

STATE OF LOUISIANA

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NO. 2002-KA-1027

VERSUS

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COURT OF APPEAL

DAVID L. SLEEPER

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 423-123, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris,
Sr., Judge Michael E. Kirby)

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On July 16, 2001 the State filed a bill of information charging the defendant-appellant with one count of armed robbery. The defendant was arraigned and entered a plea of not guilty on July 19, 2001. After counsel reviewed a copy of the police report, he withdrew all motions on August 2, 2001. Trial occurred on August 16, 2001. The twelve-person jury returned a responsive verdict of guilty of simple robbery. The trial court ordered a presentence investigation, and on November 20, 2001, the court sentenced the defendant to seven years at hard labor under La. R.S. 15:574.5, the About Face Program. The court also granted the defendant a period of eighteen months in which to file a motion to reconsider sentence.

The State immediately filed a multiple offender bill of information charging the defendant as a second offender. After being advised of his rights, the defendant entered a guilty plea to the multiple bill. The court vacated the sentence it had originally imposed and resentenced the defendant to seven years at hard labor under the About Face Program. The court again granted the defendant a period of eighteen months from that date in which to file a motion to reconsider sentence.

At the trial in this matter, Alicia Walker testified that she was in the

900 block of Lizardi Street at Rampart waiting to catch a bus when she saw the defendant, whom she recognized from the neighborhood, standing nearby. As Ms. Walker was waiting with her wallet in her hand, she heard the defendant say, "Give me your wallet." She turned toward the defendant, who raised a long gun, either a shotgun or a rifle, to her head and again demanded Ms. Walker's wallet. She asked if she could keep her bus pass, which the defendant allowed her to do; he then took her wallet and left the scene.

After the robbery, Ms. Walker did not call the police immediately. Instead, she continued to her destination uptown, which was a cleaners on Claiborne Avenue where relatives worked. From that location, she called the bank to cancel the ATM cards which had been in her wallet. She called the police later that day from her home.

Officer Glen Blache testified at trial that he interviewed Ms. Walker at her home. She stated that the robber's name was David and described him as a black male, approximately 20 to 22 years old, five feet tall, with a baby face. Ms. Walker stated that the robber was related to one of her relatives by marriage.

Officer Blache turned the matter over to Detective David Hunter of the Fifth District robbery squad. Det. Hunter also interviewed Ms. Walker,

obtaining the same information which Officer Blache received. Ms. Walker advised the detective that she could find out the robber's last name. She subsequently called the detective and gave him the robber's full name, David Sleeper. Det. Hunter compiled a photographic line-up containing the defendant's picture; the victim identified him as the person who robbed her. She repeated that identification at trial.

The defendant testified on his own behalf. He stated that he and Alicia Walker had an argument on June 5th. Walker had been in the habit of buying marijuana from him; sometimes she would send someone to buy it for her. According to the defendant, the person Walker had sent failed to buy the marijuana, and she wanted the defendant to give her some on credit. He refused to do so, and she told him she was going to have him thrown in jail. Sometime later, the defendant learned from his mother that his picture was in the paper as a wanted subject. He turned himself in.

The defendant admitted that he had a prior conviction for possession of cocaine and was on probation.

Counsel for the appellant has filed a brief requesting a review of the record 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. 4 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 he 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 which 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 on 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 available transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 14:64 relative to armed robbery, and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at arraignment, during the trial, and at sentencing. The jury verdict and the defendant's sentence are legal in all respects. Furthermore, a review of the trial transcript shows that the State provided sufficient evidence to prove beyond a reasonable doubt that the defendant committed simple robbery, a violation of La. R.S. 14:65, the crime for which the jury convicted him.

Counsel for the appellant correctly notes that the trial court erred in failing to fully advise him of the prescriptive period for post-conviction relief under La C.Cr.P. art. 930.8. However, this court has repeatedly held that this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State v. Handy, 2001-0051 (La. App. 4 Cir. 1/24/01), 779 So. 2d 103, 104, writ denied, 2001-1896 (La. 3/28/02), 812 So. 2d 651; State v. Moore, 99-2684 (La. App. 4 Cir. 12/20/00), 777 So. 2d 600, 608, writ denied, 2001-0365 (La. 12/14/01), 803 So. 2d 986; State v. Echols, 99-2226 (La. App. 4 Cir. 10/4/00), 774 So. 2d 993, 997, writ denied, 2000-3058 (La. 10/5/01), 798 So. 2d 962.

In the interest of judicial economy, we note for appellant that La. C.Cr.P. art. 930.8 generally requires that applications for post-conviction relief be filed within two years of the finality of a conviction.

Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal.

The defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

AFFIRMED