

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 KA 2004

STATE OF LOUISIANA

VERSUS

KENNETH RAY MAYO

Judgment rendered May 7, 2010.

Appealed from the
32nd Judicial District Court
in and for the Parish of Terrebonne, Louisiana
Trial Court No. 478,664
Honorable Randall L. Bethancourt, Judge

JOSEPH L. WAITZ, JR.
DISTRICT ATTORNEY
LAWRENCE D. WARD, JR.
ELLEN DAIGLE DOSKEY
ASSISTANT DISTRICT ATTORNEYS
HOUMA, LA

ATTORNEYS FOR APPELLEE
STATE OF LOUISIANA

FREDERICK KROENKE
BATON ROUGE, LA

ATTORNEY FOR APPELLANT
KENNETH R. MAYO

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

The defendant, Kenneth Ray Mayo, was charged by bill of information with one count of distribution of cocaine, a violation of La. R.S. 40:967(A)(1), and pled not guilty. Pursuant to a plea agreement for an agreed upon sentence, and in exchange for the agreement of the State not to file a habitual offender bill of information against him, the defendant withdrew his former plea and pled guilty as charged. He was sentenced to fifteen years at hard labor, with the first two years of the sentence without the benefit of parole, probation, or suspension of sentence. He now appeals, designating the following assignments of error:

1. The trial court erred in failing to state for the record those considerations taken into account and the factual basis for the sentence imposed.
2. The trial court erred in imposing a sentence herein which is unconstitutionally excessive.
3. The failure of trial counsel to file a motion to reconsider the sentence should not preclude this court from considering the constitutionality of the sentence; and, in the event that it does, then the failure of trial counsel constitutes ineffective assistance of counsel.

For the following reasons, we affirm the conviction and sentence.

FACTS

Due to the defendant's guilty plea, there was no trial, and thus, no trial testimony concerning the facts of the offense. The State did not set forth a factual basis at the **Boykin**¹ hearing. The bill of information charged that the defendant committed the offense on August 18, 2006.

DISCUSSION

In assignment of error number 1, the defendant argues the trial court failed to comply with La. Code Crim. P. art. 894.1(C) by imposing sentence without stating for the record the considerations taken into account and the factual basis therefor. He also argues that the trial court failed to individualize the sentence. See State v. Jackson, 98-0004, p. 8 (La. App. 1 Cir. 11/6/98), 724 So.2d 215, 220, writ denied, 98-3056 (La.

¹ **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

4/1/99), 741 So.2d 1283. In assignment of error number 2, the defendant argues the trial court imposed an unconstitutionally excessive sentence. In assignment of error number 3, the defendant argues that counsel was ineffective for failing to preserve review of the excessiveness of the sentence by moving for reconsideration of sentence.

A review of the transcript of the defendant's guilty plea indicates the defendant seeks review of a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. A defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement that was set forth in the record at the time of the plea. La. Code Crim. P. art. 881.2(A)(2); see **State v. Young**, 96-0195, p. 7 (La. 10/15/96), 680 So.2d 1171, 1175. Moreover, where a specific sentence has been agreed to as a consequence of a plea bargain, there is no need for the trial court to comply with Article 894.1(C). **State v. Mareno**, 530 So.2d 593, 601 (La. App. 1 Cir.), writ denied, 533 So.2d 354 (La. 1988). Therefore, the fact that trial defense counsel did not move for reconsideration of sentence does not constitute deficient performance.

These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.