

STATE OF LOUISIANA

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NO. 2003-KA-0235

VERSUS

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COURT OF APPEAL

KEITHAN TOLLIVER

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 430-669, SECTION "H"
Honorable Camille Buras, Judge

Judge Charles R. Jones

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, Judge Terri F. Love)

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**AFFIRMED; MOTION TO
WITHDRAW GRANTED**

The State of Louisiana filed a bill of information charging the defendant-appellant, Keithan Tolliver, with one count of possession of marijuana. Tolliver had been previously convicted of possession of marijuana in case number 406-148 “M-4,” a violation of La. R.S. 40:966(C). The district court heard testimony in connection with a Motion to Suppress Evidence, then deferred its ruling. Subsequently, the district court denied the Motion to Suppress Evidence, and Tolliver elected to withdraw his prior plea of not guilty and enter a plea of guilty, reserving his right to appeal from the denial of his Motion to Suppress evidence, pursuant to State v. Crosby, 338 So.2d 584 (La. 1976). The district court advised Tolliver of the rights he was waiving by entering a guilty plea, and after finding a factual basis for the plea, the court accepted Tolliver’s plea of guilty. Tolliver then waived any delays in sentencing and was sentenced to credit for time served to run concurrently with any other sentences. His motion for an appeal was granted.

The motion to suppress evidence hearing transcript, reflects that Tolliver was arrested following a routine traffic stop. Detective Lance

Schilling testified at the hearing that he was driving behind Tolliver's vehicle when he observed him turn from Forshey Street into a gas station without using a turn signal. The officer pulled into the station behind Tolliver. In the course of the routine handling of the traffic violation, Detective Schilling asked Tolliver for his driver's license. Tolliver provided the officer with a Louisiana state identification card and admitted that his driver's license was suspended. Detective Schilling ran Tollivers' name through the computer to double-check the status of his driver's license, and discovered that there was an outstanding warrant for his arrest. Based on the warrant, Tolliver was arrested, and his car was searched. A bag of marijuana was discovered in the driver's side door panel. Tolliver was then arrested for the drug offense.

Counsel for Tolliver has filed a brief requesting a review of the record 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 he believes, after a conscientious review of the

record, that there is no non-frivolous issue for appeal. Counsel reviewed the available transcripts and found no trial court ruling which arguably supports the appeal. Counsel in his brief reviewed the applicable jurisprudence in light of the argument made at the Motion to Suppress Evidence hearing. A copy of the brief was forwarded to Tolliver, and this Court informed him that he had the right to file a brief on his own behalf. He has not done so.

As per State v. Benjamin, supra, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and available transcripts in the appeal record. Tolliver was properly charged by bill of information with a violation of La. R.S. 40:966, relative to possession of marijuana, second offense, and the bill of information was signed by an assistant district attorney. Tolliver was present and represented by counsel at arraignment, when entering his guilty plea, and at sentencing.

Furthermore, the record reflects that he was sworn and given the oath prior to entering his guilty plea. The district court personally addressed him as to the charge to which he was pleading guilty, the maximum sentence he could receive, the fact that a subsequent offense could carry a penalty of up to twenty years, and that the plea could form the basis for a future felony prosecution. The district court reviewed each of the rights Tolliver was waiving by entering his guilty plea, including the right to trial by judge or

jury, the presumption of innocence, the right to confront the witnesses against him, the right not to testify, the right to present witnesses, and the right to have counsel appointed if he could not afford an attorney. Tolliver testified that he understood the rights explained to him by the district court and was aware that his sentence would be credit for time served. He denied that he had been coerced into pleading guilty and affirmed that he was satisfied with the representation provided by his counsel. He further acknowledged initialing and signing the waiver of rights form after its contents had been explained to him by his attorney.

Our independent review reveals no non-frivolous issue and no district court ruling, which arguably supports the appeal.

DECREE

The conviction and sentence of Keithan Tolliver are affirmed.
Appellate counsel's motion to withdraw is granted.

**AFFIRMED; MOTION TO
WITHDRAW GRANTED**