

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 0472

STATE OF LOUISIANA

VERSUS

LESLIE HARPER

Judgment Rendered: September 14, 2007

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On appeal from the
Twenty-Third Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Suit Number 18,385

Honorable Guy Holdridge, Presiding

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Anthony G. Falterman
District Attorney

Counsel for Appellee
State of Louisiana

Donald David Candell
Gonzales, Louisiana

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Louisiana Appellate Project
Mandeville, Louisiana

Counsel for Defendant/Appellant
Leslie Harper

* * * * *

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Leslie Harper¹, was charged by bill of information with possession with intent to distribute a schedule II controlled dangerous substance (methamphetamine) (count 1), a violation of La. R.S. 40:967(A)(1); possession of marijuana (count 2), a violation of La. R.S. 40:966(C); and possession of drug paraphernalia (count 3), a violation of La. R.S. 40:1033 (prior to renumbering by 2006 La. Acts No. 676 § 3).² The defendant initially pled not guilty. On January 18, 2007, pursuant to a plea agreement, the defendant withdrew her prior plea and entered a plea of guilty as charged. Following a Boykin examination, the trial court accepted the defendant's guilty plea and sentenced the defendant as follows: imprisonment at hard labor for five years on count 1; six months in the parish jail on count 2; and six months in the parish jail on count 3. The sentences on all three counts were to run concurrent with each other. The court suspended the sentences and placed the defendant on supervised probation for three years with conditions. The defendant now appeals.³ We affirm the defendant's convictions and sentences.

¹ Dylan M. Ramagos and Kassie Karee Harper were also charged in this bill of information.

² We note that while the offense of possession with intent to distribute a schedule II controlled dangerous substance (methamphetamine) is a felony, the offenses of simple possession of marijuana and possession of drug paraphernalia are misdemeanors. See La. R.S. 40:967(B)(1); La. R.S. 40:966(E); La. R.S. 40:1035(A) (prior to renumbering by 2006 La. Acts No. 676 § 3); La. C.Cr. P. art. 933(3) & (4). Normally, a felony offense may not properly be joined in a single bill of information with misdemeanor offenses. See La. C.Cr. P. art. 493. However, a guilty plea waives all non-jurisdictional defects occurring prior to the plea. See State v. Fields, 95-2481, p. 3 (La. App. 1st Cir. 12/20/96), 686 So.2d 107, 108. A misjoinder of offenses is not a jurisdictional defect. State v. Mallett, 357 So.2d 1105, 1109 (La. 1978), cert. denied, 439 U.S. 1074, 99 S.Ct. 848, 59 L.Ed.2d 41 (1979).

³ Normally, misdemeanor convictions are not appealable. Rather, a defendant should petition an appellate court for a writ of review. See La. C.Cr. P. art. 912.1(C)(1). However, in the instant case, the misdemeanor offenses and the felony offense charged in the same bill of information constitute a single case. See State v. Swan, 544 So.2d 1204, 1206 n.3 (La. App. 1st Cir. 1989). Thus, the misdemeanor convictions are properly included in the single appeal taken by the defendant from her convictions. We note, however, that the defendant does not raise any issues relating specifically to the misdemeanor convictions.

FACTS

Because the defendant pled guilty, there was no trial testimony regarding the facts of this case. The following factual basis was set forth at the Boykin hearing:

On or about March 3, 2005, in the Parish of Ascension, narcotics agents with the Ascension Parish Sheriff's Office were conducting a surveillance on the residence of Leslie Harper when they observed a vehicle depart the residence. The vehicle committed a traffic violation and was stopped by the Livingston Parish Sheriff's Office after it crossed the Parish line. The driver of the vehicle was found in possession of methamphetamine that she advised she had just purchased from Leslie Harper. Based on that information, a search warrant was executed at Harper's residence. Upon arrival the officers found the residence occupied by Leslie Harper, Kassie Harper and Dylan Ramagos. Agents then located a plastic bag containing marijuana on the kitchen cabinet, plastic baggies on the kitchen counter, two notebook ledgers and \$803 cash in the purse of Leslie Harper. In Harper's bedroom, officers located a black film canister with partially burned marijuana cigarettes on the nightstand, a digital scale, and a black hat containing methamphetamine, a plastic bag containing marijuana and \$2500 cash.

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant argues the trial court failed to satisfy the mandate of La. C.Cr P. art. 556.1(C), which requires disclosure on the record of the terms of plea agreements. Specifically, the defendant claims that although it is apparent from the record that she agreed to waive her right to appeal the trial court's denial of her two motions to suppress evidence, this fact was never fully set forth in the record.

Initially, we note that the defendant does not argue that her guilty plea was not knowingly and/or voluntarily made. Instead, she simply argues that her decision to waive her right to an appeal was part of the plea agreement and should have been specifically stated on the record. The defendant was represented by counsel throughout the proceedings.

Louisiana Code of Criminal Procedure article 556.1 provides, in pertinent part:

C. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the district attorney and the defendant or his attorney. If a plea agreement has been reached by the parties, the court, on the record, shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered.

It is well settled that, 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); State v. Haslom, 468 So.2d 1354, 1356 (La. App. 1st Cir. 1985). However, the defendant is allowed to condition his guilty plea upon the appellate review of specified pre-plea errors. See State v. Gordon, 2004-0633, p. 9 (La. App. 1st Cir. 10/29/04), 896 So.2d 1053, 1061, writ denied, 2004-3144 (La. 4/1/05), 897 So.2d 600. The defendant must specifically reserve the right for appellate review of any rulings of the trial court prior to entering his guilty plea. See State v. Aguillard, 357 So.2d 535, 537 (La. 1978); see also Crosby, 338 So.2d at 588.

In this case, the trial court, before accepting the guilty plea, advised the defendant of all her Boykin rights and made certain that her guilty plea was entered both voluntarily and intelligently. The trial court asked the defendant, “[d]o you wish to appeal any motions or orders entered by the Court prior to your guilty plea?” The defendant responded negatively. The court later requested that the defendant sign a written rights-waiver form signifying that she had been advised of her constitutional rights and the terms of the plea bargain. The written form contains a notation suggesting that the defendant originally intended to appeal “this court’s denial of defendant’s motion to suppress evidence ‘Crosby Plea.’” However, this notation was stricken and replaced with “No.” The record does not

indicate when the notation and/or strikethrough were made. The defendant and her counsel signed the written form acknowledging waiver of the rights.

Based upon the foregoing, the defendant argues that the waiver of her right to appeal the trial court's rulings on her motions to suppress was apparently part of the plea agreement and should have been clearly and specifically set forth as such in the record, as required by La. C.Cr. P. art. 556.1(C).

Insofar as the defendant claims that the trial court failed to specifically advise her that by pleading guilty she was waiving the right to appeal the rulings on her motions to suppress, it is noted that such an advisal is not required either by Boykin or by Article 556.1. Contrary to the defendant's assertions, the record before us demonstrates that the trial court adequately complied with the requirements of Article 556.1.

Furthermore, even assuming for the purpose of argument that the court erred in advising the defendant, any such error was harmless since the defendant has not alleged, nor do we find, that her guilty plea was not knowingly and voluntarily made. Notably, the defendant has not claimed any misunderstanding as to her right to appeal and/or the waiver of that right. Any variance from the procedure required by Article 556.1 that does not affect substantial rights of the accused shall not invalidate the plea. La. C.Cr. P. art. 556.1(E). This assignment of error lacks merit.

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.