

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 0702

STATE OF LOUISIANA

VERSUS

ALBERT GERALD JONES, III

—
**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 02-07-0429, Section III
Honorable Michael R. Erwin, Judge Presiding**
—

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State of Louisiana**

**Alton Bates, II
Baton Rouge, LA**

**Attorney for
Defendant-Appellant
Albert Gerald Jones, III**

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered December 23, 2008

Handwritten initials: DM, AMR, JEW

PARRO, J.

The defendant, Albert Gerald Jones, III, was charged by bill of information with simple burglary, a violation of LSA-R.S. 14:62. The defendant initially entered a plea of not guilty, but later withdrew that plea and entered a plea of guilty as charged. The trial court sentenced the defendant to eight years of imprisonment at hard labor. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, arguing that the trial court erred in accepting his guilty plea as he received ineffective assistance of counsel. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

As the defendant ultimately entered a guilty plea in the instant case, the facts were not fully developed. The following factual basis was presented and accepted without objection at the **Boykin** hearing:

Your honor, on or about December 20th of 2006 officers were investigating a burglary of Redeeming Life Church. Through that investigation they learned that Mr. Jones was an employee of that church. He did manual labor and stuff around the church. There was [sic] some guitars stolen from the church. They were pawned at several local pawn shops here in East Baton Rouge Parish by Albert Jones. They came into contact with him in reference to this burglary and he did admit to the burglary.

After the state presented the above factual basis, the trial court asked the defendant if that was what happened and the defendant responded, "Yes."

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court erred in accepting the guilty plea as his trial counsel was ineffective in failing to file discovery motions on the defendant's behalf. The defendant contends that his counsel's failure to file a motion for discovery prevented him from being properly advised of the state's evidence against him. The defendant further contends that the failure to file a discovery motion or any motion on the defendant's behalf is "reasonably substandard of the professional norms." The defendant argues that his

counsel's inadequate performance prejudiced him, as he lacked sufficient information to enter into a plea. Finally, the defendant concludes that it is a reasonable probability that but for this error he would not have pled guilty and may have insisted on having the matter tried.

In **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), the United States Supreme Court established a two-part test for review of a convicted defendant's claim that his counsel's assistance was so defective as to require reversal of a conviction. First, the defendant must show that counsel's performance is deficient. Second, the defendant must show that this deficient performance prejudiced the defense.

A claim of ineffective assistance of counsel is more properly raised by an application for post-conviction relief filed in the district court, where a full evidentiary hearing may be conducted.¹ Only where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel, when raised by assignment of error on appeal, may it be addressed in the interest of judicial economy. **State v. Lockhart**, 629 So.2d 1195, 1207 (La. App. 1st Cir. 1993), writ denied, 94-0050 (La. 4/7/94), 635 So.2d 1132.

At the outset, we note that the defendant did not, at the time of entering the guilty plea, expressly reserve any issues to appeal. Under both state and federal jurisprudence, an unqualified plea of guilty waives all non-jurisdictional defects occurring prior thereto, and precludes review thereof either by appeal or by post-conviction remedy. **State v. Crosby**, 338 So.2d 584, 588 (La. 1976). In the **Boykin** colloquy, the defendant unconditionally admitted his guilt and never once mentioned any intent to appeal.² Under the circumstances, no issues have been

¹ The defendant would have to satisfy the requirements of LSA-C.Cr.P. art. 924, et seq., in order to receive such a hearing.

² The record does not reflect that the defendant filed a motion to withdraw his guilty plea, and the defendant is not claiming on appeal that his guilty plea is constitutionally infirm. See LSA-C.Cr.P. art. 559.

preserved for review. **State v. Jackson**, 597 So.2d 526, 529 (La. App. 1st Cir.), writ denied, 599 So.2d 315 (La. 1992); **State v. Thornton**, 521 So.2d 598, 600 (La. App. 1st Cir.), writ denied, 530 So.2d 85 (La. 1988). For the above reasons, this assignment of error is not subject to appellate review.

Moreover, there is no merit to the ineffective assistance of counsel claim raised in this matter. The defendant's trial counsel filed a motion for discovery and request for initial offense report, as well as a motion to discover and disclose evidence favorable to the defense, on February 16, 2007.³ The state filed answers to the motions on March 9, 2007. The defendant clearly expressed his desire to plead guilty and did so on May 2, 2007. Prior to the plea, the state noted that it would be dismissing a misdemeanor charge against the defendant and that the defendant's sentence would be eight years of imprisonment. The defendant was informed of his **Boykin** rights, namely, his constitutional privilege against self-incrimination, right to trial by jury, and right to confrontation of his accuser. The defendant stated that he understood he was waiving those rights. We find that the defendant has not satisfied either **Strickland** prong, as he has failed to prove that his trial counsel's performance was deficient or that he was prejudiced. Thus, the sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.

³ The defendant's trial attorney also filed a motion for preliminary hearing and bond reduction.