

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2015 KA 0005**

**STATE OF LOUISIANA**

**VERSUS**

**ROGER MAGEE**

*WBM  
PMC  
TMT*

**Judgment Rendered: JUN 05 2015**

**Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of Washington, State of Louisiana  
Trial Court Number 14 CR9 124962**

**Honorable Reginald T. Badeaux, III, Judge Presiding**

**\*\*\*\*\***

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**\*\*\*\*\***

**BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.**

## **WHIPPLE, C.J.**

Defendant, Roger Magee, was charged by bill of information with two counts of failure to pay a child support obligation, violations of LSA-R.S. 14:75(C)(5). He initially pled not guilty, but later withdrew those pleas and pled guilty as charged on both counts. The trial court sentenced defendant on each count to two years imprisonment at hard labor, suspended, with five years of supervised probation. These sentences were imposed as concurrent sentences, and defendant was ordered to pay a fine and restitution for his child support arrearages. For the following reasons, we affirm defendant's convictions and sentences, and we remand for correction of the minute entry from defendant's sentencing. We also grant defense counsel's motion to withdraw.

### **FACTS**

Because defendant pled guilty, the facts of his offenses were not developed at a trial. The bill of information indicates that defendant was charged with two counts of failure to pay a child support obligation (violations of the "Deadbeat Parents Punishment Act of Louisiana") in excess of fifteen thousand dollars, and where the obligation has been outstanding for at least one year. These violations occurred between December 1, 2012 and March 31, 2014.

### **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. 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 finds an 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).

Defense counsel has reviewed the procedural history of the case in her brief. She sets forth that after a review of the record in this case, she has found no non-frivolous errors to present on appeal. She notes that there were no pretrial rulings in this case and that defendant was advised of his constitutional rights at the time of his plea. Accordingly, defense counsel requests that this court conduct a review for error under LSA-C.Cr.P. art. 920 and if the court finds no such errors, that defense counsel's motion to withdraw be granted and that she be relieved from further briefing.

In this case, defendant pled guilty. This court has conducted an independent review of the entire record in this matter. We recognize that our review of the guilty-plea colloquy is subject to the restraints of State v. Collins, 2014-1461 (La. 2/27/15), 159 So. 3d 1040 (per curiam) and State v. Guzman, 99-1528 (La. 5/16/00), 769 So. 2d 1158, 1162. Our independent review reveals no non-frivolous issues or trial court rulings that arguably support defendant's appeal.

In our review for error under LSA-C.Cr.P. art. 920(2), we note only two minor errors, neither of which requires reversal. First, the minute entry from defendant's sentencing fails to reflect that defendant was sentenced on each of his pleas. Rather, the minute entry makes it appear as though defendant has received only one sentence. However, the transcript makes it clear that defendant was sentenced on both counts. Second, the minute entry does not contain the trial court's instruction that defendant's sentences run concurrently. Nevertheless, this statement also appears in the transcript of defendant's sentencing. Where there is a discrepancy between a minute entry and a transcript, the transcript prevails. State v. Lynch, 441 So. 2d 732, 734 (La. 1983).

Accordingly, defendant's convictions and sentences are affirmed. The matter is remanded solely for the trial court to correct the minute entries from defendant's sentencing. Defense counsel's motion to withdraw, which has been held in abeyance pending disposition of this matter, is hereby granted.

**CONVICTIONS AND SENTENCES AFFIRMED; REMANDED FOR CORRECTION OF MINUTES; MOTION TO WITHDRAW GRANTED.**