

NEW ORLEANS, LA 70158-8769
COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTIONS AFFIRMED;
SENTENCE AMENDED; MOTION GRANTED**

Walter L. Berry, Jr., was charged by bill of information on 24 March 2000 with armed robbery, a violation of La. R.S. 14:64, and with second degree kidnapping, a violation of La. R.S. 14:44.1. At his arraignment on 29 March 2000 he pleaded not guilty. Probable cause was found and a motion to suppress the identification was denied on 16 May 2000. A twelve-member jury found defendant guilty as charged after trial on 26 June 2000. He was sentenced on 13 July 2000 to serve sixty years at hard labor as a second offender under La. R.S. 15:592.1 without benefit of parole, probation, or suspension of sentence on the armed robbery conviction and to serve forty years at hard labor without benefit of parole, probation, or suspension of sentence on the second degree kidnapping conviction; the sentences are to be served concurrently. Defendant's motion for an appeal was granted.

At trial Mr. Keino Monroe testified that on 25 January 2000 he was the victim of an armed robbery and a kidnapping. He was on North Broad Street about 7:40 p.m. when a small brown car driven by defendant approached him and slowed; a man in the backseat of the car pointed a gun

at Mr. Monroe and ordered him to get into the car. Defendant demanded Mr. Monroe's wallet and jacket but was not satisfied when Mr. Monroe had only a little over \$40.00 in his wallet; he threatened to kill Mr. Monroe who then offered to give the robbers cash that he had at his residence. He told the robbers that his roommate was at the residence. Defendant stopped the car at a service station near Mr. Monroe's apartment so that he could telephone home; Mr. Monroe told his roommate to get his (Monroe's) notebook and stand outside to wait for him. When they arrived at Mr. Monroe's residence, defendant got out of the car, got the notebook, returned to the car, and drove out of the apartment complex. He drove to the I-10 Service Road on Crowder Boulevard and let Mr. Monroe out of the car there. Mr. Monroe took the bus to his home and called the police. The officers came to his house, took his statement, and called in a description of the car. Moments later they got word that a suspect had been picked up. Mr. Monroe and his roommate accompanied the officers to Dwyer Road where they identified defendant, who was wearing Mr. Monroe's jacket and standing near a brown Toyota automobile. In the jacket pockets were Mr. Monroe's work badge, his pay stub, and a bank statement. The money taken from Mr. Monroe was never recovered. Under cross-examination, Mr. Monroe said that although defendant had a birthmark on his forehead, he did not give that detail to the

police because defendant was wearing a cap that partially covered the birthmark.

Mr. Larry Wayne Coleman, Jr., testified that he was Keino Monroe's roommate on 25 January 2000 when this incident occurred. Mr. Coleman received a telephone call about 8 p.m. from Mr. Monroe who said that he needed his notebook and asked Mr. Coleman to stand outside with it. Mr. Coleman said the weather was cold, so he waited inside. He heard a knock on the door, opened it, and saw defendant standing there. In response to a question as to why he was not waiting outside, Mr. Coleman answered that it was too cold; he looked out the window at the car as defendant was leaving. Mr. Coleman, a car salesman, saw an old foreign car "real banged up" with rust spots on it and thought that Mr. Monroe's friend needed a better car. About twenty minutes later Mr. Monroe entered the apartment, told Mr. Coleman what had happened to him, and called the police. Mr. Coleman identified defendant at the same time as Mr. Monroe.

Detective Jason Gagliano testified that he received a call about 10 p.m. on 25 January 2000 concerning an armed robbery. The detective met with Mr. Monroe, who was very nervous, but repeated his story consistently three times. The detective also spoke to Mr. Coleman and then turned the investigation over to Detective Powell. As Detective Gagliano drove away

from the victim's apartment in his unmarked car, he saw an old brown Toyota automobile speeding out of a service station. He immediately recognized that it matched the description given by Messrs. Monroe and Coleman, and called his dispatcher. About forty minutes from the time the detective had arrived at Mr. Monroe's apartment, he stopped the Toyota and detained the driver and a woman passenger. A few minutes later, Messrs. Monroe and Coleman arrived and identified the driver as the man who had robbed and kidnapped Mr. Monroe and who appeared at the door when Mr. Coleman answered it. Mr. Monroe's identification was found in the jacket that defendant was wearing.

Detective Gregory Powell testified that on 25 January 2000, he too investigated the armed robbery and a second degree kidnapping. While he was interviewing the victim at his residence, he received a call that a suspect was being held. The detective accompanied the victim and his roommate to the intersection of Crowder Boulevard and Dwyer Road where both men identified the defendant.

Counsel for defendant filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this court in State v. Benjamin, 573 So. 2d 528 (La. App. 4th Cir. 1990). Counsel filed

a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because she believes, after a conscientious review of the record, that no non-frivolous issue for appeal exists. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this court informed defendant that he had the right to file a brief in his own behalf. He has not done so.

As per State v. Benjamin, supra, this court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. Defendant was properly charged by bill of information with violations of La. R.S. 14:64 and La. R.S. 14:44.1, and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, motion hearings, jury selection, trial, and sentencing. A review of the trial transcript reveals that the State proved the crimes beyond a reasonable doubt.

Our review of the record reveals an error patent in the sentence. The defendant was sentenced on the second degree kidnapping conviction to forty years at hard labor without benefit of parole, probation, or suspension

of sentence. However, La. R.S. 14:44.1 prohibits the benefits of parole, probation, and suspension of sentence for a period of only two years.

Therefore, the sentence for second degree kidnapping is amended so as to prohibit the benefits of parole, probation, and suspension of sentence for only the first two years of the term.

Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal. Defendant's convictions are affirmed. His sixty-year sentence for armed robbery is affirmed, and his forty-year sentence for second degree kidnapping is affirmed as amended. Appellate counsel's motion to withdraw is granted.

**CONVICTIONS AFFIRMED;
SENTENCE AMENDED; MOTION GRANTED**