

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2003-KA-1145**
VERSUS * **COURT OF APPEAL**
LATHELTON JONES, A/K/A * **FOURTH CIRCUIT**
BIRD * **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 424-602, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * *
Judge David S. Gorbaty
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(Court composed of Judge Joan Bernard Armstrong, Judge David S. Gorbaty, Judge Edwin A. Lombard)

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CONVICTION AFFIRMED; SENTENCE AFFIRMED AS AMENDED

The State filed a bill of information on September 12, 2001, charging Lathelton Jones with possession of cocaine with intent to distribute, in violation of La. R.S. 40:967(A), and with possession of a firearm by a convicted felon, in violation of La. R.S. 14:95.1. At arraignment, Mr. Jones pleaded not guilty. After a hearing on the motions, the district court found probable cause and denied the motion to suppress the evidence. On the day set for trial, Mr. Jones withdrew his earlier plea and entered pleas of guilty as charged under *State v. Crosby*, 338 So. 2d 584 (La. 1976), as to both counts. He was then sentenced to serve ten years on each count without benefit of parole, probation, or suspension of sentence. The district court suspended the fine of \$1,500 on the possession of a firearm by a convicted felon conviction. The defendant was granted an appeal.

FACTS

The only facts in the record are found in the transcript of the motion hearing. Detective Edward Prater testified that he set up a surveillance of 2118 North Villere Street after receiving information from a reliable confidential informant that a man known as “Bird” was selling marijuana at that address. He learned through the police computer that “Bird” was an alias for Lathelton Jones. During the surveillance, the detective saw Mr. Jones come out of the house, speak to another man and receive what

appeared to be currency from him, and then go back into the house, return immediately and hand the waiting man an object. Believing he had observed a drug transaction, the detective set up a controlled purchase and watched as his informant followed the exact same procedure the detective had seen earlier. Detective Prater then obtained a search warrant for 2118 North Villere Street. On June 11, 2001, the warrant was executed. The officers knocked on the door, but when they got no response, they opened the unlocked door and walked into the house. Mr. Jones and Mr. Hollingsworth were in the front room; Mr. Jones had a nine-millimeter handgun. The men were advised of their *Miranda* rights. As a result of their search, the officers found a plastic bag containing rocks believed to be crack cocaine, two partially smoked marijuana cigarettes on the coffee table, a pipe that appeared to contain marijuana, a scale, a box of plastic baggies, and a blender with vegetable residue in it. The canine unit was called to search, and the dog alerted the officers to two glass tubes containing a white residue. The defendant told the officers that he was a convicted felon. He also admitted his nickname was “Bird.”

DISCUSSION

On appeal, the defendant, through counsel, points out an error patent: the district court erred in imposing the ten-year sentence for possession of

cocaine with intent to distribute without benefit of parole, probation, or suspension of sentence for the entire period. Pursuant to La. R.S. 40:967(B)(4)(b) in effect at the time of Mr. Jones's offense, only the first two years of such a sentence shall be served without benefit of parole, probation, or suspension of sentence.

CONCLUSION

Accordingly, the defendant's sentence is amended as to the restriction on benefits to provide that the first two years of his sentence under La. R.S. 967(B)(4)(b) shall be served without parole, probation, or suspension of sentence. His conviction is affirmed and, as amended, his sentence is affirmed.

CONVICTION AFFIRMED; SENTENCE AFFIRMED AS AMENDED