

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 1430

STATE OF LOUISIANA

VERSUS

MICHELLE MAZA



Judgment Rendered: March 23, 2012

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 900,767

Honorable W. Ray Chutz, Judge

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State – Appellee

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Defendant – Appellant
Michelle Maza

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Michelle Maza, was initially charged by bill of information with production or manufacturing or possession with intent to produce or manufacture methamphetamine (a Schedule II controlled dangerous substance), a violation of La. R.S. 40:967(A)(1). See also La. R.S. 40:964, Schedule II (C)(2). The defendant entered a plea of not guilty. Following the State's amendment of the charge to attempted production or manufacturing or possession with intent to produce or manufacture methamphetamine, the defendant withdrew her former plea and entered a plea of guilty to the amended charge. La. R.S. 40:967(A)(1) and La. R.S. 14:27. See also La. R.S. 40:979. The defendant waived sentencing delays and the trial court sentenced her to three years imprisonment at hard labor and ordered her to report on a later date for execution of sentence. The defendant filed a motion to withdraw the guilty plea and a motion to stay execution of sentence pending a hearing on the motion to withdraw the guilty plea. After a hearing, the trial court denied the motion to withdraw the guilty plea and ordered the sentence previously imposed be made executory. The defendant now appeals, assigning error to the trial court's denial of her motion to withdraw the guilty plea. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

The facts of the instant offense were not fully developed as the defendant entered a guilty plea, foregoing a trial. The following facts are based on the guilty plea proceeding, the incident report in the record, and testimony presented at the hearing on the motion to withdraw the guilty plea.

Agents of the Tri-Parish Narcotics Task Force investigated the defendant for approximately one year concerning her involvement with the manufacturing of methamphetamine. On September 18, 2008, the defendant was placed under arrest at her home in Hammond, Louisiana, after Agent Heath Martin received

information from multiple confidential informants regarding the defendant's gathering of precursor materials for the purpose of manufacturing methamphetamine. According to the defendant, she gathered materials to manufacture methamphetamine along with her friend, Mary Bankston. Bankston was also arrested and charged in connection with these events.

ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the defendant argues that the trial court erred when it did not allow her to withdraw her guilty plea based on ineffective assistance of counsel for failure to file a motion to suppress. The defendant contends that on the date of her arrest, the police entered her property without a warrant and without probable cause. The defendant argues that all evidence seized and statements made are subject to the exclusionary rule and the fruit of the poisonous tree doctrine. The defendant contends that the circumstances created a strong case for filing a motion to suppress evidence. On this basis, the defendant contends that there is a "strong probability" of ineffective assistance of counsel and a case for the withdrawal of her plea. The defendant also contends that she was uninformed and thought she would be placed on probation for her cooperation with the police. The defendant argues that she should have been allowed to withdraw her guilty plea and/or file a motion to suppress all physical evidence and inculpatory statements.

In a felony case, a verbatim record shall be made of the proceedings at which the defendant enters a plea of guilty or *nolo contendere*. La. C.Cr.P. art. 556.1(D). **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) requires the trial court to expressly enumerate three rights that must be waived by the accused prior to accepting a guilty plea. As spelled out by **Boykin**, these are the right to a jury trial, the right against self-incrimination, and the right to confront one's accusers. **Boykin**, 395 U.S. at 243, 89 S.Ct. at 1712. Once a

defendant has been sentenced, a guilty plea may not be withdrawn unless the plea is found to be constitutionally infirm. **State v. Bell**, 2000-1084 (La. App. 5th Cir. 2/28/01), 781 So.2d 843, 847, writ denied, 2001-0776 (La. 4/26/02), 813 So.2d 1098. A guilty plea is constitutionally infirm when a defendant is induced to enter that plea by a plea bargain or by what he justifiably believes was a plea bargain, and that bargain is not kept. In such a case a defendant has been denied due process of law because the plea was not given freely and knowingly. **State v. Dixon**, 449 So.2d 463, 464 (La. 1984). A guilty plea is a conviction and, therefore, should be afforded a great measure of finality. **State v. Thornton**, 521 So.2d 598, 600 (La. App. 1st Cir.), writ denied, 530 So.2d 85 (La. 1988). Generally, a denial of a motion to withdraw a guilty plea will not be reversed on appeal if the record clearly shows the defendant was informed of her rights and the consequences of her plea, and that the plea was entered into voluntarily. **State v. Green**, 2003-410 (La. App. 5th Cir. 10/28/03), 860 So.2d 237, 242, writ denied, 2003-3228 (La. 3/26/04), 871 So.2d 346.

We note that the defendant was afforded the opportunity to argue the merits of her motion to withdraw the guilty plea on the basis of ineffective assistance of counsel for failure to file a motion to suppress. The defendant is raising this issue again on appeal in contesting the trial court's denial of her motion to withdraw.¹ A defendant is entitled to effective assistance of counsel under the Sixth Amendment of the United States Constitution and Article I, § 13 of the Louisiana Constitution. A claim of ineffective assistance is analyzed under the criteria announced in **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). First, the defendant must show that counsel's performance was

¹ As a general rule, a claim of ineffective assistance of counsel is more properly raised in an application for post-conviction relief in the trial court than by appeal. This is because post-conviction relief provides the opportunity for a full evidentiary hearing under La. C.Cr.P. art. 930. The defendant would have to satisfy the requirements of La. C.Cr.P. art. 924 *et seq.* to receive such a hearing.

deficient. This requires a showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. **Strickland**, 466 U.S. at 687, 104 S.Ct. at 2064. Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. **Strickland**, 466 U.S. at 690, 104 S.Ct. at 2066. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable. **Strickland**, 466 U.S. at 687, 104 S.Ct. at 2064.

While it is true that the defendant’s counsel did not file a motion to suppress, such inaction may have been reasonable under the facts of this case. At the hearing on the motion to withdraw the guilty plea, Agent Heath Martin testified that confidential informants who previously provided credible information indicated that the defendant was gathering precursor materials to manufacture methamphetamine. The agents determined that the defendant purchased pseudoephedrine on the date in question. When the agents arrived at the defendant’s home and knocked on the door, they were greeted by a babysitter. As they stood on the front doorsteps, they observed exposed, peeled AA lithium batteries in an open trash bag located next to the door steps. The defendant came home while the agents were talking to the babysitter, within five to ten minutes of the agents’ arrival. After the defendant was advised of her **Miranda**² rights, she cooperated by signing a consent to search form and by making incriminating statements. The agents did not go through the trash bag before informing the defendant of their observation of the peeled batteries and obtaining the consent to

² **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

search.

Police may lawfully knock on the door of a suspect's home and request permission to speak to the occupant. **State v. Sanders**, 374 So.2d 1186, 1188-89 (La. 1979). While a search and seizure conducted without a warrant issued upon probable cause is *per se* unreasonable and thereby prohibited by the Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution, a search conducted pursuant to consent is a specifically established exception to the requirements of both a warrant and probable cause. **State v. Owen**, 453 So.2d 1202, 1205-06 (La. 1984). Based on Agent Martin's testimony, no search or seizure occurred except on the basis of the defendant's voluntary actions and consent. Thus, we cannot conclude that the defendant's trial counsel's performance was deficient or that the defendant was prejudiced because a motion to suppress was not filed. Moreover, the defendant stated on the record that she was satisfied with her counsel's performance. This assessment is reasonable considering the fact that the defendant pled guilty to an amended charge that significantly reduced her sentencing exposure. The defendant has not satisfied either prong of the **Strickland** test.

Additionally, the defendant does not contest, and the record shows, that the trial court advised her of her constitutional rights as set forth in **Boykin**. We find that the record reflects a knowing, voluntary, and intelligent waiver of the defendant's rights and the trial court's compliance with the constitutional requirements for the taking of voluntary guilty pleas. The record does not support the defendant's claim that she thought she would be placed on probation. Prior to sentencing, the State recommended the imposed sentence of three years at hard labor and the defendant did not object. Further, after the trial court imposed the sentence there was no objection by the defense. Based on our review of the record, we hold that the trial court did not abuse its discretion in denying the motion to

withdraw the guilty plea. Assignment of error number one lacks merit.

ASSIGNMENT OF ERROR NUMBER TWO

In the second assignment of error, the defendant argues that there was a conflict of interest that created a presumption of ineffective assistance of counsel such that her guilty plea was constitutionally infirm. The defendant notes that her attorney below also represented her co-defendant, Mary Bankston, who cooperated with the police to the extent that she received a probated sentence. The defendant speculates that in cooperating, Bankston may have provided information about the defendant or assigned blame to her. The defendant notes that she did not receive probation after following advice of counsel. The defendant argues that she should have been allowed to withdraw her guilty plea on this ground, and/or the case should be remanded to determine whether an actual conflict existed such that her plea was constitutionally infirm.

At the outset, we note that the defendant's motion to withdraw guilty plea did not raise the issue of a potential conflict of interest. After the defense witnesses were presented at the hearing on the motion to withdraw the guilty plea, just before the defense rested pending the State's rebuttal, the trial court denied the defendant's attempt to orally amend the motion to include a "potential conflict of interest" and limited the motion to the grounds originally raised therein. At any rate, multiple representation *per se* does not result in a conflict of interest, nor does it constitute ineffective assistance of counsel. See **State v. Lobato**, 603 So.2d 739, 749 (La. 1992); see also **State v. Kahey**, 436 So.2d 475, 484-85 (La. 1983). Both the United States Supreme Court and the Louisiana Supreme Court have given great consideration to the relationship between conflicting interests and effective assistance of counsel. **Cuyler v. Sullivan**, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980); **Holloway v. Arkansas**, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978); **State v. Wille**, 595 So.2d 1149, (La.), cert. denied, 506 U.S.

880, 113 S.Ct. 231, 121 L.Ed.2d 167 (1992). The courts have established two avenues for identifying and resolving Sixth Amendment violations due to a conflict of interest, depending upon when the issue is raised. Where the defendant raises the issue of ineffective assistance of counsel due to conflict of interest prior to trial, the trial judge is required either to appoint separate counsel or to take adequate steps to ascertain whether the risk of a conflict of interest was too remote to warrant separate counsel. **Wille**, 595 So.2d at 1153. If the defendant did not raise the issue of conflict of interest below, the defendant is required to show that "an actual conflict of interest adversely affected his lawyer's performance" in order to establish a Sixth Amendment violation. **Cuyler v. Sullivan**, 446 U.S. at 348, 100 S.Ct. at 1718. An actual conflict exists where a defense attorney owes duties to a party whose interests are adverse to those of the defendant. The interest of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client. **Kahey**, 436 So.2d at 484-85.

As the defendant did not fully address this issue below, her claim may more properly be raised in an application for post-conviction relief in the trial court to provide the opportunity for a full evidentiary hearing on the matter. Based on the limited record before us, there is no evidence that the defense counsel's representation was adversely affected. As a matter of fact, it appears that despite the defendant's claim, there was no dual representation in this case. The defendant was represented by a public defender at the time of her guilty plea. During the hearing on the motion to withdraw guilty plea, Bankston noted that she fired her public defender and hired private counsel. Moreover, as noted by the defendant at the **Boykin** hearing, Bankston had apparently already pled guilty and been sentenced to five years of probation before the defendant's **Boykin** hearing. Thus, we find no merit in the second assignment of error.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.