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JUDGES

Court of Appeal
FIFTH CIRCUIT
STATE OF LOUISIANA
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December 5, 2014

Lexis-Nexis
Post Office Box 8809
Dayton, Ohio 45401

RE State of Louisiana versus Frank E. Gardner, II, No. 14-KA-322
Opinion Rendered November 25, 2014

Dear Sir/Madam:

Please remove the above-referenced opinion from publication as it has been designated as NOT DESIGNATED FOR PUBLICATION.

Sincerely,

Cheryl Quirk Landrieu
Clerk of Court

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IMAGED DEC 05 2014 PRS
10/1

STATE OF LOUISIANA

NO. 14-KA-322

VERSUS

FIFTH CIRCUIT

FRANK E. GARDNER, II

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 13-1819, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

NOVEMBER 25, 2014

COURT OF APPEAL
FIFTH CIRCUIT

FILED NOV 25 2014

SUSAN M. CHEHARDY
CHIEF JUDGE


CLERK
Cheryl Quirk London

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Stephen J. Windhorst

PAUL D. CONNICK, JR.
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Twenty-Fourth Judicial District
Parish of Jefferson

TERRY M. BOUDREAUX
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200 Derbigny Street
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THE STATE OF LOUISIANA

GWENDOLYN K. BROWN
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Louisiana Appellate Project
P. O. Box 64962
Baton Rouge, Louisiana 70896
COUNSEL FOR APPELLANT,
FRANK E. GARDNER, II

**AFFIRMED; MOTION TO
WITHDRAW GRANTED**

SME
JLL
JW

Defendant, Frank E. Gardner, II, seeks review of his felony convictions for possession of a firearm by a convicted felon, in violation of La. R.S. 14:95.1; possession of marijuana, fourth offense, in violation of La. R.S. 40:966(C); and possession of cocaine, in violation of La. R.S. 40:967(C). For the following reasons, we affirm defendant's convictions, multiple offender adjudication, and sentences. In addition, we grant appellate counsel's motion to withdraw.

Facts and Procedural History

Because defendant pled guilty as charged, the facts were not fully developed at a trial. However, the prosecutor provided the following factual basis during the guilty plea colloquy:

Your Honor, if the State had proceeded to trial, it would have proven beyond a reasonable doubt that the defendant, Frank E. Gardner, on March 21, 2013, in the Parish of Jefferson violated Louisiana Revised Statute 14:95.1 in that he did have in possession a firearm; to wit, a Mondial 25 caliber handgun having been previously convicted of the crime of Possession of Marijuana Third Offense in violation of Louisiana Revised Statute [40]:966(C) under Case No. 11-6107 on March 19, 2012 and previously having been convicted of the crime of Possession of Cocaine in violation of Louisiana Revised Statute [40]:967(C) under Case No. 18640-06 in the 14th Judicial District Court on February 4, 2008.

Furthermore, it would have proven beyond a reasonable doubt that the defendant, Frank Gardner, violated Louisiana Revised Statute 40:966(C), Possession of Marijuana Fourth Offense in that he did knowingly or intentionally possess a controlled dangerous substance, that substance being marijuana having been previously convicted in the 24th Judicial District Court, Parish of Jefferson of Possession of Marijuana under Case Nos. 05-5563 on May 19, 2006; Possession of Marijuana Second Offense under Case No. 08-6149 on April 3, 2009; and Possession of Marijuana Third Offense under Case No. 11-6107 on March 19, 2012. That violation occurred in the Parish of Jefferson as well.

Finally, if the State had proceeded to trial, it would have been proven beyond a reasonable doubt that the defendant, Frank Gardner, violated Louisiana Revised Statute 40:967(C) in the Parish of Jefferson in that he did knowingly or intentionally possess a controlled dangerous substance, that substance being cocaine.

On April 11, 2013, the Jefferson Parish District Attorney filed a bill of information charging defendant, Frank E. Gardner, II, with possession of a firearm by a convicted felon, in violation of La. R.S. 14:95.1; possession of marijuana, fourth offense, in violation of La. R.S. 40:966(C); and possession of cocaine, in violation of La. R.S. 40:967(C). On October 2, 2013, the trial judge denied defendant's motion to suppress evidence after a hearing.

On December 16, 2013, defendant withdrew his former pleas of not guilty and tendered pleas of guilty as charged to all three counts. On that same date, the trial judge sentenced defendant to concurrent sentences as follows: on count one, imprisonment at hard labor for ten years without benefit of parole, probation, or suspension of sentence; on count two, imprisonment at hard labor for ten years; and on count three, imprisonment at hard labor for five years.

Thereafter, the State filed a multiple offender bill of information alleging that defendant was a second felony offender, to which defendant stipulated. The trial judge then, pursuant to La. R.S. 15:529.1, vacated the original sentence on count one and imposed an enhanced sentence of imprisonment at hard labor for ten years without benefit of parole, probation, or suspension of sentence, to run

concurrently with the sentences on counts two and three. On January 9, 2014, defendant filed a *pro se* motion for appeal, which the trial court granted on February 6, 2014.

Anders review

Under the procedure adopted by this Court in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11,¹ appointed appellate counsel has filed a brief asserting that she has made a conscientious and thorough review of the entire appellate record, including the procedural history and facts, and has not found any non-frivolous issues to raise on appeal. Accordingly, appointed counsel requests permission to withdraw as counsel of record.

After receiving appellate counsel's brief and motion to withdraw, this Court performed a full examination of the appellate record to determine whether the appeal is frivolous in accordance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241(*per curiam*). Our independent examination of the record in the instant case consisted of (1) a review of the bill of information to ensure that defendant was properly charged; (2) a review of all minute entries to ensure that defendant was present at all crucial stages of the proceedings and that the conviction and sentence are legal; and (3) a review of the guilty plea and sentencing transcript to determine if there was an arguable basis for appeal. In our review, we found no non-frivolous issues regarding defendant's convictions and sentences.

Because appellate counsel's brief adequately demonstrates by full discussion and analysis that she has reviewed the trial court proceedings and cannot identify any basis for a non-frivolous appeal and our independent review of the record

¹ In *Bradford*, *supra*, this Court adopted the procedures outlined in *State v. Benjamin*, 573 So.2d 528, 530 (La. App. 4 Cir. 1990), which were sanctioned by the Louisiana Supreme Court in *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (*per curiam*).

supports counsel's assertion, we affirm defendant's convictions and sentences and grant appellate counsel's motion to withdraw as attorney of record.

Decree

For the foregoing reasons, we affirm defendant's convictions for possession of a firearm by a convicted felon; possession of marijuana, fourth offense; and possession of cocaine. We further affirm his adjudication as a second felony offender. Furthermore, we affirm his sentences for possession of marijuana, fourth offense, and possession of cocaine and his enhanced sentence for possession of a firearm by a convicted felon. Finally, we grant appellate counsel's motion to withdraw. This memorandum opinion is issued in compliance with U.R.C.A. 2-16.1(B) and U.R.C.A. 2-16.3(B) and, thus, posted to this Court's website pursuant to La. C.C.P. art. 2168.

**AFFIRMED; MOTION TO
WITHDRAW GRANTED**

SUSAN M. CHEARDY
CHIEF JUDGE

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**NOTICE OF JUDGMENT AND
CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **NOVEMBER 25, 2014** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in cursive script, appearing to read "Cheryl Q. Landrieu", written over a horizontal line.

CHERYL Q. LANDRIEU
CLERK OF COURT

14-KA-322

E-NOTIFIED

TERRY M. BOUDREAUX
GWENDOLYN K. BROWN

MAILED

HON. PAUL D. CONNICK, JR.
DISTRICT ATTORNEY
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
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