

STATE OF LOUISIANA

NO. 17-KA-340

VERSUS

FIFTH CIRCUIT

SEAN E. STOCK

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 15-4508, DIVISION "K"
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

December 13, 2017

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Hans J. Liljeberg

AFFIRMED; REMANDED FOR CORRECTION OF
THE UNIFORM COMMITMENT ORDER; MOTION TO
WITHDRAW AS ATTORNEY OF RECORD GRANTED

HJL

SMC

MEJ

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Paul D. Connick, Jr.
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COUNSEL FOR DEFENDANT/APPELLANT,
SEAN E. STOCK

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LILJEBERG, J.

Defendant appeals his habitual offender adjudication and his sentences. For the following reasons, we affirm. We also remand for correction of the uniform commitment order, and we grant appellate counsel’s motion to withdraw as attorney of record.

PROCEDURAL HISTORY

This is defendant’s second appeal.

Defendant, Sean E. Stock, was charged and convicted of simple burglary of an inhabited dwelling in violation of La. R.S. 14:62.2 (count one) and receiving stolen things having a value of over \$1,500.00 in violation of La. R.S. 14:69 (count two). The trial court sentenced defendant to ten years imprisonment at hard labor on each count to be served concurrently. Defendant filed a motion to reconsider his sentences.

Thereafter, the State filed a habitual offender bill of information alleging defendant to be a second felony offender. After a habitual offender hearing, the trial court adjudicated defendant as a second felony offender. It vacated defendant’s original sentence on count one and resentenced him under the habitual offender statute to ten years imprisonment at hard labor, to be served without the benefit of probation or suspension of sentence. Defendant appealed.

In that appeal, this Court found that defendant’s motion to reconsider his original sentences remained pending and remanded the matter for the trial court to consider the motion. *State v. Stock*, 16-552 (La. App. 5 Cir. 2/22/17), 212 So.3d 1268, 1280. Furthermore, it found that the trial court erred in finding defendant to be a second felony offender since the State did not provide sufficient evidence to meet its burden of proving that defendant’s predicate conviction fell within the ten-year “cleansing period” prescribed by La. R.S. 15:529.1(C). *Id.* at 1281. Thus, it vacated defendant’s adjudication and enhanced sentence as a second felony

offender, reinstated defendant's original sentence on count one, and remanded the matter for further proceedings as warranted. *Stock*, 212 So.3d at 1281-1282.

On remand, the trial court held a habitual offender hearing on April 21, 2017. At the start of the hearing, the trial court considered defendant's outstanding motion to reconsider his original sentences, as directed by this Court's opinion, and denied the motion. Also, after the State presented evidence, the trial court found defendant to be a second felony offender, vacated his original sentence on count one, and sentenced defendant as a habitual offender to ten years at hard labor without benefit of probation or suspension of sentence. It also denied defendant's oral motion to reconsider his habitual offender sentence. Defendant appeals.

FACTS

The underlying facts of the case are not relevant to defendant's second appeal. Nevertheless, the full narrative can be found in this Court's opinion regarding defendant's first appeal. *See Stock*, 212 So.3d at 1272-74.

ANDERS BRIEF

Under the procedure adopted by this Court in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11,¹ 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 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 he finds his case to be wholly frivolous after a conscientious examination of it. The request must be

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 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam).

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*, 704 So.2d at 241, the Louisiana Supreme Court stated that an *Anders* brief need not tediously catalog every meritless pretrial motion or objection made at trial with a detailed explanation of why the motions or objections lack merit. The 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*, 676 So.2d at 1110.

DISCUSSION

In this appeal, defendant’s appellate counsel asserts that after a detailed review of the record, he could find no non-frivolous issues to raise on appeal. He states that on remand, the trial court denied defendant’s motion to reconsider his original sentences, and the State proved that defendant was released from state supervision on the predicate offense within ten years of his arrest and conviction of simple burglary of an inhabited dwelling. Appellate counsel avers that defense counsel engaged in a colloquy with defendant, wherein defendant did not indicate

any opposition to the accuracy or legitimacy of the State's evidence of his release date. He contends that an examination of the record reveals that the trial court thoroughly addressed defense counsel's motions and objections prior to and during the habitual offender hearing. Appellate counsel has filed a motion to withdraw as attorney of record.²

The State agrees with appellate counsel that this case presents no non-frivolous issues for appellate review and that appellate counsel's motion to withdraw should be granted.

It is noted that defendant's convictions were affirmed in the first appeal, and this second appeal is limited to the matters remanded to the trial court. *See State v. Evans*, 09-477 (La. App. 5 Cir. 12/29/09), 30 So.3d 958, 969, *writ denied*, 10-0363 (La. 3/25/11), 61 So.3d 653. In compliance with this Court's order, on remand the trial court ruled on defendant's motion to reconsider his original sentences, and it held a habitual offender hearing at which the State presented evidence of defendant's discharge date from state custody on his sentence for his predicate conviction. The trial court also vacated defendant's original sentence on count one and imposed a habitual offender sentence of 10 years without probation or suspension of sentence.

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

In order to prove that a defendant is a habitual offender, the State must establish by competent evidence the defendant's prior felony convictions and that defendant is the same person who was convicted of the prior felonies. *Stock*, 212 So.3d at 1278-79. In addition, when a defendant's habitual offender status is based

² In his motion to withdraw as attorney of record, appellate counsel indicates he has notified defendant of the filing of the motion to withdraw and has advised defendant 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 August 19, 2017, to file a *pro se* supplemental brief. Defendant has not filed a *pro se* brief in this matter.

on guilty pleas in the predicate convictions, the State has the burden of proving the defendant was represented by counsel when the guilty pleas were taken. *Id.* See also *State v. Shelton*, 621 So.2d 769, 779 (La. 1993).

The record shows that defendant was present at his April 21, 2017 habitual offender adjudication and sentencing and was represented by counsel. At this hearing, the State reoffered certified copies of the December 13, 2004 guilty plea transcript, bill of information, minute entry, and guilty plea form, bearing case number 04-6312, which reflect that on that date, defendant was represented by counsel and entered a plea of guilty to the offense of carjacking and was sentenced to five years at hard labor without benefit of parole, probation, or suspension of sentence. The State also reoffered a fingerprint card taken on August 26, 2016, a fingerprint card taken on September 4, 2004, and a DVD interview of defendant which was admitted at the trial of defendant's underlying convictions, to show that defendant was the same individual convicted of the predicate offense alleged in the habitual offender bill of information.

The State then offered a stipulation that if probation officer Gregory Wax were called to testify, he would testify as to the authenticity of defendant's probation and parole records which showed that defendant was released from supervision on March 29, 2010.³ Defendant stipulated to the authenticity of the probation and parole documents. The trial court then found defendant to be a second felony offender. The record establishes that the State presented competent evidence of defendant's status as a second felony offender. Thus, there are no non-frivolous issues which would support an appeal of his adjudication as a second felony offender.

³ The underlying offense occurred on June 20, 2015. Thus, defendant's predicate conviction of carjacking falls within the "cleansing period" prescribed by La. R.S. 15:529.1(C).

As to defendant's original sentences, defendant received sentences of ten years imprisonment at hard labor on each count to run concurrently. The original sentence on count one was vacated following his adjudication as a habitual offender, but the sentence on count two remains. At the time of the offense, defendant's conviction on count two, receiving stolen things having a value of \$1,500.00 or more, was punishable by imprisonment, with or without hard labor, for not more than ten years, or by a fine of not more than three thousand dollars, or both. *See* La. R.S. 14:69(B)(1). Therefore, defendant's ten-year sentence at hard labor fell within the sentencing range and does not present any non-frivolous issues which would support an appeal in this case.

Additionally, defendant's enhanced sentence falls within the sentencing range as set forth in La. R.S. 15:529.1 and La. R.S. 14:62.2. At the time of the offense, defendant's underlying conviction on count one, simple burglary of an inhabited dwelling, was punishable at hard labor for not less than one year, without benefit of parole, probation, or suspension of sentence nor more than twelve years. *See* La. R.S. 14:62.2(B). At the time of the offense, La. R.S. 15:529.1(A)(1) provided that:

If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.

Thus, defendant faced a sentencing range of six to twenty-four years imprisonment. Defendant's enhanced sentence of ten years imprisonment is within the statutory range and does not present any non-frivolous issues which would support an appeal in this case.

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, we affirm defendant's habitual offender adjudication and his sentence. We also grant appellate counsel's motion to withdraw as attorney of record.

ERRORS PATENT

Defendant requests an error patent review. In this second appeal, defendant is limited to an error patent review of the proceedings on remand. *See Evans*, 30 So.3d at 969. Our review reveals errors in the uniform commitment order ("UCO"), which must be corrected by the trial court.

The trial judge sentenced defendant as a habitual offender to ten years at hard labor without the benefit of probation or suspension of sentence, but she was silent as to the concurrent or consecutive nature of defendant's habitual offender sentence with any other sentence. The UCO indicates that defendant's enhanced sentence shall be concurrent with any or every sentence the offender is now serving. The transcript prevails. *State v. Lynch*, 441 So.2d 732 (La. 1983).

Also, the UCO incorrectly indicates that April 4, 2016, was the adjudication date, and August 26, 2016, was the date of sentencing. Defendant was found guilty by a jury of the two underlying convictions on March 22, 2016, and he was adjudicated as a habitual offender on April 21, 2017. Sentencing on the underlying convictions was held on April 4, 2016, and defendant was sentenced as a habitual offender on April 21, 2017.

This Court has previously remanded cases for correction of the UCO in its error patent review. *State v. Lyons*, 13-564 (La. App. 5 Cir. 1/31/14), 134 So.3d 36, 41, *writ denied*, 14-0481 (La. 11/7/14), 152 So.3d 170. Accordingly, we remand this matter and order the trial court to correct the UCO by amending the habitual offender adjudication and sentencing dates for each count and removing the indication that defendant's enhanced sentence be served concurrently with any or every sentence defendant is now serving. We also direct the Clerk of Court for

the 24th Judicial District Court to transmit the original of the corrected UCO to the appropriate authorities in accordance with La. C.Cr.P. art. 892(B)(2) and the Department of Corrections' legal department. *See State v. Suggs*, 11-64 (La. App. 5 Cir. 12/13/11), 81 So.3d 815, 830, *writ denied*, 12-0054 (La. 4/20/12), 85 So.3d 1269.

DECREE

For the foregoing reasons, we affirm defendant's habitual offender adjudication and his sentences. We also remand to the trial court for correction of the Uniform Commitment Order. Further, we grant appellate counsel's Motion to Withdraw as Attorney of Record.

**AFFIRMED; REMANDED FOR CORRECTION OF THE
UNIFORM COMMITMENT ORDER; MOTION TO
WITHDRAW AS ATTORNEY OF RECORD GRANTED.**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
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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 **DECEMBER 13, 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-340

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE)
TERRY M. BOUDREAUX (APPELLEE) PRENTICE L. WHITE (APPELLANT)

MAILED

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