

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1996

STATE OF LOUISIANA

VERSUS

JEWARD C. MILLER, JR.

Judgment Rendered: June 8, 2012

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 489952

The Honorable Allison H. Penzato, Judge Presiding

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Bertha M. Hillman
Thibodaux, La.

Counsel for Defendant/Appellant,
Jeward C. Miller, Jr.

Walter P. Reed
District Attorney
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Kathryn W. Landry
Baton Rouge, La.

Counsel for Appellee,
State of Louisiana

* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

Handwritten notes:
R.H. P. King
R.H. King
T.M.H.

CARTER, C.J.

The defendant, Jeward C. Miller, Jr., was charged by bill of information with armed robbery, a violation of Louisiana Revised Statutes section 14:64. The defendant initially entered a plea of not guilty, but he later withdrew this plea and pled guilty pursuant to a plea agreement with the state. Under this agreement, the defendant entered a plea of guilty as charged and was sentenced to thirty years at hard labor, without benefit of probation, parole, or suspension of sentence. The defendant filed a motion for reconsideration of sentence, which was denied. For the following reasons, we affirm the defendant's conviction and sentence, and we grant defense counsel's motion to withdraw.

FACTS

The facts surrounding the defendant's instant offense were not developed in this case because the defendant pled guilty to the charged offense, and defense counsel stipulated that a factual basis existed for the guilty plea. The bill of information alleges that on April 25, 2010, the defendant and four other individuals committed the offense of armed robbery against Megan Macshane while armed with a sawed-off shotgun.

ISSUE PRESENTED

The defense brief contains no assignments of error and sets forth that it is filed to conform with *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So. 2d 241, 241-42 (per curiam), wherein the Louisiana Supreme Court approved the procedures outlined in *State v. Benjamin*, 573 So. 2d 528 (La. App. 4th Cir. 1990). *Benjamin* set forth a procedure to comply with *Anders v. California*, 386 U.S. 738, 744 (1967), in which the United States Supreme

Court discussed how appellate counsel should proceed when, upon a conscientious review of a case, counsel finds an appeal would be wholly frivolous.

Here, defense counsel reviewed the procedural history of the case in her brief. She set forth that after a conscientious and thorough review of the record in this case, she has found no non-frivolous issues to present on appeal. Defense counsel further notes that under Louisiana Code of Criminal Procedure article 881.2A(2), a defendant cannot appeal a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. In the instant case, the defendant's plea agreement was set forth in the record at the time of his plea. Accordingly, defense counsel has filed a motion to withdraw, therein asserting that the defendant was informed of his right to file his own brief in this matter. The defendant has not filed a *pro se* brief with this court.

We have conducted an independent review of the entire record in this case and found no reversible errors under Louisiana Code of Criminal Procedure article 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably would support this appeal. Accordingly, the defendant's conviction and sentence are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is granted.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.