

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2001-KA-0835**  
**VERSUS** \* **COURT OF APPEAL**  
**RODNEY L. MACK** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 416-865, SECTION "F"  
Honorable Dennis J. Waldron, Judge  
\* \* \* \* \*  
**Judge Terri F. Love**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes III, Judge Joan Bernard  
Armstrong, Judge Terri F. Love)

**Harry F. Connick, District Attorney**  
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**COUNSEL FOR DEFENDANT/APPELLANT**

**CONVICTION AND SENTENCE AFFIRMED; MOTION**

**GRANTED**

Rodney L. Mack was charged by bill of information on September 22, 2000, with distribution of crack cocaine in violation of La. R.S. 40:967(A). At his arraignment on October 5, 2000, he pled not guilty. The trial court found probable cause and denied the motion to suppress the evidence at a hearing on November 1, 2000. After trial on November 16, 2000, a twelve-person jury found the defendant to be guilty as charged. He was sentenced on December 1, 2000, to serve five years at hard labor without benefit of parole, probation, or suspension of sentence. The defendant's motion for an appeal was granted.

At trial Officer Tommy Mercadel testified that he participated in an undercover buy/bust narcotics operation on August 25, 2000, which resulted in the arrest of the defendant. Officer Mercadel, wearing plain clothes and driving an unmarked vehicle with audio and video capacity, drove to the intersection of Desire and North Galvez Streets. The officer saw the defendant standing in front of the Continental Liquor Store, and they made

eye contact. The defendant made a gesture, and when the officer mimicked it, the defendant approached the vehicle and asked if Mercadel was a policeman. The officer answered negatively and said he wanted a “dime”, handing over a ten-dollar bill that had been previously recorded. The defendant took a piece of plastic from his mouth and gave it to Mercadel; the plastic contained a white substance. As he drove away, the officer described the defendant by his clothing and location to Detectives Jones and Jackson, who were part of his backup team. The videotape of the transaction was played for the jury. There was difficulty in hearing the transaction, and after the jury saw the video and tried to hear it once, the video was shown without the audio, and the officer provided a running commentary of events. After the defendant was arrested, a Polaroid photo was taken of him, and when Officer Mercadel met with his backup team to view the picture, he identified the defendant as the man who sold him cocaine.

Detective Lawrence Jones testified that he maintained the video and audio equipment during the narcotics investigation on August 25, 2000. The detective listened to the transaction through the Kell monitoring system. The detective identified the videotape that had been played for the jury as the one taken during the transaction involving the defendant. Detective Jones also photocopied the money used in the drug buy.

Officer Harry O'Neal, an expert in the analysis of controlled dangerous substances, testified that he tested the compressed white rock the defendant sold to Officer Mercadel, and it proved to be crack cocaine.

Officer Ricky Jackson testified that he was working as a backup for Officer Mercadel during the narcotics transaction. Officer Jackson wore plain clothes, drove an unmarked car, and remained close to Officer Mercadel. After witnessing the transaction, Officer Jackson watched the defendant so that he could not disappear or give the money to someone else. As soon as Officer Mercadel drove away, the defendant entered the liquor store, where Officer Dan Anderson immediately detained him. Officer Anderson testified that he was part of the takedown unit, and he arrested the defendant inside the liquor store. The ten-dollar bill was on the counter next to the defendant who had \$157 in his pocket.

Rodney Mack took the stand and admitted he was the man on the videotape. He also testified that on August 25, 2000, he had \$157 in cash with him because he was making funeral arrangements for his child's mother. Mack had stopped by the liquor store to use the telephone, and he found the piece of cocaine there. He was ready to continue with the funeral plans when Officer Mercadel waved to him and asked for a dime. Mack gave him the rock. However, he denied being in the business of selling

cocaine.

Counsel 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 there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling that arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed him that he had the right to file a brief in his own behalf. He has not done so.

As per State v. Benjamin, 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 a violation of La. R.S. 40:967(A), and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, motion hearings, trial, and sentencing.

A review of the record reveals a possible error patent. The trial court

imposed sentence without observing the twenty-four hour delay set forth in La. C.Cr.P. art. 873, and there is no indication in the record that defendant waived the delay. However, failure to observe the delay is harmless where—as in this case—the defendant does not complain of his sentence on appeal. State v. Collins, 584 So. 2d 356 (La. App. 4 Cir. 1991).

The sentence imposed is legal in all respects. Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal. Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

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