

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed September 3, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D06-2015
Lower Tribunal No. 96-11646

Laurancia Laurore,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

Laurancia Laurore, in proper person.

Bill McCollum, Attorney General, and Douglas J. Gland, Assistant Attorney General, for appellee.

Before WELLS, SUAREZ, and CORTIÑAS, JJ.

SUAREZ, J.

Laurencia Laurore appeals the denial of her motion for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.850. She claims ineffective

assistance of trial counsel because counsel failed to object and argue that her three separate convictions and sentences violate double jeopardy and that the trial court had imposed an excessive sentence. We affirm the trial court's denial of Laureore's motion. Laureore's trial counsel's performance was not ineffective because a double jeopardy objection would have been without merit and the trial court did not impose an excessive sentence.

On April 14, 1996, Laureore arrived at Miami International Airport from Jamaica. She was detained at customs, where agents discovered she was in possession of 0.69 lbs. of cocaine. Laureore was arrested and charged with possession of cocaine, trafficking in cocaine and importation of a controlled substance. She pled guilty, and negotiated and entered into an agreement with the State, in which she accepted separate sentences for each of her pending charges. The plea agreement provided that Laureore was obliged to appear for sentencing, and that failure to appear would result in a thirty-year sentence with a minimum mandatory term of fifteen years. Laureore failed to appear for a period of seven years, during which time she lived under an alias.

Section 775.021(4), Florida Statutes (1995), codifies the rules of construction for criminal penalties. It provides that,

“[w]hoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may

order the sentences to be served concurrently or consecutively. For the purposes of this subsection, *offenses are separate if each offense requires proof of an element that the other does not*, without regard to the accusatory pleading or the proof adduced at trial.”

§ 775.021(4)(a) Fla. Stat. (1995) (emphasis added).

The statute identifies exceptions where separate sentencing for each criminal offense arising from the same criminal transaction would not be appropriate, namely, offenses which require identical elements of proof, offenses which are degrees of the same offense as provided by statute, and offenses which are lesser offenses, the statutory elements of which are subsumed by the greater offense. *Id.* Otherwise, viable double jeopardy objections to separate sentencing for offenses arising from the same criminal transaction are waived if a defendant knowingly enters a plea bargain covering both charges and sentence. Novaton v. State, 634 So. 2d 607 (Fla. 1994).

Laurore’s possession of cocaine charge was subsumed under the charge of trafficking in cocaine. See Gibbs v. State, 698 So. 2d 1206 (Fla. 1997). Even so, she waived any double jeopardy claim by entering a guilty plea in a written plea agreement. See Novaton v. State, 634 So. 2d at 609. There is no double jeopardy imposed by separate charges for trafficking of cocaine and importation of cocaine, because the two offenses do not require identical elements of proof. Thus, trial counsel’s assistance was not rendered ineffective by failure to raise a double jeopardy objection because the objection would have been unfounded.

Laurore's remaining claims rest on her argument that she received an excessive sentence. However, Laurore failed to honor her plea agreement, which provided that her failure to appear for sentencing would result in the court entering a finding of guilty, an adjudication of guilt, and a sentence of thirty years in State prison with a minimum mandatory term of fifteen years. Even so, her counsel was able to secure her a more favorable ten-year sentence with a seven-year minimum mandatory term. Accordingly, no prejudice in fact resulted from any act or omission by Laurore's counsel because he was able to obtain a significantly more favorable result than what was provided by her plea agreement in the event of a violation.

Laurore's counsel was not rendered ineffective by failing to object or argue that her three separate convictions and sentences violate double jeopardy and that the trial court had imposed an excessive sentence because a double jeopardy objection is without merit and the trial court did not impose an excessive sentence. Therefore, Laurore cannot meet her burden of proof for ineffectiveness of counsel as required by Strickland v. Washington, 466 U.S. 668 (1984).

Affirmed.