them. The court noted that the defendant endangered more than one victim and at trial the victims were still traumatized by the crimes. The judge obviously believed the defendant a threat to society because at the end of the hearing he addressed the defendant again and called him "a dangerous and incorrigible criminal." The judge then expressed the hope that the defendant would never get out of jail. Clearly, the judge believed that defendant was the worst sort of offender of the crimes for which he was convicted. In light of these factors, we find no abuse of discretion in ordering the sentences to be served consecutively. State v. Johnson, 97-867 (La. App. 5 Cir. 4/15/98), 711 So. 2d 848; State v. Barnett, 96-2050 (La. App. 1 Cir. 9/23/97), 700 So. 2d 1005.

There is no merit to this argument.

Accordingly, for reasons cited above, the defendant's convictions and sentences are affirmed.

AFFIRMED