

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**07-848**

**STATE OF LOUISIANA**

**VERSUS**

**BYRON A. MEADS**

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**APPEAL FROM THE  
FOURTEENTH JUDICIAL DISTRICT COURT  
PARISH OF CALCASIEU, NO. 06-013623  
HONORABLE ROBERT L. WYATT, DISTRICT JUDGE**

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**MICHAEL G. SULLIVAN  
JUDGE**

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Court composed of Oswald A. Decuir, Michael G. Sullivan, and James T. Genovese,  
Judges.

**AFFIRMED AND REMANDED WITH INSTRUCTIONS.**

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Byron A. Meads**

**SULLIVAN, Judge.**

Byron A. Meads tendered an *Alford* plea of guilty to manslaughter and possession with the intent to distribute cocaine. He appeals, asserting that the trial court erred in denying his motion to suppress evidence obtained in a search of his vehicle. We affirm.

***Facts and Procedural History***

At Defendant's guilty plea hearing, the State set forth the following factual basis for the plea: On March 1, 2005, narcotic detectives with the Assumption Parish Sheriff's Office came upon a vehicle containing two suspects that was parked in the wrong direction, partially obstructing the roadway. As they blocked the vehicle, the detectives observed the owner of the vehicle, a known drug offender, exit the passenger side of the vehicle; Defendant was in the driver's seat. The detectives, donned in clothing clearly identifying themselves as sheriff's deputies, exited their unmarked van and approached the vehicle. Simultaneously, Defendant reversed the vehicle at a high rate of speed and eventually came to a stop in a ditch. Sergeant Byron Parker approached the passenger side of the vehicle with his gun drawn and ordered Defendant to exit the vehicle. A struggle ensued between Sergeant Parker and Defendant, and Sergeant Parker's gun discharged. The bullet hit and killed Sergeant Jeremy Newchurch. During a search of the vehicle incidental to arrest, officers discovered 16.29 grams of cocaine.

Defendant was charged with: 1) manslaughter, a violation of La.R.S. 14:31; 2) possession with intent to distribute cocaine, a violation of La.R.S. 40:967(A)(1); 3) attempted disarming of a peace officer, violations of La.R.S. 14:27 and 14:34.6;

4) aggravated flight from an officer, a violation of La.R.S. 14:108.1(C); and, 5) battery of a police officer, a violation of La.R.S. 14:34.2.

Defendant filed several motions, including a motion to suppress evidence. Thereafter, the State moved for a change of venue. Defendant's motion to suppress was set for hearing but was continued without date. The State's motion to change venue was then set for hearing. The motion to change venue was set for hearing, and all pending motions were scheduled for hearing on the same date, September 11, 2006.

On September 11, 2006, counsel for Defendant was not present in court when this matter was called as scheduled and did not arrive in the courtroom until 11:00 a.m. Prior to the trial court's consideration of the State's motion to change venue, the State moved to dismiss all of Defendant's motions that had not yet been heard because defense counsel did not file the required memoranda. Defense counsel did not oppose the request, stating "that's the only motion—the motion to transfer." The trial court asked, "You have no other motions?" Defense counsel replied, "That's correct." The trial court then granted the State's motion to dismiss and dismissed Defendant's motions, which included the motion to suppress. The trial court also granted the motion to change venue, and the case was transferred to the Fourteenth Judicial District Court in Calcasieu Parish.

The matter came for trial before a jury in the Fourteenth Judicial District Court on November 28, 2006. Prior to trial, several motions were heard, and at that time, Defendant requested a hearing on his motion to suppress. The State objected, arguing that the motion had been previously dismissed. After hearing argument on the issue,

the trial court held that the motion to suppress had been previously dismissed and denied Defendant's hearing request.

Before jury selection began, the State dismissed counts 3, 4, and 5. Jury selection commenced, but after fourteen jurors were chosen, Defendant withdrew his prior plea of not guilty and tendered a "best interest" plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970) to manslaughter and possession with the intent to distribute cocaine. In consideration for Defendant's plea, the State agreed not to file a habitual offender bill against him.

On February 15, 2007, Defendant was sentenced to thirty years at hard labor, without benefit of probation, parole, or diminution of sentence for good time for the manslaughter conviction and to ten years at hard labor for the possession with intent to distribute cocaine conviction. The trial court ordered the sentence for possession with intent to distribute cocaine to run concurrently with the sentence for manslaughter. Defendant asserts that the trial court erred in denying him a hearing on his motion to suppress.

### ***Errors Patent***

In accordance with La.Code Crim.P. art. 920, all appeals are reviewed for errors patent on the face of the record. Review of the record reveals that there are errors regarding the sentence imposed and that the sentencing minutes need correction.

The transcript of Defendant's sentencing reflects in pertinent part: "On the charge of manslaughter, I sentence you to 30 years Department of Corrections, without the benefit of probation, parole, or good time." Louisiana Revised Statutes 14:31 provides that a person convicted of manslaughter "shall be imprisoned at hard

labor for not more than forty years”; it does not prohibit parole or probation. Louisiana Code of Criminal Procedure Article 893 provides that persons convicted of violent offenses listed in La.R.S. 14:2(B), which includes manslaughter, are to be denied the benefit of probation of sentence, but it does not prohibit parole. Therefore, the trial court erred when it ordered that Defendant’s sentence be served without benefit of parole. Accordingly, Defendant’s sentence for manslaughter is amended to delete the denial of parole eligibility, the matter is remanded to the trial court, and the trial court is instructed to make an entry in the minutes reflecting this amendment. *See State v. Buckley*, 02-1288 (La.App. 3 Cir. 3/5/03), 839 So.2d 1193 and *State v. Gregrich*, 99-178 (La.App. 3 Cir. 10/13/99), 745 So.2d 694. —

The trial court also denied Defendant diminution of sentence for good behavior with regard to his conviction for manslaughter, *see* La.R.S. 14:2(B)(4) and La.Code Crim.P. art. 890.1, but the minutes of sentencing do not reflect this denial. Therefore, the minutes of sentencing must be corrected to accurately reflect the denial of diminution of sentence for good behavior, and on remand, the trial court is also instructed to amend the minutes of sentencing to reflect that it denied diminution of sentence for good behavior.

### ***Motion to Suppress***

In his sole assignment of error, Defendant argues that the trial court erred in refusing to allow an evidentiary hearing on his motion to suppress. Pursuant to La.Code Crim.P. art. 703(E)(1), an evidentiary hearing on a motion to suppress is required “only when the defendant alleges facts that would require the granting of relief.” Defendant urges that the facts alleged in his motion to suppress require the granting of such relief.

The record reflects that all pending motions, including Defendant's motion to suppress, were set for hearing before the trial court for the Twenty-Third Judicial District Court, Parish of Assumption, on September 11, 2006. The State moved to dismiss all of Defendant's motions for which supporting memoranda had not been filed, and counsel for Defendant agreed to the dismissal. Thus, Defendant's motion to suppress was dismissed without objection by counsel. Defendant did not file a new motion to suppress after the case was transferred to the Fourteenth Judicial District Court, Parish of Calcasieu, but simply re-urged the motion which had already been dismissed. Accordingly, we conclude that a hearing on the dismissed motion to suppress was not required and that the trial court did not err in refusing to conduct a hearing on same.

#### ***Disposition***

Defendant's convictions and his sentence on the conviction of possession with intent to distribute cocaine are affirmed. Defendant's sentence on the conviction of manslaughter is amended to delete the denial of parole eligibility. This matter is remanded, and the trial court is instructed to amend the minutes of sentencing with regard to Defendant's manslaughter conviction to reflect that Defendant is not denied parole eligibility, but he is denied diminution of sentence for good behavior.

#### **AFFIRMED AND REMANDED WITH INSTRUCTIONS.**

This opinion is NOT DESIGNATED FOR PUBLICATION.  
Uniform Rules—Courts of Appeal. Rule 2-16.3.