

Exhibit

All

Judgment rendered September 23, 1998.
Application for rehearing may be filed
within the delay allowed by Art. 922,
LSA-CrP.

No. 30,856-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

Handwritten initials: JRS

CITY OF MONROE

Appellee

versus

LESTER PASTER

Appellant

Handwritten initials: ATW

Appealed from the
Monroe City Court
Parish of Ouachita, Louisiana
Trial Court No. 97-18410

Handwritten initials: JRS

Honorable James Garland Smith, Judge

LESTER PASTER

In proper person
Appellant

RICHARD IEYOUB
Attorney General

Counsel for
Appellee

J. RODNEY PIERRE
Assistant City Attorney

Before and WILLIAMS, STEWART and GASKINS, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

STEWART, J.

The defendant, Lester Paster, was charged with a violation of La. R.S. 14:401, and sentenced to a fine of \$50.00, in default of payment of which he was ordered confined for 5 days in jail, and sentenced to 30 days in jail, suspended, with unsupervised probation for 6 months. The time actually served in jail was credited against the default jail time. Finding error patent because there was no advisement of right to jury or right to counsel, and no waivers of either of these constitutional rights, we reverse and vacate the conviction and sentence and remand for new proceedings.

FACTS

On July 9, 1997, Lester Paster placed signs on the sidewalk and courtyard area of the Monroe City Court. Honorable Larry Jefferson noticed Mr. Paster's activities and contacted the Monroe City Marshal's office. Deputy Marshal Christopher Barkley responded and requested that Mr. Paster remove the obstructions. Upon Mr. Paster's refusal to comply, he was arrested and charged, by bill of information, with a violation of La. R.S. 14:401.¹

Following bench trial, defendant was convicted and sentenced. He now appeals.

DISCUSSION

La. R.S. 14:401, which provides:

Sec. 401. Demonstrations in or near building housing a court or occupied as residence by judge, juror, witness or court officer.

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence

¹ In briefs submitted to this court, both appellant and appellee argue whether Mr. Paster violated Monroe City Ordinance 12:186, which prohibits demonstrations at courthouses or residences of judges, jurors, or witnesses. However, the only charging document contained in the record reflects that Mr. Paster was charged with a violation of La. R.S. 14:401.

occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the State of Louisiana of its power to punish for contempt.

The charged offense is a jury-triable misdemeanor, in accordance with La.

C.Cr.P. art 779, which provides in pertinent part:

Art. 779. Trial of misdemeanors

A. A defendant charged with a misdemeanor in which the punishment, as set forth in the statute defining the offense, may be a fine in excess of one thousand dollars or imprisonment for more than six months shall be tried by a jury of six jurors, all of whom must concur to render a verdict.

* * * * *

Because this offense is one triable by jury, the defendant must have been advised of and waived his right to a jury trial before proceeding to trial. *State v. McCarroll*, 337 So. 2d 475 (La. 1976). We cannot assume the waiver of constitutional rights from a silent record. *State v. Burton*, 540 So. 2d 1023 (La. App. 2d Cir. 1989).

The accused in a criminal proceeding has the right to assistance of counsel for his defense. U.S. Const. amends. VI, XIV; La. Const. art. I, § 13; *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

A valid waiver of the right to counsel must be knowing and intelligent. *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562 (1975). A defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, but must be made aware of the dangers and disadvantages of self-representation so that the

record will establish that he knows what he is doing and his choice is made with eyes open. *Id.*

On December 22, 1997, this court, noting the inadequacy of the record to show the waiver of right to counsel or jury trial, ordered the record supplemented with any minutes of court or transcript relating to the waiver of either of these rights. The supplementation received shows no waiver. The record in this case does not show that the appellant was advised of his right to trial by jury, or waived that right. It also does not show that he was advised of his right to counsel, or intelligently and voluntarily waived that right. The failure of the record to show advisement and waiver of these constitutional rights is error patent on the face of the record and mandates reversal and remand for new proceedings. *State v. Dickson*, 505 So. 2d 758 (La. App. 2d Cir. 1987).

DECREE

For the reasons explained, we set aside defendant's conviction and sentence and remand the case to the city court for further proceedings consistent with this opinion.

REVERSED and REMANDED.

STATE OF LOUISIANA PARISH OF OUACHITA MONROE CITY COURT

CITY OF MONROE

VERSUS

LESTER PASTER

FILED: 8-25-93

BY: [Signature]

DENIAL OF MOTION TO RECONSIDER
CONVICTION OUT OF TIME

The motion presently before the Court bears the same basic issues of petitioner's motion of March, 1993. The Court reiterates its ruling of March 12, 1993 that all appealable issues have long since prescribed.

Petitioner has now moved for out of time relief urging that the Attorney who appeared in open Court did not have authority to act. This Court is of the opinion that the colloquy between the Court and petitioner's attorney of record speaks both loudly and clearly.

The Court is further of the opinion that the acts and actions of petitioners attorney of record on the date of March 16, 1988 were totally credible and possess far more weight than petitioner's self-serving affidavit of July 16, 1993; five (5) years removed from the event.

The Court is strongly of the opinion that petitioners allegations in his motion for out of time relief possess no merit whatsoever. Accordingly, the motion and petition of petitioner is denied in entirety.

IT IS SO ORDERED.

JOHN LARRY LOLLEY

JOHN LARRY LOLLEY
JUDGE, DIVISION B
MONROE CITY COURT

A true and correct copy
[Signature]
CLERK, CITY COURT OF
THE CITY OF MONROE

City of Monroe
Versus 8714142 & 8714690
Lester Paster

Court was opened and presided over by the Honorable John Larry Lolley, Judge, on the date of March 16, 1988. Attorney Clyde Lain appeared at arraignment session. . . .

BY THE CLERK : Lester Paster.

BY MR. LAIN : Good afternoon, your Honor. Your Honor, at this time, I would like to enroll as counsel of record for Mr. Paster; waive his presence and enter a plea of nollo contendre to that charge, your Honor.

BY THE COURT : As I understand it, the bulk of this situation has now been compromised between your client and the parties involved in this?

BY MR. LAIN : Yes sir. That's correct.

BY THE COURT : Okay. To the nollo, the Court imposes a compulsory sentence of 10 days in Jail suspended on terms of good behavior, combined disposition.

BY MR. LAIN : Thank you, your Honor.

CITY OF MONROE
VERSUS NO. 8714142 & 8714690
LESTER PASTER

STATE OF LOUISIANA
PARISH OF OUACHITA

CITY COURT OF THE
CITY OF MONROE

CERTIFICATE

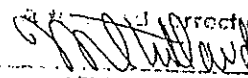
I, Martha Strickland, Deputy Clerk of the City Court of the City of Monroe, Parish of Ouachita, State of Louisiana, Ex-Officio Notary Public, and Certified General Reporter for the State of Louisiana, do hereby certify as follows:

That the foregoing page does constitute a true and correct transcription of the proceedings and testimony of the matter had March 16, 1988 in the above styled and numbered cause of the docket of the City Court of the City of Monroe, Parish of Ouachita, State of Louisiana, according to the best of my ability and understanding of Lanier recording.

IN TESTIMONY WHEREOF, I sign hereto this 9th day of March, 1993.



MARTHA STRICKLAND, CGR



CITY COURT OF
MONROE

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

CITY OF MONROE

NO. 30856-KA

VERSUS

Appealed from
Ouachita Parish, LA
No. 9718410

LESTER PASTER

Before BROWN, WILLIAMS and CARAWAY, JJ.

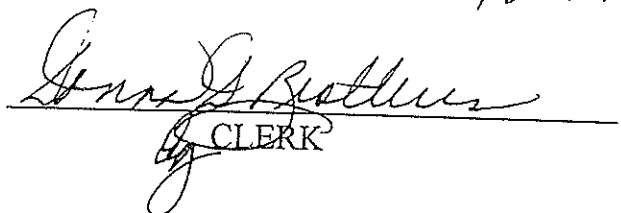
ORDER TO SUPPLEMENT RECORD.

This record fails to demonstrate that the defendant waived his right to counsel or his right to a jury trial. See *State v. Dickson*, 505 So. 2d 758, 760 (La. App. 2d Cir. 1987). Pursuant to La. C.Cr.P. art. 914.1(D), this court directs the clerk of the district court to supplement the appellate record with the minutes of court as well as a transcript of any proceeding relating to the waiver of either of the above-mentioned rights.

Shreveport, Louisiana, this 22nd day of December, 1997.



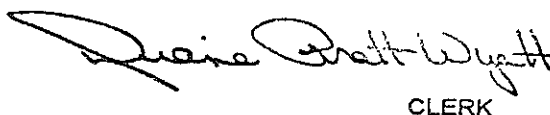
FILED: December 22, 1997


CLERK

SECOND CIRCUIT COURT
OF APPEAL
STATE OF LOUISIANA

Endorsed Filed December 22 97
DIANA

A TRUE COPY


CLERK

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA. 71101
(318) 227-3700

STATE OF LOUISIANA

NO: 32898-KH

VERSUS

FILED: 06/29/99

RECEIVED: PM 06/28/99

LESTER G. PASTER

On application of Lester G. Paster for MANDAMUS in No. 9718410 on the docket of the Monroe City Court, Parish of OUACHITA (MONROE CITY COURT), Judge James Garland Smith.

Pro se

Lester G. Paster

Counsel for:

James Rodney Pierre

City of Monroe

Before BROWN, WILLIAMS and GASKINS, JJ.

WRIT DENIED.

In an unpublished September 23, 1998 opinion (NO. 30,856-KA), the failure of the record to show advisement and waiver of the right to counsel and a jury trial was found to be error patent on the face of the record and applicant's conviction under La. R.S. 14:401 was reversed and remanded for new proceedings.

Paster now seeks to have the City of Monroe held in contempt and asks for an investigation into why this court's judgment was not carried out. Nothing in this record indicates that the City of Monroe is in contempt or that this court's judgment was violated. On this showing, the exercise of this court's extraordinary mandamus powers is not warranted and the writ is denied.

Shreveport, Louisiana, this 22nd day of July, 1999.

HRB FTW ACB

FILED July 22, 1999 HRB
James Paster
CLERK

SECOND CIRCUIT COURT
OF APPEAL
STATE OF LOUISIANA
Endorsed Filed July 22, 1999
DIANA PRATT-WYATT
CLERK
A TRUE COPY - Attest
Diana Pratt-Wyatt
CLERK

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, L.A. 71101
(318) 227-3700

James Rodney Pierre
Assistant City Attorney
P. O. Box 777
Monroe La 71210-0000

DOCKET NO. 30,856-KA

CITY OF MONROE

VERSUS

LESTER PASTER

Appealed from OUACHITA (MONROE CITY COURT) Parish Case No.9718410

ORDER

No brief has been filed on behalf of Plaintiff Appellee in this criminal appeal. You were notified on 12/11/97 that the brief in this case was due on 01/26/98.

URCA Rule 2-12.1 requires that brief shall be filed by all parties to an appeal. Rule 2-12.12 provides for sanctions in the event of failure to file a brief. Accordingly:

YOU ARE HEREBY ORDERED by the court to file a brief in this case on or before seven (7) days from this date. Failure to comply with this order may cause you to be cited for contempt of court.

By Authority of the judges of this court, Shreveport, Louisiana, this 14th day of March 1998.

FOR THE COURT

James J. Brothers
Clerk of Court

cc:
Lester Paster, Pro Se

SECOND CIRCUIT COURT
OF APPEAL
STATE OF LOUISIANA
A TRUE COPY Attest
James J. Brothers
CLERK

EXHIBIT 1A

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

CITY OF MONROE

NO. 30856-KA

VERSUS

Appealed from
Monroe City Court
No. 97-18410

LESTER PASTER

Before HIGHTOWER, WILLIAMS and STEWART, JJ.

MOTION DENIED.

On the showing made, the prosecution's motion to dismiss this appeal for want of jurisdiction is denied. The record in this matter shows that on July 10, 1997, the prosecutor filed a bill of information in Monroe City Court charging the defendant with a violation of La. R. S. 14:401. Neither this document nor any other document in the record purports to be a charging instrument charging a violation of the Monroe city ordinance against demonstrating near a courthouse. La. R. S. 13:1895 provides that criminal prosecutions in city court shall be by affidavit, information or indictment.

Because the only charge in the record is for a violation of La. R. S. 14:401 and because nothing in the record suggests that the defendant was formally charged under the city ordinance, La. R. S. 13:1896(B) specifies that La. C.Cr.P. art. 912.1 governs the procedure for appeal. La. R. S. 14:401 is an offense triable by a jury. See La. Const. Art. 1, § 17 and La. C.Cr.P. art. 779. Accordingly, appeal was properly taken to this court. La. Const. Art. 5, § 10(A); La. C.Cr.P. art. 912.1(B).

Shreveport, Louisiana, this 2nd day of April, 1998.

ATM

[Signature]

[Signature]

FILED: April 2, 1998

[Signature]
CLERK

A copy of the foregoing order of this court was handed to and/or mailed to the trial court judge, the trial court clerk of court, at least one of the counsel of record for each party, or to each party not represented by counsel on this date.

[Signature]
Clerk of Court of Appeal
Second Circuit, State of Louisiana

SECOND CIRCUIT COURT
OF APPEAL
STATE OF LOUISIANA

Endorsed Filed April 2 19 98
DIANA PRATT-WYATT
CLERK
A TRUE COPY - Attest

[Signature]
CLERK

STATE OF LOUISIANA, COURT OF APPEAL

SECOND CIRCUIT COURT

FILE NUMBER 9718410 - MONROE CITY COURT

LESTER G. PASTER

2000 MONROE AVE

MONROE, LA 71202

FILED: August 28, 1997

BY: J. White

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE AN APPEAL AND FOR COURT TRANSCRIPTS.

I AM RESPECTFULLY SUBMITTING A MOTION FOR AN EXTENTION OF TIME IN WHICH TO FILE A FIRST (1ST) APPEAL IN THE ABOVE MENTIONED CASE (FILE NO. 9718410), HELD ON JULY 31, 1997. A DECISION OF GUILTY WAS HANDED DOWN BY THE HONORABLE JUDGE GARLAND ~~SMITH~~ SMITH ON VIOLATING SECTION 12-186.

I HAVE SUBMITTED A WRITTEN REQUEST FOR COURT TRANSCRIPTS CONCERNING THIS MATTER. AS OF DATE I HAVE NOT RECEIVED REQUESTED TRANS CRIPTS OF MY ARRAIGNMENT OR HEARING.

RESPECTFULLY SUBMITTED,

LESTER G. PASTER

Lester G. Paster

RECEIVED
AUG 28 1997
MONROE CITY COURT