

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2006-KA-0802**
VERSUS * **COURT OF APPEAL**
ARNOLD WILSON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 453-322, SECTION "K"
Honorable Arthur Hunter, Judge

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Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge Patricia Rivet Murray, Judge Dennis R. Bagneris, Sr.,
Judge Leon A. Cannizzaro, Jr.)

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DECEMBER 13, 2006

AFFIRMED

Arnold Wilson appeals his sentence to serve four years at hard labor for distribution of cocaine. For the reasons below, we affirm.

Statement of the Case

On November 3, 2004 the State charged Arnold Wilson with one count of distribution of cocaine. At his arraignment on November 5, 2004, he pled not guilty. A motion hearing was set for November 24, 2004 but when the police officers did not appear, the district court found no probable cause to hold Wilson prior to trial. Nonetheless the district court heard motions on May 4, 2005 and denied Wilson's motion to suppress the evidence. The district court also found probable cause to hold Wilson for trial on only simple possession of cocaine. On June 1, 2005 Wilson waived his right to a jury, and at the conclusion of trial the district court found him guilty of simple possession of cocaine. The district court then sentenced Wilson on June 16, 2005 to serve four years at hard labor. Wilson noted his intent to move for an appeal, and the State noted its intent to file a multiple bill. On August 11, 2005 Wilson filed a motion to quash the multiple bill, a motion to reconsider sentence, and a motion for appeal. The district court

granted the Motion for Appeal, but there is no indication that the district court ruled on the other two motions. The district court set a hearing on the multiple bill for October 6, 2005, but again there is no indication that any further action was taken on the multiple bill.

The appeal record was lodged in this court on June 23, 2006. Wilson filed his brief on July 18, 2006. The State responded on July 24, 2006.

Facts

At approximately 3:00 p.m. on August 4, 2004 Det. Nikki Johnson of the N.O.P.D. Narcotics Squad was working undercover. As she drove in her unmarked vehicle to the corner of Third and S. Johnson Streets, she saw the defendant Arnold Wilson standing in the street next to the curb. She pulled up to Wilson, who came to her window. She testified she asked him if he had two “dimes.” In response, Wilson spit out two rocks of what appeared to be crack cocaine and gave them to her in exchange for money. Det. Johnson then left and radioed to her backup officers a description of Wilson and his clothing, which included a white t-shirt, blue jean shorts, and a yellow and black cap. Det. Johnson testified that her vehicle also contained an audio/video camera that recorded the transaction. Det. Johnson stated that she drove back through the area to identify him and later viewed a photograph of him taken by other officers that day. Because the officers were conducting a “buy/walk” operation, they did not arrest Wilson at that time. Det. Johnson admitted that during the operation she would usually be involved in three undercover transactions per day. She insisted, however, that after each transaction, she and the other officers involved in the operation met and filled out the paperwork for that particular buy and then took the suspected drugs to the property room before returning to the street. She positively

identified Wilson as the man who sold her the purported cocaine. She also identified exhibit S-1 as the two rocks of suspected crack cocaine Wilson sold her.

Det. Patrick O'Hern testified that he equipped Det. Johnson's police vehicle with the audio/video camera and tested it to make sure it worked. He also made a copy of the videotape of the transaction with Wilson, and he identified this videotape as exhibit S-2.

The State recalled Det. Johnson and played the videotape. Det. Johnson testified that in the photograph taken sometime after the buy Wilson was not wearing his hat and appeared to be wearing a different shirt.

Det. Yusef Willoughby testified that he was involved in the surveillance of the transaction between Det. Johnson and Wilson. He described their meeting and the exchange of objects for money. Det. Willoughby stated that he remained at his surveillance post after Det. Johnson left the area, and soon thereafter Wilson walked down the street and entered a house. Wilson remained inside for less than five minutes, and when he reemerged he was wearing a slightly different shirt and had abandoned the cap. Det. Willoughby testified that he then directed other officers to the area, and they spoke with Wilson and took his photograph. He positively identified Wilson as the man who was involved in the transaction with Det. Johnson.

The parties stipulated that the two rocks tested positive for cocaine.

The defense called Lillie Roberts, who identified herself as the great-grandmother of Wilson's niece. She insisted that Wilson was at her house at 3414 Momus Court the entire day of August 4, 2004. She testified that he was at her house when she got up at 9:00 that morning, and he did not leave the house or the front porch during the day. She stated that at some point, a man ran down her alley

and jumped the fence, and soon thereafter police officers arrived at her house. She insisted that they forced her to take them through the house to show them that the man they saw running was not inside. She identified a photograph taken of the scene as depicting her house and Wilson, but she could not identify the other two people in the picture. She insisted that Wilson never changed clothes that day.

The court found Wilson guilty of simple possession of cocaine.

Errors Patent

A review of the record reveals no patent errors.

Assignment of Error

By his sole assignment of error, Wilson contends that the district court imposed an excessive sentence. The district court sentenced Wilson to serve four years at hard labor, one year less than the maximum sentence he could have received.

However, this claim was not preserved for appeal. At the time sentence was imposed, the defense did not object to it. Defense counsel filed a Motion to Reconsider Sentence, but that motion was filed almost two months after sentencing. As per La. C.Cr.P. art. 881.1, the defendant or the State must file a motion to reconsider sentence within thirty days of sentencing unless the trial court sets a longer period of time at the time of sentencing. The transcript of sentencing in this case shows that the trial court did not set a longer period. Art. 881.1 further provides that the failure to make or file a motion to reconsider sentence “shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.”

Even though there is no indication that district court ruled on the motion to reconsider in this case, it was filed long after the time period set forth in La.

C.Cr.P. art. 881.1. Thus, the appellant did not preserve the issue of excessiveness of sentence. This claim cannot be addressed by this court. State v. Mosley, 2003-1947 (La. App. 4 Cir. 4/14/04), 872 So. 2d 1220.¹

Decree

For the reasons stated above, we affirm the conviction and sentence of Arnold Wilson imposed by the district court.

AFFIRMED

¹ Writ den. 2004-1400 (La. 11/8/04), 887 So. 2d 448, reconsideration denied 2004-1400 (La. 2/25/05), 894 So. 2d 1133.

