

STATE OF LOUISIANA

NO. 17-KA-346

VERSUS

FIFTH CIRCUIT

JONAH D. BROWN

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 14-2187, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

December 13, 2017

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Robert M. Murphy, and Stephen J. Windhorst

CONVICTION AFFIRMED;
SENTENCE AMENDED IN PART,
VACATED AND REMANDED IN PART,
MOTION TO WITHDRAW GRANTED

SJW
FHW
RMM

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Paul D. Connick, Jr.
Terry M. Boudreaux

COUNSEL FOR DEFENDANT/APPELLANT,
JONAH D. BROWN

Bertha M. Hillman

WINDHORST, J.

In this appeal, defense counsel for Defendant, Jonah Brown, concludes that there are no non-frivolous issues for review, and requests permission to withdraw. Defense counsel also requests that this Court conduct an errors patent review. For the following reasons, we affirm Mr. Brown's convictions and sentences and grant defense counsel's motion to withdraw.

Factual and Procedural History

Because Mr. Brown pled guilty, the facts of this case were not fully developed at the trial court. However, the record reflects that on or between March 7, 2014 and April 29, 2014, Mr. Brown and another codefendant conspired to commit armed robberies by using "ghost" phone numbers to place requests for cab service and then rob the drivers. The record also reflects that on or about April 29, 2014, Mr. Brown killed Blake Helmer during an attempted armed robbery.

Mr. Brown was ultimately charged with the second degree murder of Blake Helmer. The State subsequently filed a superseding indictment, charging Mr. Brown with both the second degree murder of Mr. Helmer, as well as conspiracy to commit armed robbery and conspiracy to obstruct justice. Following the disposition of several pre-trial motions, the State amended the first count of the indictment to manslaughter, and Mr. Brown withdrew his not guilty pleas. Ultimately, Mr. Brown pled guilty to the amended charge of manslaughter, conspiracy to commit armed robbery, and conspiracy to obstruct justice. The trial court sentenced Mr. Brown to forty years imprisonment at hard labor without the benefit of probation or suspension of sentence on count one, forty years imprisonment at hard labor without the benefit of probation or suspension of sentence on count two, and twenty years imprisonment at hard labor on count three, to run concurrently with one another.

Under the procedure set forth in State v. Benjamin, 573 So.2d 528, 530 (La. App. 4 Cir. 1990), defendant's appointed appellate counsel has filed an Anders brief 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, 242 (*per curiam*), asserting that she has thoroughly reviewed the trial court record and could find no non-frivolous issues to raise on appeal. Accordingly, 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 or she finds the case to be wholly frivolous after a conscientious examination of it. In State v. Jyles, 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." Jyles, 704 So.2d at 241.

An appellate court must conduct an independent review of the trial court record to determine whether the appeal is wholly frivolous. 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 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. State v. Dufrene, 07-823 (La. App. 5 Cir. 2/19/08), 980 So.2d 31, 33.

Mr. Brown's appellate counsel asserts that after a detailed review of the record, she could find no non-frivolous issues to raise on appeal. 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 in this case properly charged Mr. Brown and presents no non-frivolous issues supporting an appeal. As required, it plainly and concisely states the essential facts constituting the offense charged. It also sufficiently identifies defendant and the crimes charged. See La. C.Cr.P. arts. 464-466.

Mr. Brown filed several pre-trial motions, and a hearing was held on his motion to suppress his statement, which was denied. Although the remainder of Mr. Brown's omnibus pretrial motions were not heard, when a defendant fails to object to the trial court's failure to hear or rule on a pre-trial motion before pleading guilty, the motion is considered waived. See State v. Corzo, 04-791 p. 2 (La. App. 5 Cir. 2/15/05), 896 So.2d 1101, 1102. Here, because Mr. Brown did not object to the trial court's failure to hear or rule on his pre-trial motions, any objection is waived.

As reflected by the minute entries and commitment, Mr. Brown appeared at each stage of the proceedings against him, including his arraignment, his plea, and his sentencing. Mr. Brown's presence does not present any issue that would support an appeal. Accordingly, we affirm Mr. Brown's convictions and sentences, and grant defense counsel's motion to withdraw.

Errors Patent Review

Mr. Brown requests an errors patent review, which this Court routinely conducts in accordance with the mandates of 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. The following errors require corrective action.

First, the trial judge erred in sentencing Mr. Brown with regard to his conviction for manslaughter and for conspiracy to obstruct justice. With regard to his sentence for manslaughter, the record reflects that the trial court sentenced Mr. Brown to forty years at hard labor without the benefit of probation or suspension of

sentence. Although this sentence is within the range prescribed by La. R.S. 14:31, La. R.S. 14:31 does not reflect that a defendant may be sentenced for manslaughter with a restriction of benefits. In addition, with regard to Mr. Brown's conviction for conspiracy to obstruct justice, the trial court imposed an illegally harsh sentence. Under La. R.S. 14:26 and La. R.S. 14:130.1, a defendant's maximum sentence for conspiracy to obstruct justice is ten years at hard labor. Accordingly, under La. C.Cr.P. art. 882, we amend Mr. Brown's sentences to remove the restriction on benefits for his manslaughter conviction. We further order the Clerk of Court for the 24th Judicial District Court to transmit notice of this amended sentence to the appropriate authorities pursuant to La. C.Cr.P. art. 892(B)(2) and the Department of Corrections' legal department.

With regard to Mr. Brown's illegally harsh sentence for conspiracy to obstruct justice, we vacate his current sentence and remand the matter for resentencing in accordance with this opinion.

In addition, because there are inconsistencies between the transcript and the uniform commitment, the uniform commitment is defective in three respects. First, it incorrectly lists the statute for conspiracy to obstruct justice as "14:26:30.1" rather than "La. R.S. 14:26 and La. R.S. 14:130.1." Second, the uniform commitment lists the dates of the offense with regard to the conspiracy to obstruct justice as April 20, 2014 and July 30, 2014, rather than "on or between April 30, 2014 and July 30, 2014" as reflected in the superseding indictment. Finally, the uniform commitment should reflect that Mr. Brown was sentenced to forty years without the benefit of parole, probation or suspension of sentence specifically as to count two. Accordingly, we remand this matter for correction in accordance with this opinion.

Conclusion

For the foregoing reasons, Mr. Brown's convictions are affirmed, his sentences are amended in part and vacated in part, and this matter is remanded for further proceedings consistent with this opinion. In addition, defense counsel's motion to withdraw is granted.

**CONVICTION AFFIRMED; SENTENCE AMENDED
IN PART, VACATED AND REMANDED IN PART,
MOTION TO WITHDRAW 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-346

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE STEPHEN D. ENRIGHT, JR. (DISTRICT JUDGE)

BERTHA M. HILLMAN (APPELLANT)

TERRY M. BOUDREAUX (APPELLEE)

MAILED

HON. PAUL D. CONNICK, JR. (APPELLEE)

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