NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1545

STATE OF LOUISIANA

VERSUS

CHARLES WILSON

DATE OF JUDGMENT: February 9, 2007

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 06-01-0220 "VI"), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE DONALD JOHNSON, JUDGE

* * * * * *

Hon. Doug Moreau
District Attorney
M. Therese Nagem
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellee
State of Louisiana

Gwendolyn Brown
Appellate Attorney
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Charles Wilson

* * * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Charles Wilson, and co-defendant Aaron Brown,[1] were jointly charged by bill of information with one count of possession with intent to distribute cocaine (count 1), a violation of La. R.S. 40:967(A), and one count of possession of 28 grams or more but less than 200 grams of cocaine (count 2), a violation of La. R.S. 40:967(F)(1)(a). Defendant initially entered a plea of not guilty. Subsequently, defendant entered into a plea agreement with the State. In exchange for defendant's guilty plea to the charged offense in count 1, the State agreed to dismiss count 2. The State also agreed not to file a multiple offender bill of information. Defendant withdrew his former "not guilty" plea and pleaded guilty as charged to count 1. Following a ***Boykin*** examination, the trial court accepted defendant's guilty plea and sentenced him to the agreed-upon sentence of fifteen years imprisonment at hard labor, the first two years to be served without benefit of parole, probation, or suspension of sentence. Defendant subsequently filed two separate motions to modify the sentence. The trial court denied the motions. Defendant now appeals. We affirm.

FACTS

Because defendant pled guilty and there was no trial, the facts of this case were never fully developed in the record. The following factual basis for defendant's guilty plea was recited by the prosecutor at the **Boykin** hearing:

> [O]n April 25th of 2001, East Baton Rouge Parish Sheriffs' narcotics agents received information from a confidential informant. This information pertained [to] the ability to buy crack cocaine from a person, not Mr. Wilson, but one of Mr. Wilson's companions. They arranged a control buy from this person and set up surveillance in the

---

[1] Co-defendant Brown was tried separately and is not a party to the instant appeal.

> parking lot of the Piggly Wiggly located at 3873 Choctaw in Baton Rouge. They arranged the control buy and monitored the situation. At approximately 3 p.m. a green Saturn, driven by Charles Wilson entered the parking lot and the persons in the vehicle entered into a controlled buy with the [confidential informant]. At this time the confidential informant purchased approximately .76 grams of crack cocaine from a member of the vehicle. When the [confidential informant] completed the transaction and walked away from the green Saturn, they attempted to make contact with the persons in the vehicle. However, at this time Charles Wilson attempted to flee the scene by driving the Saturn. As a result several vehicles in the parking lot were damaged as he attempted to flee. One of those vehicles did have occupants. They were harmed only moderately. They did manage to stop the vehicle before Mr. Wilson left the premises. Mr. Wilson was taken into custody. On or about his person in addition to another controlled dangerous substance they found a plastic bag in his vehicle of approximately 4 grams of crack cocaine located in a cup holder. Mr. Wilson indicated that this did in fact belong[] to him.

Defendant acknowledged that these facts were accurate.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant urges that the trial court erred in denying his motions to modify his sentence. Specifically, defendant asserts that the plea agreement in this case was conditioned upon the imposition of the fifteen-year sentence concurrently with his "parole time."[2] Thus, defendant asserts the trial court erred in denying his motions to modify the sentence without a hearing. He requests that the sentence be modified to run concurrently with his parole time or, in the alternative, that the matter be remanded to the trial court for a hearing to determine the intent of the parties to the plea agreement.

La. Code Crim. P. art. 881.2(A)(2) provides that "[t]he defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement

---

[2] The record does not include any information about defendant's parole.

which was set forth in the record at the time of the plea." The prohibition of this article is applicable to both agreed specific sentences and agreed sentence ranges or sentencing caps. See ***State v. Young***, 96-0195, p. 5 (La. 10/15/96), 680 So.2d 1171, 1174; ***State v. Fairley***, 97-1026, pp. 4-5 (La. App. 1st Cir. 4/8/98), 711 So.2d 349, 352.

Based upon the record before us, we find defendant voluntarily entered into a plea agreement in which he agreed, along with the trial judge and the prosecutor, that he would receive a sentence of "fifteen (15) years at the Department of Corrections at hard labor, with the first two years of the fifteen (15) being without benefit of probation or parole or suspension of sentence." Therefore, we find La. C.Cr.P. art. 881.2(A)(2) precludes defendant from appealing his sentence imposed in conformity with a plea agreement set forth in the record at the time of his plea.

Moreover, even if we were to review defendant's claim, we would find no error in the court's denial of the requests to modify the sentence. Contrary to defendant's assertions, at the time of sentencing, the trial court did not state that his sentence for the instant offense was to be served in relation to any time he was serving on parole. Insofar as credit for time served, the trial court stated, "[T]he defendant is entitled to credit for whatever time he has served *on this charge and arrest* to include any time in any other jurisdiction while under arrest or detained." (Emphasis added.) This statement, as specified by the trial court, dealt only with time served on the instant offense. It had nothing to do with whether the sentence for the instant offense was to run concurrently rather than consecutively to defendant's "parole time." The sentence agreed upon by the parties in this case was recited on the record more than once. The record is devoid of any language

suggesting that the agreement included a condition that the sentence was to be served concurrently to any other. Although defendant cites La. C.Cr.P. art. 559(A) in his brief, he did not file a motion to withdraw the guilty plea. Since there is no mention in the record of defendant's parole time, he lacks support for his assertion that his guilty plea was conditioned upon his sentence running concurrent with his "parole time." This assignment of error is without merit.

DECREE

For the foregoing reasons, we find defendant's sentence was agreed to as part of a plea agreement and is not subject to review by this court.

CONVICTION AND SENTENCE AFFIRMED.