

STATE OF LOUISIANA

NO. 14-KA-538

VERSUS

FIFTH CIRCUIT

OTIS J. LANDRY

COURT OF APPEAL

STATE OF LOUISIANA

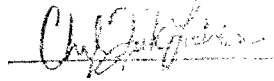
ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 13-3229, DIVISION "B"  
HONORABLE CORNELIUS E. REGAN, JUDGE PRESIDING

February 25, 2015

COURT OF APPEAL  
FIFTH CIRCUIT

FILED FEB 25 2015

**HANS J. LILJEBERG**  
JUDGE

  
CLERK  
Cheryl Quirk Lauritzen


Panel composed of Judges Susan M. Chehardy,  
Fredericka Homberg Wicker, and Hans J. Liljeberg

PAUL D. CONNICK, JR.  
DISTRICT ATTORNEY  
Twenty-Fourth Judicial District  
Parish of Jefferson

TERRY M. BOUDREAUX  
ASSISTANT DISTRICT ATTORNEY  
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COUNSEL FOR THE STATE OF LOUISIANA

CHARLES M. STEVENSON  
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321 North Vermont Street  
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COUNSEL FOR DEFENDANT/APPELLANT

**APPEAL DISMISSED**

  
SMC  
JHW

Retained counsel for defendant-appellant filed a motion to withdraw pursuant to *Anders v. California, infra*, relative to defendant's convictions and sentences for La. R.S. 14:95.1, La. R.S. 14:95(E), and La. R.S. 40:1792. For the following reasons, we dismiss the appeal.

**Discussion**

Defendant-Appellant, Otis J. Landry, pleaded guilty as charged under *State v. Crosby*, 338 So.2d 584 (La. 1976) to count one, felon in possession of a firearm in violation of La. R.S. 14:95.1; count two, possession of a firearm while in possession of a controlled dangerous substance, to wit: marijuana in violation of La. R.S. 14:95(E); and count three, possession of an unidentifiable firearm in violation of La. R.S. 40:1792. Prior to pleading guilty, defendant filed two separate motions to quash the bill of information alleging La. R.S. 14:95.1 and La. R.S. 14:95(E) were unconstitutional, which the trial court denied.

Thereafter, the trial court sentenced defendant-appellant to ten years imprisonment at hard labor on counts one and two, and five years imprisonment at hard labor on count three, all to be served without benefit of probation, parole, or suspension of sentence and to run concurrently with one another.

Defendant-Appellant, through retained counsel, Charles M. Stevenson, moved for and was granted an appeal in the above-entitled matter on February 11, 2014. Retained counsel filed an appeal brief in this Court and the matter was docketed.

In his brief, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *State v. Benjamin*, 573 So.2d 528 (La.App. 4 Cir. 1990), retained counsel requested this Court to independently review the record for errors patent and specifically requested that this Court “review the following potential assignments of error: (1) whether the trial court erred by improperly denying appellant’s Motion to Quash R.S. 14:95.1; and (2) whether the trial court erred by improperly denying appellant’s Motion to Quash R.S. 14:95.E.” Retained counsel further requested that he be granted permission to withdraw as counsel of record for defendant-appellant on the basis that the appeal is frivolous.

In *Anders, supra*, the United States Supreme Court stated that *appointed* appellate counsel may request permission to withdraw if he finds his case to be wholly frivolous after a conscientious examination of it. (*Emphasis added.*) The request must be accompanied by “a brief referring to anything in the record that might arguably support the appeal” so as to provide the reviewing court “with a basis for determining whether *appointed* counsel have fully performed their duty to support their clients’ appeals to the best of their ability” and to assist the reviewing court “in making the critical determination whether the appeal is indeed so frivolous that counsel should be permitted to withdraw.” *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S. 429, 439, 108 S.Ct. 1895, 1902, 100 L.Ed.2d 440 (1988). (*Emphasis added.*) Moreover, in *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241 (*per curiam*), the Louisiana Supreme Court explained that an *Anders* brief must demonstrate *by full discussion and analysis* that appellate

counsel “has cast an advocate’s eye over the trial record and considered whether any ruling made by the trial court, subject to the contemporaneous objection rule, had a significant, adverse impact on shaping the evidence presented to the jury for its consideration.” (*Emphasis added.*)

The purpose of the *Anders* procedure is to “assure penniless defendants the same rights and opportunities on appeal -- as nearly as is practicable -- as are enjoyed by those persons who are in a similar situation but who are able to afford the retention of private counsel.” *Anders, supra* at 745. “Although a defense attorney has a duty to advance all colorable claims and defenses, the canons of professional ethics impose limits on permissible advocacy. It is the obligation of any lawyer -- whether privately retained or publicly appointed -- not to clog the courts with frivolous motions or appeals.” *McCoy, supra* at 438, citing *Polk County v. Dodson*, 454 U.S. 312, 70 L.Ed.2d 509, 102 S.Ct. 445 (1981). “When retained counsel concludes that an appeal would be frivolous, he or she has a duty to advise the client that it would be a waste of money to prosecute the appeal and that it would be unethical for the lawyer to go forward with it.” *Id.* at 437.

A plain reading of *Anders, supra*, and its progeny leads this Court to infer that its procedures apply to appointed counsel, not privately retained counsel. This Court further found that retained counsel’s brief was not in compliance with *Anders, supra*, and its progeny in that it did not demonstrate by full discussion and analysis whether the issues raised by counsel as potential assignments of error are indeed frivolous.

Accordingly, the matter was removed from the docket and this Court ordered retained counsel to supplement his brief with a full discussion of whether *Anders, supra*, applied to him as retained counsel, and if so, to further brief the

issues set forth by him with full discussion and analysis as to the frivolity of the appeal. Alternatively, counsel was given the option to dismiss the appeal.

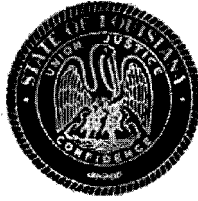
Subsequently, counsel filed a motion to dismiss the appeal in this Court. Considering the foregoing, we grant defendant's motion to dismiss the appeal and hereby order that the appeal be dismissed. *See* Uniform Rules – Courts of Appeal, Rule 2-8.1.

**APPEAL DISMISSED**

SUSAN M. CHEARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
ROBERT M. MURPHY  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG

JUDGES



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MARY E. LEGNON  
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ  
FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

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**NOTICE OF JUDGMENT AND  
CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **FEBRUARY 25, 2015** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in black ink, appearing to read "Cheryl Q. Landrieu", written over a horizontal line.

CHERYL Q. LANDRIEU  
CLERK OF COURT

**14-KA-538**

**E-NOTIFIED**

TERRY M. BOUDREAUX  
CHARLES M. STEVENSON

**MAILED**

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