

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 KA 2089

STATE OF LOUISIANA

VERSUS

CHARLES M. GUILLORY

Judgment Rendered: September 20, 2006

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On Appeal from the Eighteenth Judicial District Court
In and For the Parish of West Baton Rouge
State of Louisiana
Docket No. 053473

Honorable J. Robin Free, Judge Presiding

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Becky L. Chustz
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State of Louisiana

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Appellate Counsel
Slidell, LA

Counsel for Defendant/Appellant
Charles M. Guillory

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Parro, J., concurs.

McCLENDON, J.

Defendant, Charles M. Guillory, was charged by bill of information with possession of a Schedule II controlled dangerous substance (cocaine), a violation of LSA-R.S. 40:967(C). Defendant entered a plea of guilty under **Crosby**, reserving the right to appeal “the suppression of evidence and the manner that it was seized from the person or near the person.” Our review of the record indicates that no motion to suppress was filed. Following a **Boykin** hearing, the trial court accepted the guilty plea. Defendant waived sentencing delays and was sentenced to eighteen months at hard labor. The sentence was suspended, and defendant was placed on supervised probation for three years and ordered to pay a \$500.00 fine. Defendant now appeals, asserting one assignment of error. We affirm the conviction and sentence.

FACTS

Because defendant pled guilty, the facts were not fully developed at trial. The factual basis for the guilty plea, provided by the prosecutor during the **Boykin** hearing, is as follows:

[O]n or about July 31, 2005, Mr. Charles Guillory did intentionally possess crack cocaine when he was present at Vibes and consented to a pat-down search. The cocaine was found in his pocket upon search prior to entering the club.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that he is entitled to a meaningful appeal of the issues regarding his arrest and the seizure of the cocaine that resulted in prosecution. Specifically, defendant contends that the prosecutor and defense counsel erred in confecting a plea agreement that promised an appeal, but provided no basis for one; also, the trial court erred in accepting the plea agreement when there could be no meaningful appeal

since the issue upon which the appeal was to be based was never litigated, i.e., there was no hearing or ruling on a motion to suppress.

The record indicates that pursuant to the guilty plea colloquy, defendant's **Boykin** rights were thoroughly explained to him. The waiver of those rights, made knowingly and voluntarily, and the subsequent guilty plea were proper. A plea of guilty generally waives all non-jurisdictional defects in the pre-plea proceedings. Under **State v. Crosby**, 338 So.2d 584 (La. 1976), however, a defendant may condition his plea upon the reservation of specified pre-plea errors for appellate review. See **State v. Aguilard**, 357 So.2d 535, 537 (La. 1978). While defense counsel indicated that the guilty plea was under **Crosby** to reserve for appeal the issue regarding suppression of evidence, there was no motion to suppress filed by defendant and, therefore, no motion to suppress hearing. Had defendant filed a motion to suppress and had such motion been denied by the trial court, defendant would have reserved his right to appeal the trial court's ruling under **Crosby**. However, since no motion to suppress was ever filed, there was no ruling from which the defendant might have taken a **Crosby** appeal. See **State v. Cole**, 04-615, pp. 7-8 (La.App. 5 Cir. 3/1/05), 900 So.2d 15, 21.

We do not find a remand of these proceedings to be the appropriate remedy because, absent a motion to suppress (and, hence, no ruling on the motion) in the record, there is nothing for this Court to review. As such, we find no arguable assignment of error. Defendant is relegated to postconviction relief, wherein he may, if he chooses to, attack his plea in the trial court.

This assignment of error is without merit.

CONCLUSION

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

CONVICTION AND SENTENCE AFFIRMED.