

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0695

STATE OF LOUISIANA

VERSUS

DANIEL HINTON

Judgment rendered December 27, 2013.

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 11-12-0079
Honorable Richard D. Anderson, Judge

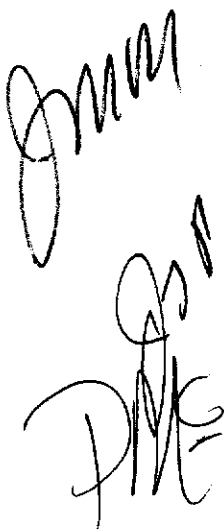
HON. HILLAR C. MOORE, III
DISTRICT ATTORNEY
JOHN W. RUSSELL, IV
MONISA L. THOMPSON
ASSISTANT DISTRICT ATTORNEYS
BATON ROUGE, LA

ATTORNEYS FOR
STATE OF LOUISIANA

LIEU T. VO CLARK
MANDEVILLE, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
DANIEL HINTON

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.



PETTIGREW, J.

Defendant, Daniel Hinton, was charged by bill of information with aggravated battery, a violation of La. R.S. 14:34 (count one), and armed robbery, a violation of La. R.S. 14:64 (count two). He initially pled not guilty. After the State dismissed the charge on count two, defendant withdrew his former plea of not guilty and entered a plea of guilty to the charge on count one. The trial court sentenced him to five years at hard labor. Defendant filed a motion to reconsider sentence, but that motion was denied by the trial court. For the following reasons, we affirm defendant's conviction and sentence. Additionally, we grant defense counsel's motion to withdraw.

FACTS

Because defendant pled guilty, the facts of his offense were not developed at trial. At defendant's plea and sentencing hearing, he stipulated to the following circumstances as a factual basis for his offense.

On or about August 21, 2012, at approximately 8:30 p.m., deputies with the East Baton Rouge Parish Sheriff's Office were dispatched to Skysail Avenue, in the Gardere area in reference to multiple subjects engaged in a fight. Upon their arrival, the officers made contact with the victim, who advised them that defendant "jumped" him while armed with a knife and accompanied by a cohort who was armed with a stick. Defendant and his accomplice were able to take some tennis shoes, a cell phone, and some cash from the victim's person. At some point, however, the victim was able to gain an advantage in the physical altercation, causing the two attackers to leave the area. Subsequent investigation revealed that there had been prior issues between defendant and the victim, but the investigating detective expressed doubt about whether anything was actually taken from the victim. However, defendant did admit on audiotape that he did "jump" the victim while armed with a knife.

ISSUES 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 (per curiam), wherein the Louisiana Supreme Court approved the procedures outlined in **State v.**

Benjamin, 573 So.2d 528 (La. App. 4 Cir. 1990). **Benjamin** set forth a procedure to comply with **Anders v. California**, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), in which the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel finds an appeal would be wholly frivolous. **Benjamin** has repeatedly been cited with approval by the Louisiana Supreme Court. See **Jyles**, 96-2669 at 1, 704 So.2d at 241; **State v. Mouton**, 95-0981, pp. 1-2 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam); **State v. Royals**, 600 So.2d 653 (La. 1992).

In the instant case, defense counsel reviewed the procedural history of the case in her brief. She set forth that, after a review of the record in this case, she has found no non-frivolous issues to present on appeal. Defense counsel specifically notes that she has reviewed the transcript of defendant's guilty plea and found no infirmities in the colloquy. Further, she notes that although defendant did file a motion to reconsider sentence, the trial court sentenced defendant in accordance with an oral sentencing agreement between the State and defense that included an agreement not to bill defendant as a third-felony habitual offender.¹ Accordingly, defense counsel requested that she be relieved from further briefing, and she has filed a motion to withdraw. In her motion to withdraw, defense counsel asserts that defendant was informed of his right to file his own brief in this matter. Defendant has not filed a pro se brief with this court.

This court has performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcript in the appeal record. Our independent review reveals no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, defendant's conviction and sentence for aggravated battery are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending disposition of this matter, is granted.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.

¹ Although defendant's prior offenses are not detailed in the record, the State represented at defendant's guilty plea and sentencing hearing that they were crimes of violence that, in connection with the instant offense, would make defendant eligible for the mandatory habitual offender sentence of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence.