

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2008 KA 1120**

**STATE OF LOUISIANA**

**VERSUS**

**SCOTT ANTHONY LAURENT**

**Judgment Rendered: December 23, 2008**

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On Appeal from the Twenty-Second Judicial District Court  
In and For the Parish of St. Tammany  
State of Louisiana  
Docket No. 382629

Honorable Donald M. Fendlason, Judge Presiding

**\* \* \* \* \***

Walter P. Reed  
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Scott Anthony Laurent

Scott A. Laurent  
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In Proper Person  
Defendant/Appellant

**\* \* \* \* \***

**BEFORE: PARRO, McCLENDON, AND WELCH, JJ.**

Handwritten initials: FMC, RHO, JCW

**McCLENDON, J.**

Defendant, Scott Anthony Laurent, was charged by bill of information with one count of distribution of cocaine (Count 1), a violation of LSA-R.S. 40:967(A)(1). The bill was subsequently amended and defendant was also charged with one count of possession with intent to distribute cocaine (Count 2), a violation of LSA-R.S. 40:967(A)(1).<sup>1</sup> Defendant initially entered a plea of not guilty. The state severed Count 1 and proceeded to trial against defendant only on Count 2.

Defendant filed a motion to suppress evidence that the trial court heard during a recess in the jury selection. Following the hearing, the trial court denied defendant's motion. Defendant then withdrew his prior plea of not guilty and entered a guilty plea to Count 2. Defendant was originally sentenced to a term of twenty years.

The state instituted habitual offender proceedings against defendant, seeking to have him adjudicated a third felony habitual offender.<sup>2</sup> Defendant admitted the allegations of the habitual offender bill, and the trial court adjudicated him a third felony habitual offender. The trial court sentenced defendant to serve twenty years at hard labor without benefit of probation or suspension of sentence. The first two years of defendant's sentence were ordered to be served without benefit of probation, parole, or suspension of sentence. The trial court also noted that defendant had a four-year sentence regarding a probation revocation in which two of those years would be served consecutive to the present sentence and two of the years would be served concurrent with the present sentence.

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<sup>1</sup> Terri L. Sutton and William C. Gainer were also charged as codefendants in the same bill of information. The state severed the charges against defendant, and there are no issues pertaining to the codefendants addressed in this appeal.

<sup>2</sup> In addition to the instant conviction, the habitual offender bill alleged defendant had a March 22, 1999 conviction for simple burglary of an inhabited dwelling, a violation of LSA-R.S. 14:62.2, under docket number 281051 of the Twenty-Second Judicial District Court, and a September 10, 1997 conviction for burglary, a violation of LSA-R.S. 14:62, under docket number 0397512 of the Nineteenth Judicial District Court. The trial court noted that defendant actually had eleven prior felony convictions.

Defendant was granted an out-of-time appeal in **State v. Laurent**, 2007-0243 (La. 1/11/08), 972 So.2d 1154, and now assigns the following as error:

Counseled assignments of error:

1. Defendant clearly intended to reserve his right to appeal the trial court's denial of the motion to suppress the taped statement.
2. The trial court erred in denying defendant's motion to suppress the taped statement.

Pro se assignments of error:

3. (a) Whether a guilty plea can be deemed intelligently, voluntarily and knowingly entered to a multiple bill of information where counsel does no pretrial investigation into the constitutionality of said pleas.

(b) Whether counsel was ineffective by not preserving all pretrial issues for appellate purposes.

4. Whether the state of Louisiana proved by competent evidence that Judge James Strain of Slidell City Court had authority from the Twenty-Second Judicial District Court to issue the search warrant as mandated by LSA-Cr.P. art. 161(B).

5. Whether the state of Louisiana through Scott Gardner, Assistant District Attorney, deliberately destroyed evidence of Detective Blackmon's promises for defendant's cooperation as previously heard in its entirety by ex-counsel Bernard Williams prior to its altered use at trial.

6. Whether defendant was entitled by law to confront and cross-examine the confidential informant whom the state of Louisiana alleges defendant sold drugs to, forming the basis of the search warrant.

7. Whether appellate counsel was ineffective by not raising the assignments under ineffective counsel.

We affirm defendant's conviction, habitual offender adjudication, and sentence.

### **FACTS**

In the early morning hours of March 17, 2004, a confidential informant (CI) utilized by the St. Tammany Parish Sheriff's Office executed a controlled purchase of illegal narcotics from defendant. Based on the information supplied by the CI, agents of the Narcotics Task Force obtained and executed a search warrant of a residence located at 62278 17<sup>th</sup> Street in Alton, Louisiana. As a result of the search, defendant was arrested on the instant charge.

Defendant eventually entered a guilty plea to possession with intent to distribute cocaine. Pursuant to a plea agreement, defendant further admitted the allegations of the habitual offender bill of information and was adjudicated a third felony habitual offender.

### **DISCUSSION**

In his first counseled assignment of error, defendant argues he clearly intended to reserve his right to appeal the trial court's denial of the motion to suppress the taped statement. Defendant acknowledges that there was no reservation of his right to appeal the trial court's ruling on the motion to suppress in accordance with **State v. Crosby**, 338 So.2d 584 (La. 1976). However, defendant argues that his persistent and concerted efforts to seek an out-of-time appeal indicate it was his belief that he had the right to appeal the court's denial of his motion to suppress.

When a defendant withdraws a plea of not guilty and enters a plea of guilty, he waives any non-jurisdictional defects. A defendant may, however, specifically reserve his right to obtain appellate review of pre-plea errors. **State v. Ealy**, 451 So.2d 1351, 1352 (La.App. 1 Cir. 1984). In the instant case, neither defendant nor his attorney reserved the right to appellate review of the pre-plea ruling on the motion to suppress. Instead, defendant made an affirmative, intelligent, knowing and informed waiver of such right. Therefore any error in the ruling on the motion to suppress has been waived. See **State v. Ealy**, 451 So.2d at 1352. Accordingly, defendant failed to preserve for appellate review the trial court's ruling on the motion to suppress the taped statement.

Additionally, we find defendant's admission to the allegations contained in the habitual offender bill of information waived many of his complaints raised in his pro se brief. In defendant's first pro se assignment of error, he contends his admission to the habitual offender bill was not voluntary because his trial counsel failed to conduct an investigation into his predicate pleas. Specifically, defendant argues that the bills of information (for the predicate offenses) were not signed by Walter Reed, the District Attorney; failed to contain all of the elements of the

offense(s); failed to contain an accurate explanation of the rights waived by entering a guilty plea; failed to inform him of the minimum and maximum penalties of each offense; and failed to contain a factual basis for acceptance by the court.<sup>3</sup> A review of the record indicates defendant admitted the allegations contained in the habitual offender bill, thus any complaint defendant raised regarding his predicate pleas have been waived.

Moreover, we note that defendant's contention that the state failed to prove Judge Strain had the authority to issue the March 17, 2004 search warrant had also been waived by his guilty plea to the offense of possession with intent to distribute cocaine. Defendant failed to file a motion to suppress evidence seized pursuant to the search warrant on this basis; thus, this issue has been waived. Further, defendant's contention that he was entitled to cross-examine the CI who supplied information integral to the basis of the search warrant has also been waived by the failure to file a motion to suppress or reserve this issue prior to entering a guilty plea. See State v. Ealy, 451 So.2d at 1352.

Defendant's additional pro se assignments of error, including allegations that his trial counsel was ineffective in not preserving pretrial issues for review, and the effectiveness of his appeal counsel, all raise issues more properly preserved for review through post-conviction proceedings.

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. This requires showing that counsel committed errors so serious that he or she was not functioning as the "counsel" guaranteed a defendant by the Sixth Amendment. Second, the defendant must show that this deficient performance prejudiced the defense. This requires

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<sup>3</sup> A review of the record indicates that defendant was properly advised of his rights when he pled guilty to the offense of possession with intent to distribute cocaine and his admission of the allegations of the habitual offender bill.

showing that counsel's errors were so serious as to deprive him of a fair trial, one with a reliable result.

A claim of ineffective assistance of counsel is more properly raised by an application for post-conviction relief where a full evidentiary hearing may be conducted. Only where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel when raised by an 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. 1 Cir. 1993), writ denied, 94-0050 (La. 4/7/94), 635 So.2d 1132. Decisions made regarding trial strategy require an evidentiary hearing and, therefore, cannot possibly be reviewed on appeal. See State v. Martin, 607 So.2d 775, 788 (La.App. 1 Cir. 1992). Thus, defendant is free to seek post-conviction relief under the provisions of LSA-C.Cr.P. arts. 924, *et seq.*, provided that the trial court determines that he satisfies the requirements of those articles.

We note that defendant's pro se brief raises the issue of whether the assistant district attorney destroyed evidence of Detective Blackmon's alleged promises in exchange for defendant's cooperation. No such allegation was made at the trial court level in connection with the motion to suppress the taped statement. However, resolution of this issue would require an evidentiary hearing and cannot be addressed on appeal. Similar to defendant's claims regarding ineffective assistance of counsel, he is free to pursue this claim through the provisions of the Louisiana Code of Criminal Procedure, which address post-conviction relief, provided the trial court determines he satisfies the requirements of those articles. See LSA-C.Cr.P. arts. 924, et seq.

Finally, defendant filed a pro se document entitled "Request for Judicial Notice." Because his requested relief relates to issues that have been waived by his guilty plea, we deny the request.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**