

STATE OF LOUISIANA

NO. 17-KA-197

VERSUS

FIFTH CIRCUIT

MELVIN R. BILLIOT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 11-3801, DIVISION "M"
HONORABLE HENRY G. SULLIVAN, JR., JUDGE PRESIDING

November 15, 2017

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Robert A. Chaisson

**CONVICTIONS AND SENTENCES AFFIRMED; MOTION TO
WITHDRAW GRANTED**

SMC

FHW

RAC

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

COUNSEL FOR DEFENDANT/APPELLANT,
MELVIN R. BILLIOT
Prentice L. White

DEFENDANT/APPELLANT,
MELVIN R. BILLIOT
In Proper Person

CHEHARDY, C.J.

Defendant, Melvin R. Billiot, appeals his convictions and sentences for manslaughter and obstruction of justice. His appointed appellate counsel has filed a brief in conformity with the procedure outlined in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11, asserting that he 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, appointed appellate counsel requests permission to withdraw as counsel of record for defendant. After a thorough review of the record, we agree with counsel's assessment of the case, affirm defendant's convictions and sentences, and grant counsel's motion to withdraw.

PROCEDURAL HISTORY

On October 13, 2011, the Jefferson Parish District Attorney filed a bill of information charging defendant with manslaughter, a violation of La. R.S. 14:31 (count one), and obstruction of justice, a violation of La. R.S. 14:130.1 (count two). Defendant was arraigned the next day and pled not guilty to both counts. After several years of pre-trial motions and continuances, defendant withdrew his pleas of not guilty and pled guilty as charged to both counts on July 13, 2016. The court sentenced him to twenty years imprisonment at hard labor on each count, to be served concurrently. On January 6, 2017, defendant filed an application for post-conviction relief which was construed as a request for an out-of-time appeal and was granted.

FACTS

Because defendant pled guilty, the underlying facts were not developed at a trial. Nevertheless, the State alleged in the bill of information that on or about July

19, 2011, in Jefferson Parish, defendant violated La. R.S. 14:31 in that he unlawfully killed Richard Barrios, and that on July 19, 2011, defendant violated La. R.S. 14:130.1 in that he obstructed justice by tampering with evidence. Also, during his plea colloquy, defendant indicated that by entering his guilty pleas, he was telling the court that he did, in fact, commit the crimes to which he was pleading guilty. With regard to the crime of manslaughter, defendant wrote on the plea form, "I stabbed Richard, but I didn't mean to kill him." And the State offered the following factual basis for the obstruction of justice charge:

Your Honor, if the State had gone to trial in this matter, the State would have proven that on July 19th, in the year 2011, the Defendant, Melvin Billiot, did violate Louisiana Revised Statute 14:130.1 in that he did obstruct justice by tampering with evidence, to wit, the removal of a weapon, as well as blood evidence.

ANDERS BRIEF

Under the procedure adopted by this Court in *Bradford, supra*, appointed appellate counsel has filed a brief asserting that he has thoroughly reviewed the trial court record and cannot find any non-frivolous issues to raise on appeal. Accordingly, pursuant to *Anders, supra* and *Jyles, supra*, appointed counsel requests permission to withdraw as counsel of record.

In *Anders*, 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. 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).

In *Jyles, supra*, 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, supra* 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, he could find no non-frivolous issues to raise on appeal. Counsel states that motions for a preliminary examination and suppression hearing were filed during the discovery process, but there was no information to suggest that the district court erred in finding probable cause or in denying the motion to suppress. He further states that the district court advised defendant of his constitutional rights

relative to criminal proceedings and that defendant willingly agreed to waive those rights before the district court accepted his guilty pleas. Counsel also asserts that the district court did not err in accepting defendant's pleas. He affirms that with defendant admitting to the allegations in the bill of information, it was not manifestly erroneous for the district court to accept defendant's admission and sentence him to twenty years imprisonment. Counsel also notes that defendant was sentenced in accordance with his plea agreement.

The State responds that appellate counsel correctly notes that there are no non-frivolous issues for appellate review. It further 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 the convenience of this Court. The State notes that appellate counsel has "cast an advocate's eye" over the record and determined there were no non-frivolous issues to raise on appeal. As such, it maintains that appellate counsel has conformed with and followed the procedures set forth in *Anders* and *Jyles*, and should be granted permission to withdraw.

The State agrees with appellate counsel that, as shown by the record, the trial court conducted a *Boykin*¹ colloquy with defendant and explained the rights he was waiving by pleading guilty. The record reflects that defendant acknowledged the pleas were in his best interest. The State points out that the trial court fully explained to defendant the time limitations for appeal and post-conviction relief as well as the sentences to be imposed. The State notes that the sentences imposed on defendant were within the statutory limits and that defendant was advised that by pleading guilty, he was giving up his right to appeal. The State also notes that defendant did not reserve any rights to appeal any pre-trial rulings prior to pleading guilty, and therefore, any claims relating to such rulings are now waived. The State also agrees with appellate counsel that defendant voluntarily and intelligently

¹ *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

entered guilty pleas and that there are no non-frivolous issues to be raised on appeal. As such, the State requests that appellate counsel's motion to withdraw be granted.

Our independent review of the record supports appellate counsel's assertion that there are no non-frivolous issues to be raised on appeal.

The 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. 462-466. Further, as reflected in the minute entries, defendant and his counsel appeared at all crucial stages of the proceedings against him, including his arraignment, guilty pleas, and sentencing. Accordingly, we find that there are no appealable issues regarding defendant's presence.

Further, defendant pleaded 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 precludes review of such defects either by appeal or post-conviction relief. *State v. Turner*, 09-1079 (La. App. 5 Cir. 7/27/10), 47 So.3d 455, 459. Here, defendant entered unqualified guilty pleas and preserved no rulings for appeal under *State v. Crosby*, 338 So.2d 584 (La. 1976). Therefore, all non-jurisdictional defects were waived. Although defendant filed several pre-trial motions that do not appear to have been ruled upon, he did not object to the district court's failure to hear or rule on these pre-trial motions prior to his guilty pleas. When a defendant does not object to the trial court's failure to hear or rule on a pre-trial motion prior to pleading guilty, the motion is considered waived. *See State v. Corzo*, 04-791 (La. App. 5 Cir. 2/15/05), 896 So.2d 1101, 1102. Therefore, defendant's pre-trial motions are waived.

Once a defendant is sentenced, only those guilty pleas that are constitutionally infirm may be withdrawn by appeal or post-conviction relief.

State v. McCoil, 05-658 (La. App. 5 Cir. 2/27/06), 924 So.2d 1120, 1124. A guilty plea is constitutionally infirm if it is not entered freely and voluntarily, if the *Boykin* 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. *Id.*

A review of the record reveals no constitutional infirmity in defendant's guilty pleas. The record reflects that defendant was aware he was pleading guilty to the crimes of manslaughter and obstruction of justice. In his waiver of rights form and during his plea colloquy with the trial judge, defendant was advised of his right to a jury trial, his right to confrontation, and his privilege against self-incrimination, as required by *Boykin*. Defendant advised the court that he understood these rights and that he had reviewed the waiver of rights form with his attorneys and signed it, indicating that he understood he was waiving these rights by pleading guilty. He was also advised of and indicated he understood the sentencing ranges and the actual sentences that would be imposed if his guilty pleas were accepted. Furthermore, during the colloquy and on his waiver of rights form, defendant indicated that he had not been forced, coerced, or threatened into entering his guilty pleas. At the conclusion of the colloquy with defendant, the district court accepted defendant's guilty pleas as knowing, intelligent, free, and voluntary.

With regard to defendant's sentences, 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. Washington*, 05-211 (La. App. 5 Cir. 10/6/05), 916 So.2d 1171, 1173. In the instant case, defendant's sentences were imposed in accordance with the terms of the plea agreement set forth in the record at the time of his pleas. Moreover,

defendant's sentences are within the sentencing ranges set forth in the respective statutes. *See* La. R.S. 14:31; La. R.S. 14:130.1.

Because appellate counsel's brief adequately demonstrates by full discussion and analysis that he 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, appellate counsel's motion to withdraw as attorney of record is hereby granted.

In conjunction with appellate counsel's *Anders* brief and his motion to withdraw as counsel of record, defendant was advised of his right to file a *pro se* brief in his appeal. Defendant filed three *pro se* briefs, which we now consider.

PRO SE ASSIGNMENTS OF ERROR

In his three *pro se* briefs, defendant raises arguments relating to the denial of his motion to quash the bill of information based on the State's failure to commence trial within the two-year time limitation set forth in La. C.Cr.P. art. 578(2). And in his third *pro se* brief, defendant raises an additional argument relating to the admissibility of evidence.

As noted above, defendant entered unqualified guilty pleas, thereby waiving any pre-plea non-jurisdictional defects, including rulings on a motion to quash or relating to the admissibility of evidence. *See Crosby, supra*. Accordingly, we decline to consider these arguments as these issues have not been preserved for our review.

ERRORS PATENT

Defendant requests an errors patent review. This Court routinely reviews the record for errors patent in accordance with La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990) regardless of whether defendant makes such a request. Our review reveals no errors patent in this case.

DECREE

For the foregoing reasons, defendant's convictions and sentences are affirmed. Appellate counsel's motion to withdraw as counsel of record for defendant is granted.

**CONVICTIONS AND SENTENCES
AFFIRMED; MOTION TO
WITHDRAW GRANTED**

SUSAN M. CHEHARDY
CHIEF JUDGE

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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 **NOVEMBER 15, 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

17-KA-197

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
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