STATE OF LOUISIANA

VERSUS

JASMOND L. MARTIN

NO. 16-KA-588

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 13-191, DIVISION "H"
HONORABLE GLENN B. ANSARDI, JUDGE PRESIDING

February 08, 2017

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Susan M. Chehardy,
Marc E. Johnson, and Robert A. Chaisson

AFFIRMED.

SMC
MEJ
RAC

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA
Paul D. Connick, Jr.
Terry M. Boudreaux

COUNSEL FOR DEFENDANT/APPELLANT,
JASMOND L. MARTIN
Jane L. Beebe

CHEHARDY, C.J.

On appeal, defendant's appointed appellate counsel has filed an *Anders* brief on defendant's behalf, asserting that there is no basis for a non-frivolous appeal. For the following reasons, we affirm defendant's convictions and sentences.

Facts and Procedural History

Because defendant entered guilty pleas, the underlying facts were not fully developed in the record but the following facts were gleaned from the testimony presented at the suppression hearing. According to Jefferson Parish Sheriff's officers, on or about January 7, 2013, defendant, along with five other individuals, violated La. R.S. 14:64, when they robbed John Vurttas, Eric Wells, and Charles Smith "while armed with a dangerous weapon, to wit: a firearm."

On February 5, 2013, the Jefferson Parish District Attorney filed a three-count bill of information charging defendant, Jasmond L. Martin, in count one, with armed robbery with a firearm of John Vurttas, in violation of La. R.S. 14:64 and La. R.S. 14:64.3; in count two, with armed robbery with a firearm of Eric Wells, in violation of La. R.S. 14:64 and La. R.S. 14:64.3; and, in count three, with armed robbery with a firearm of Charles Smith, in violation of La. R.S. 14:64 and La. R.S. 14:64.3. Defendant was arraigned on February 6, 2013, and pled not guilty.

On March 5, 2013, defendant filed omnibus motions. On October 29, 2013, the trial court denied defendant's motions to suppress identification, statement, and evidence as to the clothes. On July 21, 2014, defendant filed a motion for discovery.

On August 18, 2014, the State amended all counts in the bill of information to violations of La. R.S. 14:64. On that same date, defendant withdrew his pleas of not guilty and tendered a plea of guilty as charged on all counts. The State agreed not to file a bill alleging that defendant was a multiple offender. Afterward, on that

same date, the trial judge sentenced defendant to imprisonment at hard labor for twenty-five years on each count, without benefit of parole, probation, or suspension of sentence, to run concurrently with each other and any other sentence defendant was serving.

On August 5, 2016, defendant filed an Application for Post-Conviction Relief (APCR) arguing that his sentence was excessive, that his counsel was ineffective, and that his counsel failed to file a motion for appeal. On August 9, 2016, the trial judge construed defendant's pleading as a motion for out-of-time appeal and granted it. This appeal follows.

Anders review

Under the procedure adopted by this Court in *State v. Bradford*, 95-929, pp. 3-4 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11,[1] appointed appellate counsel has filed a brief asserting that she has thoroughly reviewed the trial court record and cannot find any non-frivolous issues to raise on appeal. Accordingly, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), appointed counsel requests permission to withdraw as counsel of record.

In *Anders*, *supra*, the United States Supreme Court stated that appointed appellate counsel may request permission to withdraw if she finds her case to be wholly frivolous after a conscientious examination of it.[2] The request must be accompanied by "a brief referring to anything in the record that might arguably support the appeal," *Anders*, 386 U. S. at 744, 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

[1]In *Bradford*, *supra*, this Court adopted the procedures outlined in *State v. Benjamin*, 573 So.2d 528, 530 (La. App. 4 Cir. 1990), which were sanctioned by the Louisiana Supreme Court in *State v. Mouton*, 95-0981, pp. 1-2 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam).

[2] The United States Supreme Court reiterated *Anders* in *Smith v. Robbins*, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).

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).

In *Jyles*, 96-2669 at 2, 704 So.2d at 241, the Louisiana Supreme Court stated that an *Anders* brief need not tediously catalog every meritless pre-trial motion or objection made at trial with a detailed explanation of why the motions or objections lack merit. The 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." *Id.*

When conducting a review for compliance with *Anders*, an appellate court must conduct an independent review of the record to determine whether the appeal is wholly frivolous. *Bradford*, 95-929 at 4, 676 So.2d at 1110. If, after an independent review, the reviewing court determines there are no non-frivolous issues for appeal, it may grant counsel's motion to withdraw and affirm the defendant's conviction and sentence. However, if the court finds any legal point arguable on the merits, it may either deny the motion and order the court-appointed attorney to file a brief arguing the legal point(s) identified by the court, or grant the motion and appoint substitute appellate counsel. *Id.*

Discussion

Defendant's appellate counsel asserts that, after a detailed review of the record, she could find no non-frivolous issues to raise on appeal. Appellate counsel states that the appellate record reflects that there is no ruling of the trial

court to be challenged. She further states that this was not a *Crosby*[3] plea, and, thus, there were no pre-trial rulings subject to this appeal.

Appellate counsel notes that she considered whether to raise the issue of coercion of the plea but was compelled to conclude that such a claim would be frivolous based on the appellate record presented. She further notes that she also considered the claim of excessiveness of the sentence but felt such a claim would be frivolous. Appellate counsel provides that the trial court reviewed defendant's plea, went through a proper colloquy with him, and informed him of his sentencing exposure in the plea colloquy. Therefore, she submits that, as the appellate record now stands, the three concurrent twenty-five year sentences with credit for time served would not be regarded as constitutionally excessive or made under false representation.

The State responds that the brief filed by appellate counsel shows a conscientious and thorough review of the procedural history of the case with references to the record for convenience of this Court. It further responds that appellate counsel has "cast an advocate's eye" over the record and determined there were no non-frivolous issues to raise on appeal. The State asserts that appellate counsel, therefore, has conformed with and followed the procedures set forth in *Anders* and *Jyles* and should be granted permission to withdraw.

The State indicates that the trial court fully explained to defendant the ramifications of pleading guilty and foregoing a trial. The State also indicates that the trial court clearly explained the charges and the sentences that defendant was facing. It further indicates that defendant entered into a fair plea agreement, which was explained to him by his trial counsel. The State notes that the trial court fully explained defendant's right to appeal and that defendant indicated he understood

[3] *State v. Crosby*, 338 So.2d 584 (La. 1976).

and agreed to these explanations. It further notes that there is nothing else in the record that would suggest a non-frivolous issue to be raised on appeal.

Appellate counsel has filed a motion to withdraw as attorney of record, which states that she has prepared an *Anders* brief and that she has notified defendant of the filing of this motion and of his right to file a *pro se* brief in this appeal. Additionally, this Court sent defendant a letter by certified mail informing him that an *Anders* brief had been filed and that he had until December 7, 2016, to file a *pro se* supplemental brief. As of the date of submission, defendant has not yet filed a brief.

Our independent review of the record supports appellate counsel's assertion that there are no non-frivolous issues to be raised on appeal. The amended bill of information properly charged defendant and plainly and concisely stated the essential facts constituting the offenses charged. It also sufficiently identified defendant and the crimes charged. *See* La. C.Cr.P. arts. 463-466.

Further, as reflected by the minute entry and commitment, defendant appeared at each stage of the proceedings against him, including his arraignment, guilty pleas, and sentencing. As such, we find that there are no appealable issues surrounding defendant's presence.

Further, defendant pled guilty in this case. Generally, when a defendant pleads guilty, he normally waives all non-jurisdictional defects in the proceedings leading up to the guilty plea, and review of such defects either by appeal or post-conviction relief is precluded. *State v. Turner*, 09-1079, pp. 7-8 (La. App. 5 Cir. 7/27/10), 47 So.3d 455, 459. Here, defendant entered unqualified guilty pleas, and therefore, all non-jurisdictional defects are waived.

Further, no rulings were preserved for appeal under the holding in *State v. Crosby*, 338 So.2d 584 (La. 1976). Although it is possible that not all of defendant's pre-trial motions were ruled upon prior to his entering of guilty pleas,

we find that defendant waived those motions by pleading guilty without raising that issue. *See State v. Corzo*, 04-791 (La. App. 5 Cir. 2/15/05), 896 So.2d 1101, 1102.

Also, once a defendant is sentenced, only those guilty pleas that are constitutionally infirm may be withdrawn by appeal or post-conviction relief. A guilty plea is constitutionally infirm if it is not entered freely and voluntarily, if the *Boykin*[4] colloquy is inadequate, or when a defendant is induced to enter the plea by a plea bargain or what he justifiably believes was a plea bargain and that bargain is not kept. *State v. McCoil*, 05-658 (La. App. 5 Cir. 2/27/06), 924 So.2d 1120, 1124.

Importantly, our review of the record reveals no constitutional infirmity or irregularities in defendant's guilty pleas to the amended bill of information. The record shows that defendant was aware he was pleading guilty to three counts of armed robbery. Defendant was also properly advised of his *Boykin* rights. On the waiver of rights form and during the colloquy with the trial court, defendant was advised of his right to a jury trial, his right to confrontation, and his privilege against self-incrimination. On the waiver of rights form, defendant initialed next to each of these rights and signed the form, indicating that he understood he was waiving these rights by pleading guilty. During the colloquy with the trial judge, defendant also indicated that he understood the rights he was waiving by pleading guilty.

Further, during his guilty plea colloquy and in the waiver of rights form, defendant indicated that he had not been forced, coerced, or threatened into entering his guilty pleas and that he was satisfied with the way his attorney and the court handled his case. Defendant was also informed by the waiver of rights form and during the colloquy of his minimum and maximum sentencing exposure and of the actual sentences that would be imposed upon acceptance of his guilty pleas.

[4] *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

After the colloquy with defendant, the trial court accepted defendant's pleas as knowingly, intelligently, freely, and voluntarily made.

With regard to defendant's sentences, they were imposed in accordance with the plea agreement. This Court has consistently recognized that La. C.Cr.P. art. 881.2(A)(2) precludes a defendant from seeking review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. *State v. Moore*, 06-875 (La. App. 5 Cir. 4/11/07), 958 So.2d 36, 46, *writ denied*, 09-2046 (La. 8/18/10), 42 So.3d 394. In addition, defendant's sentences fall within the sentencing range set forth in the statute. *See* La. R.S. 14:64. Also, the plea agreement was beneficial to defendant in that he received three concurrent twenty-five-year sentences when he could have received three ninety-nine-year sentences. Additionally, the State agreed not to multiple bill him as a second felony offender, which would have increased his sentencing exposure.

Because appellate counsel's brief adequately demonstrates by full discussion and analysis that she has reviewed the trial court proceedings and cannot identify any basis for a non-frivolous appeal, and an independent review of the record supports counsel's assertion, we affirm defendant's convictions and sentences.

Errors patent

In accordance with La. C.Cr.P. art. 920, this Court has reviewed the record for errors patent and found none that require correction. *State v. Oliveaux*, 312 So.2d 337 (La. 1975); *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990).

Decree

For the foregoing reasons, we affirm defendant's convictions for armed robbery and concurrent sentences of twenty-five years at hard labor.

AFFIRMED.

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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 2-16.4 AND 2-16.5** THIS DAY **FEBRUARY 8, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

16-KA-588

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE GLENN B. ANSARDI (DISTRICT JUDGE)
TERRY M. BOUDREAUX (APPELLEE)

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