

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1862

STATE OF LOUISIANA

VERSUS

LAWRENCE FRANK LANDOR

Judgment Rendered: **JUN 17 2011**

On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 419716 "A"

Honorable Raymond S. Childress, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Parro, J., concurs.

HUGHES, J.

The defendant, Lawrence Frank Landor, was charged by bill of information with distribution of cocaine, a violation of LSA-R.S. 40:967(A)(1). The defendant pled not guilty and, following a jury trial, he was found guilty as charged. The state then filed a “multiple offender” bill of information. Prior to the habitual-offender hearing, the defendant was sentenced on his original sentence to fifteen years at hard labor, with the first ten years of the sentence to be served without benefit of parole, probation, or suspension of sentence. The defendant admitted the allegations of the habitual-offender bill and waived the habitual-offender hearing. The trial court accepted the defendant’s “plea” under the habitual-offender bill, vacated the original sentence, and sentenced the defendant to twenty years at hard labor pursuant to LSA-R.S. 15:529.1. The defendant appealed the conviction and sentence.¹ On May 13, 2009, in an unpublished opinion, another panel of this court rendered judgment affirming the defendant’s conviction. However, finding that the defendant was never advised of his rights regarding the habitual-offender proceedings, this court vacated the habitual-offender adjudication and sentence, and remanded the matter to the district court for resentencing. **State v. Landor**, 2008-1577 (La. App. 1st Cir. 5/13/09), 10 So.3d 894, writ denied, 2009-2092 (La. 8/18/10), 42 So.3d 398.

On remand, the district court advised the defendant of his rights and a hearing was held on the habitual-offender bill. At the conclusion of the hearing, the trial court found the defendant to be a third felony habitual offender.² The court resentenced the defendant to twenty years at hard labor. The defendant again appeals. We affirm the habitual-offender adjudication and sentence.

¹ On appeal, the defendant raised two assignments of error. In the first assignment of error, the defendant challenged the validity of the habitual-offender adjudication and sentence, arguing that he was not advised of his right to remain silent or his right to a hearing on the habitual-offender bill of information. In the second assignment of error, the defendant argued that his sentence was illegally excessive.

² The defendant’s habitual-offender status was based on a June 13, 1995 22nd Judicial District Court (docket number 240611) guilty plea to possession with intent to distribute cocaine and a March 4, 2004 22nd Judicial District Court (docket number 354837) guilty plea to possession of hydrocodone.

FACTS

In the prior appeal, the facts of this case were summarized as follows:

On June 22, 2006, Detective Cheryl Kaprielian of the St. Tammany Parish Sheriff's Office was working undercover for the Narcotics Task Force, which was targeting narcotics dealers. A confidential informant contacted the defendant to arrange a drug transaction. Detective Kaprielian drove her vehicle to the Slidell Post Office on U.S. Highway 190. She exited her vehicle and approached the defendant in his vehicle. She purchased from the defendant \$100 worth of crack cocaine with a net weight of .83 grams. Detective Kaprielian testified at trial and identified the defendant in court.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues that the evidence presented at the trial of this matter was insufficient to support the conviction. Specifically, he asserts that the state failed to prove his identity as the person who sold the cocaine. The state contends that the defendant is not entitled to raise the sufficiency argument in this appeal. We agree.

In the previous appeal, we vacated the habitual-offender adjudication and sentence and remanded for resentencing. The defendant is entitled to appeal the habitual-offender adjudication and the new sentence. However, we previously affirmed the defendant's conviction, and the defendant is not entitled to another appeal of issues related to that particular conviction in this court. The instant appeal is therefore limited to review of the habitual-offender proceedings and the new sentence.

VALIDITY OF MARCH 4, 2004 GUILTY PLEA PREDICATE

In his reply brief,³ the defendant contends that the trial court erroneously adjudicated him a third felony offender. Specifically, he asserts that the evidence presented at the habitual-offender hearing in support of the March 4, 2004 22nd

³ Rule 2-12.6 of the Uniform Rules for the Courts of Appeal provides that a reply brief shall be "strictly confined to rebuttal of points urged in the appellee's brief. No further briefs may be filed except by leave of court." As the defendant correctly notes in his "Response Brief," on March 3, 2011, this court granted the defendant's new counsel leave to file a "**reply**" brief. The argument contained in the reply brief is beyond the permissible scope for a reply brief. However, we will consider the brief a supplement to the defendant's original brief.

Judicial District Court (docket number 354837) guilty plea failed to establish a knowing and voluntary waiver of his constitutional rights. Thus, he asserts that the state should not have been allowed to use this predicate for enhancement.

To use a prior guilty plea to enhance punishment under LSA-R.S. 15:529.1, the state initially needs to prove only the fact of conviction and that the defendant was represented by counsel (or waived counsel) at the time he entered his plea. Thereafter, the defendant bears the burden of proving a significant procedural defect in the proceedings. See State v. Shelton, 621 So.2d 769, 779 (La. 1993). Once a defendant makes an affirmative showing of an infringement of his rights or a procedural irregularity in the plea transcript, the state must then prove the constitutionality of the predicate pleas by producing a "perfect" transcript. If the state produces anything less than a "perfect" transcript, for example, a guilty plea form, a minute entry, an "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence to determine whether the state has met its burden of proving that defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three **Boykin** rights. **State v. Zachary**, 2001-3191(La. 10/25/02), 829 So.2d 405, 407 (per curiam).

At the habitual-offender hearing on remand, the state presented certified documentary evidence (bills of information and minutes) on both predicates.⁴ The documents show that the defendant was represented by counsel at each of the prior guilty pleas. The minutes of each of the pleas show that the defendant was advised of his **Boykin** rights prior to pleading guilty. The state also introduced expert testimony confirming that the defendant's fingerprints (taken the day of the hearing) matched the prints taken in connection with the guilty pleas in each of the

⁴ The state requested that the trial court take judicial notice of its records in docket numbers 240611 and 354837. State's exhibit 3 in the record before this court also contains a copy of the guilty plea transcript in docket number 240611. There is no transcript in the record for docket number 354837. State's exhibit 2 contains only the bill of information and minutes for the guilty plea and sentencing in docket number 354837.

predicates. With this evidence, the state met its initial burden of proof under **Shelton**.

Once the state met this burden, the defendant was required to produce some affirmative evidence of an infringement of his rights or a procedural irregularity in the taking of the predicate guilty pleas. See Shelton, 621 So.2d at 779. The defendant offered no affirmative statement or documents to contradict the state's evidence. Consequently, we find that the trial court correctly adjudicated the defendant to be a third felony offender under LSA-R.S. 15:529.1. This assignment is without merit.

**HABITUAL-OFFENDER ADJUDICATION AND SENTENCE
AFFIRMED.**