STATE OF LOUISIANA	*	**NO. 2002-KA-2483**
VERSUS	*	**COURT OF APPEAL**
CARLTON DOUGLAS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 414-963, SECTION "L"
Honorable Terry Alarcon, Judge
* * * * * *
JUDGE

JOAN BERNARD ARMSTRONG
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Dennis R. Bagneris Sr., Judge Michael E. Kirby)

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AFFIRMED.

STATEMENT OF THE CASE

The defendant, Carlton Douglas, was charged by bill of information on June 13, 2000, with one count of possession of cocaine in violation of La. R.S. 40:967(c)(2). The defendant pleaded not guilty at his June 16, 2000, arraignment. On January 30, 2001, a six-person jury found the defendant guilty as charged. On that same date, the State filed a multiple bill. On May 16, 2001, the defendant was sentenced to two years in the Department of Corrections. On June 8, 2001, the defendant appeared for a multiple bill hearing. The defendant pled guilty to the multiple bill, the trial court vacated its previous sentence of two years, and re-sentenced the defendant to forty months as a triple offender. On appeal, the defendant asserts three assignments of error.

STATEMENT OF THE FACTS

Officer Mathew Robinson of the New Orleans Police Department testified that on May 31, 2000, he and his partner Edward Prader were on pro-active patrol in the lower ninth ward. Officer Robinson further testified

that about 10:30 p.m. he observed the defendant standing on a street corner with a bike. When the defendant saw the patrol car he dropped the bike and walked to the front door of a nearby residence. The officers stopped their patrol car in front of the residence where the defendant stood. The defendant jumped off the steps of the residence and attempted to climb a nearby fence. The officers called the defendant over to their patrol car. As the defendant approached, he walked with his right hand in his pants pocket. Officer Prader asked the defendant to remove his hand from his pocket and place both hands on the hood of the patrol vehicle. The officers questioned the defendant and ran his name through their computer to determine if the defendant lived at the residence as he claimed. The check of the defendant's name revealed there was a warrant for the defendant's arrest for the defendant's failure to appear in Municipal Court.

Officer Robinson informed the defendant he was under arrest for his failure to appear in court. When Officer Robinson informed the defendant he was under arrest the defendant immediately put his hand in his right pants pocket. Officer Robinson asked the defendant to remove his hand from his pocket and place it back on the hood of the vehicle. The defendant removed his hand and lowered it to his side. Officer Robinson testified that he heard what sounded like a glass object hit the ground. Officer Robinson further

testified that his partner saw the object discarded by the defendant. Officer Prader handcuffed the defendant and retrieved a glass tube used to smoke crack cocaine. The defendant was then informed he was being arrested for drug paraphernalia.

Officer Prader testified corroborating Officer Robinson's testimony.

Karen Lewis-Holmes of the New Orleans Police Department Crime Lab testified that the residue substance in the glass tube tested positive for cocaine.

ERRORS PATENT

A review of the record reveals no errors patent.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant argues that the trial court erred when it failed to advise him at sentencing of post conviction relief provisions.

This court in State v. Moore, 99-2684 p.13 (La. App. 4 Cir. 12/20/00), 777 So. 2d 600, 608, when addressing the trial court's failure to advise the defendant of the two year prescriptive period for applying for post conviction relief found:

> The Louisiana Supreme Court has held that La. C.Cr.P. art. 930.8(c) is supplicatory language and does not bestow an enforceable right upon an individual defendant. Thus, the trial court's failure to advise the defendant of the limitations period requires no action by this court. (Citations omitted).

Accordingly, in the instant case, we find that no action is required by this court.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, the defendant contends that he received ineffective assistance of counsel. Specifically, the defendant argues that his trial counsel erred in not filing a motion to suppress the evidence because it was the product of an unreasonable investigatory stop.

The Louisiana Supreme Court in State v. Brooks, 505 So. 2d 714, 724 (La. 1987) citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) stated that hindsight is not the proper perspective for judging the competence of counsel's trial decisions. Neither may an attorney's level of representation be determined by whether a particular strategy is successful.

This court in State v. Jason, 99-2551 (La. App. 4 Cir. 12/6/00), 779 So. 2d 865, 871, citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct.

2052, 80 L.Ed.2d 674 (1984), stated that the claim of ineffective assistance of counsel is to be assessed by the two-part test of Strickland. The defendant must show that his counsel's performance was deficient and that the deficiency prejudiced him. Counsel's performance is ineffective when it can be shown that he made errors so serious that counsel was not functioning as the "counsel" guaranteed to the defendant by the Sixth Amendment. Jason, id. Counsel's deficient performance will have prejudiced the defendant if he can show that the errors were so serious as to deprive him of a fair trial. To carry this burden, the defendant "must show that there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Jason, id, citing Strickland, id.

A claim of ineffective assistance of counsel is properly raised in a petition for post conviction relief. State v. Green, 562 So. 2d 35,36, (La. App. 3rd Cir. 1990), citing State v. Burkhalter, 428 So. 2d 449, 456, (La. 1983). If development of evidence on the issue is warranted, the district court may order a full evidentiary hearing. Green, id, citing State v. Seiss, 428 So. 2d 444 (La. 1983). However, where the record contains evidence necessary to decide the issue, and the issue is raised on appeal by assignment

of error, the issue should be considered. Seiss, id.

In the instant case, the defendant argues that if trial counsel had filed a motion to suppress the evidence it would have been granted because the arresting officers had no reason to believe the defendant was committing, had committed or was going to commit a crime. Therefore, the investigatory stop was unreasonable.

The trial court is vested with great discretion when ruling on a motion to suppress. State v. Oliver, 99-1585, p.4 (La. App. 4 Cir. 9/22/99), 752 So. 2d 911, 914.

La. C.Cr.P. art. 215.1 provides in part:

> A. A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and demand of him his name, address, and an explanation of his actions.

This court in State v. Anderson, 96-0810, p.2 (La. App. 4 Cir. 5/21/97), 696 So. 2d 105,106, noted:

> A police officer has the right to stop a person and investigate conduct when he has a reasonable suspicion that the person is, has been, or is about to be engaged in criminal conduct. Reasonable suspicion for an investigatory stop is something less than probable cause; and, it must be determined under the facts of each case whether the officer had sufficient articulable knowledge of particular facts and circumstances to justify an infringement upon an individual's right to be free from governmental interference.

> The totality of the circumstances must be considered in determining whether reasonable suspicion exists. An investigative stop must be justified by some objective manifestation that the person stopped is or is about to be engaged in criminal activity or else there must be reasonable grounds to believe that the person is wanted for past criminal conduct.
> (Citations omitted)

Though law enforcement officers are given the discretion to stop a person and investigate suspicious activity, this discretion is juxtaposed against an individual's rights under the Fourth Amendment of the United States Constitution and the Louisiana Constitution Art. I, Section 5, which provides in part:

> Every person shall be secure in his person, property, communications, houses papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose for the search.

In State v. Tucker, 626 So. 2d 707,710 (La. 1993), the Louisiana Supreme Court noted:

> In an effort to discourage police misconduct in violation of these standards, evidence recovered as a result of an unconstitutional search or seizure has been held inadmissible. Thus, evidence abandoned by a citizen and recovered by the police as a direct result of an unconstitutional seizure may not be used in a resulting prosecution against the citizen. Chopin, 372 So.2d at 1224. If, however, a citizen abandons or

> otherwise disposes of property prior to any unlawful intrusion into the citizen's right to be free from governmental interference, then such property may be lawfully seized and used against the citizen in a resulting prosecution. In this latter case, there is no expectation of privacy and thus no violation of a person's custodial rights. Chopin, Id.; State v. Ryan, 358 So.2d 1274, 1275 (La.1978).

In the instant case, Officer Robinson testified that when the defendant observed the marked patrol car driving down the street he immediately abandoned his bike and walked to the door of a nearby residence. As the defendant stood at the door of the residence he continued to look behind him to determine the location of the patrol car. When the patrol car stopped near the residence, the defendant attempted to climb the fence of the residence. The abandonment of the bike along with the defendant's flight gave the officers reasonable suspicion, sufficient articulable knowledge of particular facts and circumstances to justify detaining the defendant. State v. Benjamin, 97-3065 (La. 12/1/98), 722 So. 2d 988.

Moreover, even if the investigatory stop was an infringement of the defendant's right to be free of governmental interference, the Louisiana Supreme Court in State v. Hill, 97-2551 (La. 11/6/98), 725 So. 2d 1282, found that the intervening circumstance of the police officers finding the defendant wanted on outstanding warrants creates probable cause to arrest and dissipates the taint of an initial impermissible stop.

In the instant case, the officers found the defendant was wanted on an outstanding warrant for failing to appear in Municipal Court. Therefore, a motion to suppress the evidence would not have been granted. The defendant has failed to show he has been prejudiced by the trial counsel's actions. The defendant's claim of ineffective assistance of counsel fails.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER THREE

In his third assignment of error, the defendant argues that the evidence was insufficient to support his conviction for possession of cocaine.

The standard for reviewing a claim of insufficient evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The reviewing court is to consider the record as a whole and not just evidence most favorable to the prosecution; and if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. State v. Mussall, 523 So. 2d 1305 (La. 1988). Additionally, the reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of

the evidence. Id. The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. State v. Cashen, 544 So. 2d 1268 (La. App. 4th Cir. 1989).

When circumstantial evidence forms the basis for the conviction, such evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. The court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. Rather, this court when evaluating the evidence in the light most favorable to the prosecution, must determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under Jackson. State v. Davis, 92-1623 (La. 5/23/94), 637 So. 2d 1012. This is not separate test from Jackson, but is instead an evidentiary guideline for the jury when considering circumstantial evidence, and this test facilitates appellate review of whether a rational juror could have found the defendant guilty beyond a reasonable doubt. State v. Wright, 445 So. 2d 1198 (La. 1984).

The elements of possession of cocaine as found in La. R.S. 40:967(c), are proof that the defendant knowingly or intentionally possessed cocaine. The State need not prove that the defendant was in actual possession of the narcotics found; constructive possession is sufficient to support conviction.

State v. Allen, 96-0138 (La. App. 4 Cir. 12/27/96), 686 So. 2d 1017, 1020. A person not in physical possession of narcotics may have constructive possession when the drugs are under that person's dominion and control. Allen, id, citing State v. Jackson, 557 So. 2d 1034, 1035 (La. App. 4th Cir. 1990).

This court in State v. Maxwell, 97-1927 (La. App. 4 Cir. 9/15/97), 699 So. 2d 512, found that trace amounts of cocaine in a crack pipe are sufficient to support a conviction for possession of cocaine.

In the instant case, Karen Lewis-Holmes of the NOPD Crime Lab testified that the residue in the glass tube tested positive for cocaine. The defendant argues that the State failed to prove he possessed the glass pipe. However, Officer Prader testified that he saw the defendant drop the glass tube after removing his hand from his pocket. Therefore, the jury did not abuse its discretion in finding the defendant guilty of possession of cocaine.

This assignment of error is without merit.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED.