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SUPREME COURT OF LOUISIANA

No. 2019-KK-0338

STATE OF LOUISIANA

versus

STEVEN STILES

ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT,

PARISH OF ORLEANS

Genovese, J., would grant for the following reasons:

This case concerns the legal and procedural consequences of a fatally flawed plea bargain. The state and defendant herein reached an agreement (a constitutional contract) allowing defendant to plead guilty to a felony-grade marijuana offense in exchange for a suspended sentence pursuant to La.C.Cr.P. art. 893.¹ The trial court accepted this agreement. After satisfying his debt to society, defendant moved to set aside his arrest and conviction pursuant to La.C.Cr.P. art. 893(E)(2), which the trial court granted. Thereafter, defendant moved to expunge his arrest and conviction as authorized by La.C.Cr.P. art. 978(A).² However, the lower courts denied his motion. Defendant thereafter filed a writ with this Court seeking to reverse the lower courts and have his arrest and conviction expunged.

Article 893(E)(2) allows defendants who received a *deferred* sentence to request that their convictions be set aside following the satisfactory completion of

¹ Article 893 provides, in pertinent part, as follows:

(1)(a) When it appears that the best interest of the public and of the defendant will be served, the court, after a first, second, or third conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole.

² Under La.C.Cr.P. art. 978(a), a person may file a motion to expunge his or her record of arrest and conviction under certain circumstances.

their probationary period. However, defendant here received a *suspended* sentence. Thus, the trial court improperly granted defendant's motion to set aside his sentence per Article 893(E)(2).

Legally, defendant was not eligible for a deferred sentence because his conviction stemmed from La.R.S. 40:966(A)(1), a crime which La.C.Cr.P. art. 893(E)(1)(b) specifically excludes from the deferral-eligible offenses.³ Because defendant was not eligible for a deferral, he was also ineligible to have his conviction set aside per La.C.Cr.P. art. 893(E)(2). Thus, he is not eligible at this time to receive an expungement.

Because a fundamental and principal cause of his agreement to enter his plea was the benefit of La.C.Cr.P. art. 893, the agreement is invalid, and defendant's plea is no good. Defendant should be permitted the opportunity to withdraw his guilty plea. I would remand this matter to the trial court for a hearing to determine whether defendant wishes to withdraw his flawed plea. If so, then the trial court should determine whether defendant's plea was constitutionally infirm and decide whether the plea was induced by what defendant justifiably believed to be a valid plea bargain, but which, as a matter of law, could not be kept. *State v. Allah*, 17-0785 (La. 1/9/18), 232 So.3d 554.

³ Louisiana Code of Criminal Procedure 893(E)(1)(b) provides, in pertinent part, as follows (emphasis added):

The court shall not defer a sentence under this provision for an offense or an attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense by R.S. 15:541, involving a child under the age of seventeen years or **for a violation of the Uniform Controlled Dangerous Substances Law that is punishable by a term of imprisonment of more than five years or for a violation of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A)**.