

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 KA 2175

STATE OF LOUISIANA

VERSUS

DEON MONTREAL WALTON

**Judgment rendered September 20, 2006.**

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Appealed from the  
18th Judicial District Court  
in and for the Parish of West Baton Rouge, Louisiana  
Trial Court No. 052401  
Honorable J. Robin Free, Judge

\* \* \* \* \*

HON. RICHARD J. WARD, JR.  
DISTRICT ATTORNEY  
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ASSISTANT DISTRICT ATTORNEY  
PORT ALLEN, LA

ATTORNEYS FOR  
STATE OF LOUISIANA

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SLIDELL, LA

ATTORNEY FOR  
DEFENDANT-APPELLANT  
DEON MONTREAL WALTON

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

**PETTIGREW, J.**

The defendant, Deon Montreal Walton, was charged by bill of information with possession of a Schedule II controlled dangerous substance (cocaine), a violation of La. R.S. 40:967(C). The defendant pled not guilty. The defendant filed a motion to suppress, and the State filed an objection to the motion to suppress for lack of specificity. There is nothing in the record to indicate that the motion to suppress was heard and ruled on by the trial court. Prior to the date scheduled for a hearing on the motion to suppress, the 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." Following a **Boykin** hearing, the trial judge accepted the guilty plea. The defendant waived sentencing delays and was sentenced to eighteen (18) months at hard labor. The sentence was suspended, and the defendant was placed on supervised probation for three (3) years and ordered to pay a \$500.00 fine. The defendant now appeals, asserting one assignment of error. We vacate the guilty plea and sentence and remand for further proceedings.

**FACTS**

Because the 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 May 15, 2005, in the Parish of West Baton Rouge, Deon Walton did possess crack cocaine, he intentionally possessed it, and the cocaine was found on his person upon arrest.

**ASSIGNMENT OF ERROR**

In his sole assignment of error, the 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, the 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 judge 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., a hearing was never conducted on the motion to suppress.

A plea of guilty generally waives all nonjurisdictional 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 for appellate review of specified pre-plea errors. 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, the record indicates there had been no hearing conducted on the motion to suppress.

A guilty plea is a contract. The plea here was intended to preserve a **Crosby** appeal, which could not be preserved since no hearing on the motion to suppress has ever been held. Therefore, there is a failure of cause on a principal condition of the contract. As such, the defendant should be allowed to withdraw his plea.<sup>1</sup>

**PLEA AND SENTENCE VACATED, AND THIS MATTER IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.**

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<sup>1</sup> The defendant should carefully consider asking for something he may not want. The trial court is not required to agree to probation the second time around.