NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 1767

STATE OF LOUISIANA

VERSUS

JOSEPH COLLINS

Judgment Rendered: APR - 9 2014

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court Number 08-09-0883

Honorable Donald Johnson, Judge Presiding

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Hillar C. Moore, III **Monisa L. Thompson** **Baton Rouge, LA**	**Counsel for Appellee,** **State of Louisiana**
Frederick Kroenke **Baton Rouge, LA**	**Counsel for Defendant/Appellant,** **Joseph Collins**
Joseph L. Collins	**In Proper Person**

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BEFORE: WHIPPLE, C.J., WELCH AND CRAIN, JJ.

WHIPPLE, C.J.

Defendant, Joseph Collins, was charged by bill of information with simple burglary, a violation of LSA-R.S. 14:62. He initially pled not guilty. Defendant later withdrew his former plea of not guilty and pled guilty as charged. The trial court sentenced him to three years at hard labor, to be served concurrently with any other sentences.[1] Defendant now appeals, alleging no counseled and two pro se assignments of error. Defense counsel has also filed a motion to withdraw. For the following reasons, we affirm defendant's conviction and sentence. We also grant defense counsel's motion to withdraw.

FACTS

Because defendant pled guilty, the facts of his offense were not developed at trial. The bill of information alleged that on July 26, 2008, defendant committed the simple burglary of a business belonging to another. At the time he pled guilty, the state and defense stipulated to a factual basis for his plea. The state informed the trial court that defendant was the former employee of the victim and that he broke into the victim's place of business and stole a large sum of cash.

PRO SE BRIEF

Defendant filed a pro se brief alleging two related assignments of error regarding a pro se motion to quash that he filed with the trial court. In the first pro se assignment of error, defendant argues that the trial court erred in denying his motion to quash without a hearing. In his second pro se assignment of error, defendant alleges that the trial court erred in failing to grant his motion to quash based on the expiration of the two-year time limit for commencement of trial.

The bill of information charging defendant with simple burglary was filed on August 26, 2009. Defendant filed his pro se motion to quash on October 7, 2011.

[1]Defendant pled guilty to three other offenses in East Baton Rouge Parish docket number 04-09-0049. Those convictions and sentences are addressed in defendant's other appeal before this court. See State v. Collins, 2013-1768 (La. App. 1st Cir. __/__/14), ___ So.3d ___, also rendered this date.

In the time between the filing of defendant's bill of information and the filing of his pro se motion to quash, defense counsel moved for, and was granted, at least seven continuances. The last such continuance was requested and granted on April 25, 2011. The trial court denied defendant's pro se motion to quash on October 18, 2011.

As a general rule, no trial shall be commenced in non-capital felony cases after two years from the date of institution of the prosecution. See LSA-C.Cr.P. art. 578(A)(2). Simple burglary is a non-capital felony. See LSA-R.S. 14:62(B). The date of institution of the prosecution is the date when the bill of information is filed. See State v. Gladden, 260 La. 735, 742-43, 257 So. 2d 388, 391 (1972), cert. denied, 410 U.S. 920, 93 S. Ct. 1377, 35 L. Ed. 2d 581 (1973). When a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by Article 578 shall be suspended until the ruling of the court thereon; but in no case shall the state have less than one year after the ruling to commence the trial. LSA-C.Cr.P. art. 580(A). A motion to continue filed by a defendant is a preliminary plea under LSA-C.Cr.P. art. 580 that suspends the running of the time limitations established by LSA-C.Cr.P. art. 578. See State v. Marshall, 99-2884 (La. App. 1st Cir. 11/8/00), 808 So. 2d 376, 379.

With regard to defendant's first pro se assignment of error, it appears from the record that the trial court did not deny the pro se motion to quash without a hearing. Instead, the record clearly contains a minute entry from October 18, 2011 – the date of the denial – wherein defendant, his counsel, and the state were all present in open court. Defendant represents in his brief that his counsel declined to argue the pro se motion on his behalf because of defendant's "recent complaint to the Louisiana Attorney Disciplinary Board" about him. Defendant also represents that the trial court restricted him from addressing the court "concerning his motion or any other matter." Because the proceedings from that day were not transcribed

in the record, we cannot assess the veracity of defendant's claim that his motion to quash was denied without a hearing.

Nonetheless, even if it is true that the trial court denied defendant's motion to quash without a hearing, we would conclude that it clearly had a legal basis for doing so. At the time defendant filed his pro se motion to quash on October 7, 2011, the time limitation for commencement of his trial had not yet expired. Defendant received numerous continuances, including most recently on April 25, 2011. Due to this most recent "preliminary plea" apparent in the record, the state had one year from that date to commence his trial.[2] See LSA-C.Cr.P. art. 580(A). Therefore, when defendant filed his October 7, 2011 motion to quash based on time limitations, that motion had no legal basis. The trial court could have discerned that fact from a mere examination of the minute entries.

These assignments of error are without merit.

ANDERS BRIEF

The counseled 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. 4th 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 found the appeal would be wholly frivolous. Benjamin has repeatedly been cited with approval by the Louisiana Supreme Court. See Jyles, 704 So. 2d at 241; State v. Mouton, 95-0981 (La. 4/28/95), 653 So. 2d 1176, 1177 (per curiam); State v. Royals, 600 So. 2d 653 (La. 1992).

[2]We note that defendant did not actually plead guilty until October 29, 2012. Defendant was granted several more continuances before the time that the state was obligated to commence trial, each of which further extended the allowable time for commencement. We also note that defendant received new counsel on November 22, 2011.

In the instant case, defense counsel stated in his brief that he reviewed the procedural history of the case. He set forth that, after a review of the record in this case, he has found no non-frivolous issues to present on appeal. He noted specifically that, under LSA-C.Cr.P. art. 881.2(A)(2), a defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement that was set forth in the record at the time of the plea, as happened in the instant case. Accordingly, defense counsel requested that he be relieved from further briefing, and he has filed a motion to withdraw.

This Court has conducted an independent review of the entire record in this case, and we have found no reversible errors under LSA-C.Cr.P. art. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. Therefore, defendant's conviction and sentence are hereby affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.