

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

*

NO. 2014-KA-0697

VERSUS

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COURT OF APPEAL

ANTONIO BRINSON

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 494-832, SECTION "A"
Honorable Laurie A. White, Judge

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Judge Terri F. Love

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(Court composed of Judge Terri F. Love, Judge Madeleine M. Landrieu, Judge Rosemary Ledet)

Leon A. Cannizzaro, Jr.
District Attorney
Scott G. Vincent
Assistant District Attorney
Parish of Orleans
619 South White Street
New Orleans, LA 70119

COUNSEL FOR APPELLEE/STATE OF LOUISIANA

Powell W. Miller
LOUISIANA APPELLATE PROJECT
P.O. BOX 4121
New Orleans, LA 70178-4121

COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTION AFFIRMED;
REMANDED FOR RESENTENCING
January 14, 2015**

Antonio Brinson (“Mr. Brinson”) appeals his conviction for possession of cocaine and his nine-year sentence as a second offender, seeking only a review of the record for errors patent. We affirm Mr. Brinson’s conviction and his plea of guilty to the multiple bill, but due to a patent error, we vacate his sentence and remand the case for resentencing.

PROCEDURAL HISTORY

By bill of information filed on February 18, 2010, the State of Louisiana charged Mr. Brinson with one count of possession of cocaine, a charge to which he subsequently pled not guilty. Mr. Brinson went to trial on November 30, 2011, at the conclusion of which a six-person jury found him guilty as charged. On December 14, 2011, Mr. Brinson filed a motion for new trial. The court sentenced him on February 10, 2012 to serve five years at hard labor. The State filed a multiple bill that charged him as a fourth offender. Thereafter, the State amended the bill to charge Mr. Brinson as a second offender, and he pled guilty to the multiple bill on June 13, 2013. On March 18, 2014, the court vacated the original sentence and resentenced Mr. Brinson to serve nine years as a multiple offender.

The court then denied his outstanding motion for new trial and denied his motion to reconsider sentence but granted his motion to appeal his conviction.

After the appeal record was lodged in this Court, Mr. Brinson's counsel filed a brief requesting only an errors patent review. Pursuant to Mr. Brinson's request, this Court sent him a copy of the record and granted him time to file a *pro se* brief. He has failed to do so; thus, our review is limited to a review for patent errors.

FACTUAL BACKGROUND

Officers arrested Mr. Brinson on January 29, 2010, on St. Philip Street between North Miro and North Galvez Streets. Officer Athena Monteleone ("Officer Monteleone") and Detective Kelly Morell ("Detective Morell") were on pro-active patrol in the area that evening when they saw a man riding a bicycle against traffic toward them on N. Miro, a one-way street. The officers noticed that the man, later identified only as "Mr. Chaney", circled around the corner a few times and then turned up St. Philip Street. The officers followed and saw him stopped next to a car that was parked in the block. Mr. Chaney was leaning into the passenger side of the car. Mr. Brinson was seated in the driver's seat of the car.

As the officers pulled up to the car, Mr. Chaney withdrew from the window and attempted to ride away. The officers exited their unit, and while Officer Monteleone detained Mr. Chaney and the passenger, identified as Mr. Jerome Roberts ("Mr. Roberts"), Detective Morell approached the driver's side of the car. She testified that Mr. Brinson quickly exited the car, turned his back to her, dropped what appeared to be crack cocaine, and began walking away. Detective Morell ordered Mr. Brinson to stop; he turned around with his hands up and walked back toward the car. He put his hands on the car and attempted to kick the

rock of suspected crack cocaine under the car. Detective Morell handcuffed Mr. Brinson and moved him away from the car. As he did so, Detective Morell observed Mr. Brinson stomp the ground and drag his foot while walking in an attempt to destroy the object. Detective Morell testified that Mr. Brinson told her that he had merely thrown away a cup and pointed to a cup lying next to a nearby house. She insisted, however, that he did not have a cup in his hand when he exited the car, and the cup was not near the car. She retrieved the suspected crack cocaine, arrested Mr. Brinson, and advised him of his *Miranda* rights. She stated that the substance tested positive for cocaine. Although no other drugs, weapons, or paraphernalia were found in the car or in Mr. Brinson's possession, the officers found \$142 in various denominations on the driver's seat where Mr. Brinson had been sitting.

Tiffany Brinson ("Mrs. Brinson"), Mr. Brinson's wife, testified that she shared a checking account with her husband. She identified a bank statement which indicated that she withdrew \$140 on January 28, 2010. She testified that she gave the money to Mr. Brinson to pay some bills. She stated that Mr. Brinson was in her sister's car at the time of his arrest, and he used the car to get to and from work at Clearview Mall.

At trial, Mr. Brinson denied possessing any cocaine on the night of January 29, 2010. He stated that on that night, he was merely riding around in the car when he saw his friend, Mr. Roberts, standing at a bus stop. He offered Mr. Roberts a ride to his house, which was near the corner of Ursulines and Johnson Streets, near the scene of the arrest. Mr. Brinson stated that as they were driving there, he received a call from his cousin, who asked him to pick her up from a card game at a house on St. Philip Street. He drove to that house, parked the car, and went

inside to use the bathroom. Four to five minutes later, someone told him that police officers were outside, looking under his car. He stated that he went outside and saw the officers, who had Mr. Roberts on the hood of the car and another man in the back of a police unit. He stated that he went up to his car to ask what was happening, and one of the officers told him to move away. He testified that when he persisted in his inquiries, the officer grabbed his arm, handcuffed him, and put him in the back of the police unit. He stated that the officers searched him and his car, finding nothing, and then they released the other man and took Mr. Brinson to Central Lockup. When he asked why he was arrested, they told him that he would find out when he got to lockup.

Mr. Brinson admitted having various prior convictions, including ones for possession of cocaine in 2007 or 2008, 2000 or 2001, 1998 or 1999, and 1996 or 1997. He also admitted having a simple robbery conviction in 1995 or 1996.

On cross-examination, Mr. Brinson admitted that he did not know the address of the house where he picked up his cousin because he knew it only by sight. He stated that none of the people inside the house was present to testify, including his cousin, who did not want to get involved. He also testified that Mr. Roberts was incarcerated in New Orleans, but that because Mr. Roberts had his own problems to deal with, Mr. Brinson did not subpoena him to testify. Additionally, he denied knowing Mr. Chaney. He testified that he no longer had the cell phone on which his cousin called him, explaining that it belonged to a female friend who took it back after his arrest. He insisted that the \$140 was inside the arm rest of the car, along with his credit card. He insisted that he knew nothing about any drugs until he got to lockup. He explained that he pled guilty to his prior charges because he was guilty.

PATENT ERROR REVIEW

Mr. Brinson requests only 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, 18 L.Ed 493 (1967), as interpreted by this Court in *State v. Benjamin*, 573 So. 2d 528 (La. App. 4th Cir. 12/28/90). 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 believed, after a conscientious review of the record, that there is no non frivolous issue for appeal. Counsel reviewed the record and found no trial court ruling that arguably supports the appeal.

As per *State v. Benjamin*, this Court has performed an independent, thorough review of the pleadings, minute entries, and the bill of information in the appeal record. Mr. Brinson was properly charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967(C), and the bill of information was signed by an assistant district attorney. The appellant was present and represented by counsel during arraignment, trial, and at sentencing. The jury's verdict of guilty as charged is legal in all respects. Furthermore, a review of the trial transcript shows that the State provided sufficient evidence to prove beyond a reasonable doubt that Mr. Brinson was guilty of possession of cocaine. Mr. Brinson's sentence is legal in all respects.

We recognize, however, one patent error that requires this Court to vacate Mr. Brinson's sentence and remand the case for resentencing. The multiple bill sentencing transcript in Mr. Brinson's case indicates that the trial court sentenced

Mr. Brinson before ruling on his outstanding motion for new trial, which he filed prior to the imposition of his original sentence. Nevertheless, La. C.Cr.P. art. 853 provides that a motion for new trial based upon all grounds except newly-discovered evidence must be filed and disposed of prior to sentencing. Because the trial court failed to comply with La. C.Cr.P. art. 853, this Court must vacate Mr. Brinson's sentence and remand the case for resentencing. *State v. Nora*, 13-0892 (La. App. 4 Cir. 6/18/14), 143 So. 3d 1237; *State v. Boyd*, 11-1129 (La. App. 4 Cir. 11/21/12), 104 So. 3d 642; *State v. Booth*, 98-2065 (La. App. 4 Cir. 10/20/99), 745 So. 2d 737.

DECREE

Accordingly, we affirm Mr. Brinson's conviction for possession of cocaine and his guilty plea to being a second felony offender. We vacate his sentence as a multiple offender and remand the case for resentencing. We grant counsel's motion to withdraw.

**CONVICTION AFFIRMED;
REMANDED FOR RESENTENCING**