

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KA 0744

STATE OF LOUISIANA

VERSUS

FRANK CHARLES SMITH

Judgment Rendered: NOV 06 2018

\* \* \* \* \*

On Appeal from  
The 18<sup>th</sup> Judicial District Court,  
Parish of Pointe Coupee, State of Louisiana  
Trial Court No. 80,850-F  
The Honorable J. Kevin Kimball, Judge Presiding

\* \* \* \* \*

Richard J. Ward Jr.  
District Attorney  
New Roads, Louisiana

Attorneys for Appellee,  
State of Louisiana

and

Terri Russo Lacy  
Assistant District Attorney  
Port Allen, Louisiana

Bertha M. Hillman  
Louisiana Appellate Project  
Covington, Louisiana

Attorney for Defendant/Appellant,  
Frank Charles Smith Jr.

\* \* \* \* \*

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

*McDonald, J. concurs*

## **CRAIN, J.**

The defendant, Frank Charles Smith Jr., pled guilty to simple burglary in exchange for a ten-year sentence and the state's agreement to forego habitual offender proceedings and *nol pros* three counts of simple burglary. See La. R.S. 14:62. The defendant was sentenced to ten years imprisonment at hard labor. The defendant appeals. We affirm the conviction and sentence.

### **FACTS**

Because the defendant pled guilty, the facts were not developed. According to the bill of information, the defendant committed four counts of simple burglary in Pointe Coupee Parish from April 27 to May 5 of 2016.

### **DISCUSSION**

The brief filed by defense counsel contains no assignments of error and was filed in accordance with *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L. Ed. 2d 493 (1967), and *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So. 2d 241 (*per curiam*). In *Anders*, the United States Supreme Court instructed that if counsel finds the defendant's case to be wholly frivolous, after a conscientious examination, he should so advise the court and request permission to withdraw. *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished to the indigent, who should be allowed time to raise any points he chooses; the court, not counsel, then decides whether the case is wholly frivolous based upon a full examination of all the proceedings. *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400.

In *Jyles*, the Louisiana Supreme Court approved the procedures outlined in *State v. Benjamin*, 573 So. 2d 528 (La. App. 4 Cir. 1990), to comply with *Anders*. Appellate counsel must not only review the procedural history of the case and the evidence presented at trial, but his brief must also contain "a detailed and

reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place.” *Jyles*, 704 So. 2d at 242 (quoting *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So. 2d 1176, 1177 (*per curiam*)). When conducting a review for compliance with *Anders*, an appellate court must conduct an independent review of the record to determine whether the appeal is wholly frivolous. *State v. Thomas*, 12-0177 (La. App. 1 Cir. 12/28/12), 112 So. 3d 875, 878 (*en banc*).

Here, defense counsel complied with the requirements for an *Anders* brief. She reviewed the procedural history and facts of the case, recognized the defendant is precluded from challenging his sentence, and concluded there are no non-frivolous issues for appeal. A copy of the brief was provided to the defendant, and, in a motion to withdraw, defense counsel confirms the defendant was informed of his right to file a *pro se* brief on his own behalf. The defendant has not filed a *pro se* brief.

This court has conducted an independent review of the record, including a review for error under Louisiana Code of Criminal Procedure article 920(2). That review reveals no non-frivolous issues or trial court rulings that arguably support the defendant’s appeal.<sup>1</sup> The defendant’s conviction and sentence are affirmed, and the motion to withdraw is granted.

**CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.**

---

<sup>1</sup> Our review of the guilty-plea colloquy is subject to the constraints of *State v. Collins*, 14-1461 (La. 2/27/15), 159 So. 3d 1040 (*per curiam*), and *State v. Guzman*, 99-1528, 99-1753 (La. 5/16/00), 769 So. 2d 1158, 1162.