

**NOT DESIGNATED FOR PUBLICATOIN**

**STATE OF LOUISIANA** \* **NO. 2004-KA-2216**  
**VERSUS** \* **COURT OF APPEAL**  
**WALTER MARTIN** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 442-011, SECTION "L"  
Honorable Terry Alarcon, Judge

\* \* \* \* \*

**Judge Max N. Tobias, Jr.**

\* \* \* \* \*

(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias, Jr., and  
Judge Leon A. Cannizzaro, Jr.)

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**CONVICTION AND SENTENCE AFFIRMED;  
COUNSEL'S MOTION TO WITHDRAW IS GRANTED.**

**MARCH 23, 2005**

On 12 September 2003 the state filed a bill of information charging the defendant-appellant, Walter Martin ("Martin"), with one count of burglary of an inhabited dwelling, a violation of La. R.S. 14:62.2. Martin entered a not guilty plea at his arraignment on 17 September 2003. On 23 January 2004, the court held a preliminary examination and found probable cause to bind Martin over for trial. On 15 March 2004, after being advised of his right to a jury trial, Martin waived that right and proceeded to trial before the court alone. At the conclusion of the testimony, the court found Martin guilty of attempted simple burglary of an inhabited dwelling. The court sentenced Martin on 22 March 2004 to serve three years at hard labor. Several months later, on 21 October 2004, counsel for Martin filed a motion for an appeal, which was granted.

On 31 August 2003 at approximately 12:30 a.m., United States Air Force Lieutenant Zachary Stevens, his wife Elizabeth Stevens, and their friend, USAF Lieutenant Adrian Lamport, were in the living room of the Stevens' residence at 507 Cherokee Street. The three had arrived at the house just a few minutes earlier and had left the front door unlocked. As

they were talking, they heard a noise as if the screen door had been opened. Lt. Lamport went from the living room, which was the second room of the apartment, into the front room, which was the kitchen and dining area. He saw Martin standing by a table holding some objects; Lt. Stevens and Lt. Lamport had placed various items including their wallets on that table when they came in a few minutes earlier. Lt. Lamport yelled at Martin to get out of the house, and then told him to stop. Martin ran from the house, and Lt. Lamport gave chase. Lt. Lamport was able to tackle Martin at the end of the driveway and pin him to the ground. Meanwhile, Lt. Stevens and Mrs. Stevens had heard their friend yelling in the front room and then heard the door slam. First Lt. Stevens went to check on the situation. He went outside and saw Lt. Lamport tackling Martin; he also saw items go flying. Lt. Stevens assisted Lt. Lamport in subduing Martin and noticed that his wallet, his watch, and his wife's wallet were on the ground near Martin. Mrs. Stevens followed the others outside. They told her to call the police, which she did.

Officers Johnny Brumfield and Anthony Villavaso responded to the call of a residence burglary in progress. When they arrived, they saw Martin being physically detained in the driveway by the victims of the burglary. Martin was immediately arrested. A crime laboratory photographer later

arrived and took photographs of the residence and the items that Martin had taken. The victims identified these photographs at trial.

Martin, who had given a pretrial notice of his intention to offer an intoxication defense, was the sole defense witness. He testified that he was sixty years of age, had prior felony convictions for burglary, and had been a heroin and cocaine addict for many years. He admitted entering the Stevens' residence, stating that he had noticed the light on and the open door, and once inside he saw the wallets and watch. According to Martin, he was desperate for more drugs, having been on heroin and crack cocaine for two days. He did not admit that he entered the residence with the intent to steal anything.

To refute Martin's intoxication defense, the state asked its witnesses, the two police officers and the victims of the burglary, if Martin showed any signs of intoxication. All indicated he did not.

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 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 that arguably supports the appeal. A copy of the brief was forwarded to Martin, 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. Martin was properly charged by bill of information with a violation of La. R.S. 14:62.2, and the bill was signed by an assistant district attorney. Martin was present and represented by counsel at arraignment, the motion hearing, trial, and sentencing. A review of the trial transcript reveals that the state proved the offense beyond a reasonable doubt. The trial court returned a legally authorized responsive verdict. The sentence is legal in all respects. Our independent review reveals no non-frivolous issue and no trial court ruling that arguably supports the appeal. We find no errors patent on the face of the record. Martin's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

**CONVICTION AND SENTENCE AFFIRMED;  
COUNSEL'S MOTION TO WITHDRAW IS GRANTED.**