

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0597**
VERSUS * **COURT OF APPEAL**
EMANUEL CALVIN * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*
*
*
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 393-763, SECTION "H"
Honorable Camille Buras, Judge
* * * * *
Judge Steven R. Plotkin
* * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin, Judge Max N. Tobias, Jr.)

Harry F. Connick
District Attorney
Anne M. Dickerson
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

Anderson Council
4948 Chef Menteur Highway
Suite 712

New Orleans, LA 70126

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED.

The issues in this appeal are whether the trial court erred in finding probable cause for the appellant's arrest and whether the trial court erred in accepting the plea of guilty without any factual basis to support the plea.

PROCEDURAL HISTORY

The defendant, Emanuel Calvin, was charged by bill of information with aggravated burglary in violation of La. R.S. 14:60. At arraignment he pled not guilty. A probable cause hearing was held at which the victim testified; however, the hearing was continued and the trial court never ruled on the motions or on the matter of probable cause. Subsequently, the defendant was charged with another offense, simple burglary, in violation of La. R.S. 14:62 in case # 395-795. He also pled not guilty to this offense. The trial court found probable cause to bind the defendant over for trial and denied the motions to suppress. The defendant withdrew both of his earlier pleas and entered pleas of guilty as charged on both offenses. On the aggravated burglary charge, he pleaded under State v. Crosby, 338 So. 2d 584 (La. 1976). The State filed a multiple bill charging him as a second offender, and, after being advised of his rights, he was sentenced that same

day to serve twenty years on each offense; the aggravated burglary conviction was imposed without benefits of parole, probation, or suspension of sentence for the first year.

STATEMENT OF FACTS

At about 9:40 p.m. on August 18, 1997, the victim heard a noise on the fire escape of her home at 815 Baronne Street, and shortly thereafter, she heard what sounded like window-glass breaking on her third floor. She called 911, picked up her two-year-old child, and went to a neighbor's house. As she waited for her neighbor to open the door, she observed a man leave her home via a third floor window and the fire escape. He jumped to the ground and ran down an alley. A policeman stopped him almost immediately. He was carrying a butcher block filled with steak knives. The victim later identified the item as coming from a kitchen on the third floor of her house.

ERRORS PATENT

When the defendant was sentenced the trial court erroneously imposed his aggravated burglary sentence without benefits of parole, probation, or suspension of sentence for one year. La. R.S. 14:60 does not prohibit those benefits. However, the defendant was sentenced under La. R.S. 15:529.1, and Section "G" of that statute prohibits probation and suspension of

sentence. Moreover, the defendant was sentenced in 1998, and it appears that he was not released on parole during his first year of incarceration.

Accordingly, the error is harmless.

ASSIGNMENT OF ERRORS 1 AND 2

The defendant through counsel makes two assignments of error. He argues that the trial court erred in finding probable cause for the appellant's arrest and in accepting the plea of guilty without any factual basis to support the plea.

The defendant failed to brief his first assignment, and therefore, this Court cannot consider the argument. Under the Uniform Rules—Courts of Appeal, Rule 2-12.4, this Court considers as abandoned any assignment of error which has not been briefed.

In his second argument, the defendant contends that the trial court erred in accepting the guilty plea because there was no affirmative evidence of an essential element of the crime.

The defendant pled guilty to La. R.S. 14:60 which provides in pertinent part:

Aggravated burglary is the unauthorized entering of any inhabited dwelling ... where a person is present, with the intent to commit a felony or any theft therein, if the offender,

- (1) Is harmed with a dangerous weapon; or
- (2) After entering arms himself with a dangerous weapon ...

The defendant claims that it was not clear who took the butcher block or whether it could be classified as a dangerous weapon. However, the defendant overlooks the fact that he pled guilty to aggravated burglary; thus, the State was not required to prove the elements of the crime because he admitted to having broken into the victim's house while she was at home, and having taken the knives.

Entry of an unqualified guilty plea waives all nonjurisdictional defects in the proceedings prior to the plea and precludes appellate review of such defects; however, a defendant may plead guilty subject to a specific reservation of his right to obtain appellate review of pre-plea rulings by the trial court. State v. Crosby, 338 So. 2d 584 (La. 1976). Because there were no pre-plea rulings in this case, there is nothing for this Court to review.

CONCLUSION

Accordingly, for reasons cited above, the defendant's conviction and sentence are affirmed.

AFFIRMED.