

STATE OF LOUISIANA

*

NO. 2003-KA-0091

VERSUS

*

COURT OF APPEAL

GLENN LEO WILLIAMS

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 378-491, SECTION "B"

Hon. Robert J. Burns, Judge Pro Tempore

Judge Edwin A. Lombard

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby,
Judge Edwin A. Lombard)

ON REHEARING GRANTED

Eddie J. Jordan, Jr.
District Attorney
Claire Adriana White
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

Christopher A. Aberle
LOUISIANA APPELLATE PROJECT

P.O. Box 8583
Mandeville, LA 704708583

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

We granted rehearing to consider the defendant's argument that the trial court erred in denying his second motion to quash the indictment, filed on May 17, 2002, wherein he challenged the constitutionality of the grand jury selection in Orleans Parish at the time of his indictment. After consideration of the pertinent facts in light of the applicable caselaw and supplemental briefs filed by the parties, we affirm the defendant's conviction and sentence.

Relevant Facts

In *State v. Dilosa*, 2002-2222 (La. 6/27/03), 848 So. 2d 546, the Louisiana Supreme Court struck down as unconstitutional La. Code Crim. Proc. art. 412 and La. Rev. Stat. 15:114 in their entirety, the introductory phrases of La. Code Crim. Proc. arts. 413(B) and 414(B) ("In parishes other than Orleans,"), and La. Code Crim. Proc. arts. 413(C) and 414(C) in their entirety. The offending provisions together provided procedures, applicable only in Orleans Parish, for the selection of the grand jury venire, the impaneling of the grand jury, selection of the grand jury foreman, the time

for impaneling grand juries and the period of service, and the rotation of judges who select and control the grand jury. The court found that the provisions were "local laws" concerning "criminal actions" which regulated the "practice" of Orleans Parish criminal courts in violation of La. Const. art. III, § 12(A)(3). Subsequently, La. Code Crim. Proc. arts. 412(A) and 413(B) were amended to remove the offending provisions, and art. 413 (C) was repealed in its entirety by Acts 2001, No. 281, §§ 1 and 2, respectively.

In this case, the grand jury that indicted defendant on July 9, 1995, and the foreman of that grand jury, were selected while the applicable procedures declared unconstitutional in *Dilosa, supra* were all in effect. The defendant's second motion to quash his indictment, filed in May 2002, challenged the constitutionality of the grand jury selection process. The defendant's conviction and sentence were under direct appeal to this court at the time of the *Dilosa* decision.

Discussion

Article 921 of the Louisiana Code of Criminal Procedure provides that "[a] judgment or ruling shall not be reversed by an appellate court because of any error, defect, irregularity, or variance which does not affect substantial rights of the accused."

The statute and codal provisions pertinent to this case were declared

unconstitutional in *Dilosa* solely because they were local laws in violation of La. Const. art. III, §12(A). However, the constitutional prohibition against local laws which underlies the *Dilosa* decision simply reflects a policy decision that legislative resources and attention should be concentrated upon matters of general interest and that purely local matters should be left to local governing authorities. *Morial v. Smith & Wesson Corp.*, 2000-1132, p. 22 (La. App. 4 Cir. 4/3/01), 785 So. 2d 1, 17; *Kimball v. Allstate Ins., Co.*, 97-2885, p. 4 (La. 4/14/98), 712 So. 2d 46, 50. As such, the substantial rights of a criminal defendant are not affected *per se* solely because he is indicted by a grand jury selected pursuant to local laws passed by the Louisiana State legislature. Thus, although the trial court erred in denying defendant's motion to quash his grand jury indictment based on the unconstitutionality of the local laws at issue, there is no showing that the error affected his substantial rights. Accordingly, the error does not require reversal of defendant's conviction, sentence and indictment. Therefore, on rehearing, the defendant's conviction and sentence are affirmed.

AFFIRMED.