**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 1070

STATE OF LOUISIANA

VERSUS

HECTOR J. PEREZ

Judgment Rendered: DEC 2 3 2015

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 472,557, SECTION "E"

HONORABLE WILLIAM BURRIS, JUDGE

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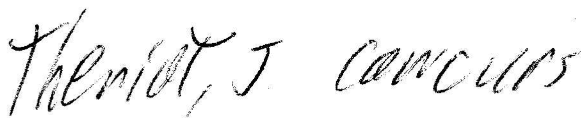

**BEFORE: McDONALD, McCLENDON, and THERIOT, JJ.**

**McDONALD, J.**

The defendant, Hector J. Perez, was charged by grand jury indictment with aggravated rape of a victim under the age of thirteen years, a violation of LSA-R.S. 14:42. He pled not guilty and, following a jury trial, was found guilty as charged. He filed a motion for post-verdict judgment of acquittal, which was denied. The defendant was sentenced to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. He then filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating three counseled assignments of error and twelve pro se assignments of error. We affirm the conviction and sentence.

**FACTS**

In 2002, Angela Perez became involved in a relationship with the defendant. They were living in Texas, and Angela had a five-year-old daughter, A.W.,[1] from a previous relationship. In 2003, Angela and the defendant had their own daughter and then married. The defendant, a roofer, went alone to Florida and then to Louisiana to find work. Around 2006, Angela and her daughters left Texas to join the defendant, who had settled in Bush, Louisiana. The family lived in a camper, owned by Gerald Spell, who defendant met in 2005 and with whom he did roofing work. The family later moved out of the camper and into a trailer on Home Lane, also in Bush. The family later moved back to a trailer on Mr. Spell's property.

In 2009, A.W. was in the fifth grade at Fifth Ward Junior High School in Bush when a school counselor showed her class a video on "good touches" and "bad touches." After watching the video, A.W. told the counselor that the defendant, her stepfather, had been inappropriately touching her. Authorities were brought into the matter. A.W. was taken to the Children's Advocacy Center (CAC) in Covington, where she disclosed in an interview that the defendant had been sexually abusing her for several years, beginning when she was about six years old and lived with her mother and the defendant in Texas. A.W. disclosed to Jo Beth Rickels, the CAC forensic interviewer, that on many occasions the defendant touched her breasts, buttocks, and vagina, and engaged in oral sexual intercourse with her; the defendant also made A.W.

[1] The victim is referenced by her initials. See LSA-R.S. 46:1844(W).

put her hand on his penis on several occasions. The CAC interview was played for the jury.

The defendant testified at trial. He denied all of the allegations and stated that he never inappropriately touched A.W.

## COUNSELED ASSIGNMENT OF ERROR NUMBER ONE

In his first counseled assignment of error, the defendant argues the trial court erred in allowing expert testimony to invade the jury's province on questions of A.W.'s veracity and reliability. The three experts who testified at trial were Julie Kringas, qualified as an expert in child sexual abuse counseling; Jo Beth Rickels, qualified as an expert in forensic interviewing of children; and Dr. Yameika Head, qualified as an expert in the field of child abuse pediatrics.

The defendant argues that Ms. Kringas should not have talked about grooming[2] because there was no evidence of grooming; further her testimony that one of A.W.'s statements was believed over another statement was an "invasion of the jury's decision." The defendant argues that Ms. Rickels testified about the CAC process and commented on how the statements given in a CAC interview were of better quality or veracity. Finally, according to the defendant, Dr. Head, who was qualified only as an expert in forensic pediatrics, "went far beyond testifying about her finding that no evidence of sexual assault was present and the reasons that forensic physical evidence might not have been found"; she also gave psychological testimony about grooming and delayed disclosure, without a factual basis for such testimony.

Defense counsel did not request a **Daubert** hearing and no such pretrial hearing was held regarding the three experts that testified.[3] At trial, defense counsel did not object to the expertise of these three experts or to their testimony. Defense counsel's single objection was a hearsay objection during Ms. Kringas's testimony, who testified

[2] Ms. Kringas testified that "grooming" is "when a perpetrator manipulates his behavior to engage a child to gain their (sic) trust for the purpose of eventually abusing them."

[3] See **Daubert v. Merrell Dow Pharm., Inc.**, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

that, when she first introduced herself to Angela, A.W.'s mother, Angela "got really embarrassed and said that [A.W.] -- ." At this point defense counsel objected, and the trial court instructed Ms. Kringas not to repeat what Angela had said. This objection had nothing to do with expert testimony or with an expert infringing on the fact finding process.

Further at trial, defense counsel did not traverse the expert voir dire of each of the three experts but rather conceded to the prosecutor's offer of each expert's area of expertise and the trial court's qualification of the experts. After the prosecutor questioned each expert during voir dire and turned over questioning for cross-examination on the predicate, defense counsel stated either, "No questions" or "No objection." Moreover, regarding Dr. Head, defense counsel told the trial court that the doctor was a witness that he (defense counsel) wanted. When the prosecutor tendered on the predicate, defense counsel stated, "We'd have no questions. We'd accept her as an expert."

The failure to raise an objection to the admissibility and reliability of an expert's testimony constitutes a waiver of such an objection. A contemporaneous objection must be made to the disputed evidence or testimony in the trial court record to preserve the issue for appellate review. See LSA-C.E. art. 103(A)(1) and LSA-C.Cr.P. art. 841(A). **State v. Tillery**, 14-429 (La. App. 5 Cir. 12/16/14), 167 So.3d 15, 24, writ denied, 15-0106 (La. App. 1 Cir. 11/6/15). See **State v. Perry**, 08-1304 (La. App. 3 Cir. 5/6/09), 9 So.3d 342, 349, writ denied, 09-1955 (La. 6/25/10), 38 So.3d 352. Cf. **State v. Torregano**, 03-1335 (La. App. 5 Cir. 5/11/04), 875 So.2d 842, 846-47 (where the defendant never challenged the reliability or admissibility of testimony relating to the theory of delayed disclosure at trial, but objected only to whether the doctor was qualified to testify about delayed disclosure).

Thus, we find that the defendant waived any objection to the trial testimony of experts Julie Kringas, Jo Beth Rickels, and Dr. Yameika Head. We decline to review this issue on appeal. This assignment of error is without merit.

## COUNSELED ASSIGNMENT OF ERROR NUMBER TWO

In related arguments, the defendant contends the verdict is contrary to the law and evidence, the verdict is not supported by sufficient evidence, and the trial court erred in refusing to grant the post-verdict judgment of acquittal.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. Amend. XIV; LSA-Const. Art. I, §2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See LSA-C.Cr.P. art. 821(B); **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in LSA-C.Cr.P. art. 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 01-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

From 2006 to 2009 (the applicable time period regarding the allegations against the defendant), LSA-R.S. 14:42 provided in pertinent part:

> A. Aggravated rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:
>
> * * * *
>
> (4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

From 2006 to 2009, LSA-R.S. 14:41 provided in pertinent part:

> A. Rape is the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent.
>
> B. Emission is not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, however slight, is sufficient to complete the crime.
>
> C. For purposes of the Subpart, "oral sexual intercourse" means the intentional engaging in any of the following acts with another person:

(1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender.

From 2006 to 2009, LSA-R.S. 14:43.3 provided in pertinent part:

A. Oral sexual battery is the intentional engaging in any of the following acts with another person, who is not the spouse of the offender when the other person has not yet attained fifteen years of age and is at least three years younger than the offender:

(1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender[.]

In his brief, the defendant suggests that the evidence at trial did not prove all of the elements of aggravated rape. He contends there was no evidence of vaginal or anal intercourse. According to the defendant, based on A.W.'s testimony, her CAC interview, and what she told Dr. Head, there was also no evidence of oral sexual intercourse. The defendant suggests that A.W.'s claims show only the crime of sexual battery, oral sexual battery, or misdemeanor sexual battery. The defendant argues that A.W.'s allegations describing his actions did not constitute aggravated rape because A.W. stated the defendant licked her "butt crack" and somewhere in her "pubic area." The words "butt crack" as used by A.W., according to the defendant, is not a euphemism for anus, but rather a description of the area outside the anus.

The defendant is correct that A.W.'s trial testimony did not establish the elements of aggravated rape. The prosecutor at trial did not ask the seventeen-year-old A.W. on the stand to explain with any particularity what the defendant had done to her to establish anal, oral, or vaginal sexual intercourse. The prosecutor asked A.W. if the defendant started doing things to her that she did not like, and when it started; A.W. replied in the affirmative and that she was about six years old when it started. After this, the single exchange on direct examination regarding the defendant's sexual acts was:

Q. Once you and your mom and sister moved to Bush and joined Hector Perez, did the -- did he continue to do things to you that you didn't like?

A. Yes, sir.

Q. What parts [of] your body were involved when Hector Perez would do things to you that you didn't like?

A. My breasts and my butt and my vagina.

Based on A.W.'s CAC interview, however, there was evidence of the defendant's repeated acts of oral sexual intercourse on A.W. Throughout the CAC interview, A.W. indicated the defendant licked her vagina and her "butt." Ms. Rickels placed anatomical drawings of a nude male and female in front of A.W. On the female drawing, A.W. circled the breasts, the vagina, and the buttocks to show where the defendant had put his hands, mouth, or tongue. During the interview, A.W. said the defendant had licked her "there" while tapping the vagina on the anatomical drawing; she continued, while pointing to the buttocks area on the drawing, "if he licks me here, he tries to go up my butt." Ms. Rickels asked, "He goes up your butt when he licks you there?" A.W. replied, "He tries to go up my butt crack." A.W. also told Ms. Rickels that the defendant asked her a lot if he could lick her vagina, and that almost every time he touched her, he would lick her. Later in the CAC interview, Ms. Rickels, while pointing at the drawing of the female buttocks, asked A.W. that when the defendant licked her with his tongue, it would be "like inside your butt right there?" A.W. nodded, said "mm hmm, there," then pointed again to the vagina in the drawing and said "and right here."

The defendant suggests that there is no forensic or corroborative evidence that any of A.W.'s allegations actually occurred. While the defendant states that the lack of evidence is not about A.W.'s credibility, he attacks her credibility. For example, he suggests A.W. made allegations only after she became angry with him and was so non-specific in her claims that they did not support a finding of aggravated rape. The defendant also claims that A.W.'s suggestion that some of these allegations could be corroborated by her sister or friend was inaccurate and that such corroboration did not exist. Also, the defendant alleges that the "small, cramped trailers with her mother and others always present make the opportunity to commit such a crime highly suspect." In any case, these issues raised by the defendant are matters of credibility. The jury heard all of the testimony and chose to believe A.W.'s version of the acts that occurred. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. **State v. Higgins**, 03-1980 (La. 4/1/05), 898 So.2d 1219, 1226,

cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005).

The trier of fact is free to accept or reject, in whole or in part, any witness's testimony. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the witnesses' credibility, the matter is one of the weight of the evidence, not its sufficiency. **State v. Taylor**, 97-2261 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **Id.** We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the accepted evidence insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1 Cir. 1985).

When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680-81 (La. 1984). The jury's guilty verdict here reflected the reasonable conclusion that, based on the testimony of several witnesses, including A.W., and her CAC interview, the defendant committed aggravated rape upon A.W. for several years, mainly by way of oral sexual intercourse. In finding the defendant guilty, the jury clearly rejected the defendant's theory of innocence. See **Captville**, 448 So.2d at 680. The defendant complains of a lack of corroboration and suggests there were no witnesses to the sexual abuse, but the testimony of the victim alone is sufficient to prove the elements of the offense. See **State v. Orgeron**, 512 So.2d 467, 469 (La. App. 1 Cir. 1987), writ denied, 519 So.2d 113 (La. 1988). See **State v. Rives**, 407 So.2d 1195, 1197 (La. 1981).

After a thorough review of the record, we find the evidence supports the jury's unanimous verdict. We are convinced that, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the

defendant was guilty of the aggravated rape of A.W. See **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). This assignment of error is without merit.

**COUNSELED ASSIGNMENT OF ERROR NUMBER THREE**

In his third counseled assignment of error, the defendant argues that his sentence is excessive.

The Eighth Amendment to the United States Constitution and Article I, §20 of the Louisiana Constitution prohibit the imposition of cruel or excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive absent a manifest abuse of discretion. **Id.** Louisiana Code of Criminal Procedure article 894.1 sets forth the factors the trial court must consider when imposing sentence. While the trial court need not recite the entire checklist of LSA-C.Cr.P. art. 894.1, the record must reflect that it adequately considered the criteria. **State v. Brown**, 02-2231 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

The goal of LSA-C.Cr.P. art. 894.1 is the articulation of the factual basis for a sentence, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where the trial court has not fully complied with LSA-C.Cr.P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial court should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981). On appellate review of a sentence, the

relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. **State v. Thomas**, 98-1144 (La. 10/9/98), 719 So.2d 49, 50 (per curiam).

For the defendant's aggravated rape conviction, the trial court imposed the mandatory life sentence. The defendant argues that the trial court did not consider mitigating factors, stating "what allegedly occurred herein is not what is usually considered as aggravated rape, and certainly is not the worst kind of aggravated rape." The defendant suggests that a sentence in the fifty-year range would be more appropriate under the circumstances.

In **State v. Dorthey**, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court opined that, if a trial court finds that the punishment mandated by LSA-R.S. 15:529.1 makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounted to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," the trial court has the option, indeed the duty, to reduce such sentence to one that would not be constitutionally excessive. In **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, 676-77, the Louisiana Supreme Court reexamined the issue of when **Dorthey** permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law.[4] While both **Dorthey** and **Johnson** involve the mandatory minimum sentences imposed under the Habitual Offender Law, the Louisiana Supreme Court has held that the sentencing review principles discussed in **Dorthey** are not limited to the penalties provided by LSA-R.S. 15:529.1. See **State v. Fobbs**, 99-1024 (La. 9/24/99), 744 So.2d 1274 (per curiam); **State v. Collins**, 09-1617 (La. App. 1 Cir. 2/12/10), 35 So.3d 1103, 1108, writ denied, 10-0606 (La. 10/8/10), 46 So.3d 1265.

The defendant contends the trial court failed to comply with LSA-C.Cr.P. art. 894.1, because it did not consider mitigating circumstances. It is true that the trial

[4] The defendant does not mention **Dorthey** or **Johnson** in his brief. He does, however, address both of these cases in his written motion to reconsider sentence. Also, in his brief, the defendant argues the life sentence imposed is excessive "for this offense and this offender." Thus, we address the **Johnson** downward departure issue.

court did not specifically discuss the case or the defendant's circumstances at sentencing. Clearly, however, the trial court judge did consider mitigating factors when he stated, "I don't see any mitigating circumstances." In any event, the trial court need not justify a sentence under LSA-C.Cr.P. art. 894.1 when it is legally required to impose that sentence. So, the failure to articulate reasons as set forth in LSA-C.Cr.P. art. 894.1 when imposing a mandatory life sentence is not an error; articulating such reasons or factors would be futile since the trial court has no discretion. **State v. Felder**, 00-2887 (La. App. 1 Cir. 9/28/01), 809 So.2d 360, 371, writ denied, 01-3027 (La. 10/25/02), 827 So.2d 1173.

Mandatory sentences have been repeatedly upheld as constitutional and consistent with the federal and state provisions prohibiting cruel, unusual, or excessive punishment. See **State v. Jones**, 46,758, 46,759, (La. App. 2 Cir. 12/14/11), 81 So.3d 236, 249, writ denied, 12-0147 (La. 5/4/12), 88 So.3d 462. To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that he is exceptional, which means that, because of unusual circumstances, this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the offender's culpability, the gravity of the offense, and the circumstances of the case. **Johnson**, 709 So.2d at 676.

There is nothing particularly unusual about the defendant's circumstances that would justify a downward departure from the mandatory sentence under LSA-R.S. 14:42. The record before us clearly established an adequate factual basis for the sentence imposed. As a stepfather to a very young A.W., the defendant used his status as a father figure to exploit A.W.'s trust and to rape her. See **State v. Kirsch**, 02-0993 (La. App. 1 Cir. 12/20/02), 836 So.2d 390, 395-96, writ denied, 03-0238 (La. 9/5/03), 852 So.2d 1024. The defendant has not proven by clear and convincing evidence that he is exceptional such that a mandatory life sentence would not be meaningfully tailored to the offender's culpability, the gravity of the offense, and the circumstances of the case. See **Johnson**, 709 So.2d at 676. Accordingly, no downward departure

from the presumptively constitutional mandatory life sentence is warranted. The sentence imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. This assignment of error is without merit.

**PRO SE ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO**

In his first and second pro se assignments of error, the defendant argues that the trial court should have dismissed his indictment because he was denied his Sixth Amendment and statutory right to a speedy trial.

The defendant was charged with aggravated rape on August 13, 2009. Under LSA-C.Cr.P. art. 578(A)(2), no trial shall be commenced in non-capital felony cases after two years from the date of institution of the prosecution. The defendant's trial began on November 10, 2014. The defendant argues that he was tried beyond the two-year limitation of LSA-C.Cr.P. art. 578(A)(2) and that there was not one motion for continuance filed by "the defendant." He also argues there were "five" continuances filed without his consent.

The defendant's assertion that his right to a speedy trial was violated is baseless. On October 30, 2014, the defendant filed a pro se motion to quash the indictment on the grounds that the time limitations for commencement of trial had expired. A hearing on the motion was held on November 10, 2014. The prosecutor pointed out that most of the motions to continue had been at the defense's request and that other defense motions had interrupted prescription. The trial court denied the motion to quash.

Louisiana Code of Criminal Procedure article 580(A) provides:

> 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.

Under LSA-C.Cr.P. art. 580, a preliminary plea is any pleading or motion filed by the defense that has the effect of delaying trial. These pleadings include properly filed motions to quash, motions to suppress, or motions for continuance, as well as applications for discovery and bills of particulars. Joint motions for continuance fall under the same rule. **State v. Brooks**, 02-0792 (La. 2/14/03), 838 So.2d 778, 782

(per curiam). Although LSA-C.Cr.P. art. 707 provides for a motion for continuance to be in writing, where the occurrences that allegedly made the continuance necessary arose unexpectedly, and defense had no opportunity to prepare a written motion, then the trial court's denial of a defendant's motion for a continuance is properly before this Court for review. **State v. Washington**, 407 So.2d 1138, 1148 (La. 1981).

The prosecution, instituted on August 13, 2009, would have prescribed on August 13, 2011, had the prescriptive period not been suspended or interrupted. See LSA-C.Cr.P. art. 578(A)(2). The minutes of the record indicate that on the following dates, on defense motion or joint motion, the trial court ordered the matter continued: November 13, 2009; January 22, 2010; April 19, 2010; November 8, 2010; March 16, 2011; and April 28, 2011 (written motion).

Then on June 27, 2011, the defendant's **Brady**[5] motion was to be heard, but on defense motion, the trial court ordered the motion deferred until the trial date. On September 19, October 24, and November 21, 2011, February 8, 2012, and March 22, 2012, all on defense motions, the matter was continued.

After several more court-ordered continuances, the trial court again continued the matter on written defense motions on July 9, October 29, and December 12, 2012, and on January 10, 2013.

On April 9, 2013, on written defense motion, the trial court ordered the matter continued. On April 10, 2013, the trial court conducted a hearing on the defendant's various discovery motions.

On May 20, 2013, on written defense motion, the trial court ordered the matter continued. On June 12, 2013, on defense motion, the trial court ordered the matter continued. On July 15, 2013, on defense motion, the trial court ordered the matter continued. On August 19, October 3, and November 18, 2013, all based on written defense motions, the trial court ordered the matter continued.

As the above shows, there was never more than a few months between each continuance requested by the defense. So, each time the trial court ruled on defense counsel's motion for continuance, the State had either the remainder of the time

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[5] **Brady v. Maryland**, 373 U.S. 83, 83, S.Ct. 1194, 10 L.Ed. 215 (1963).

limitations under LSA-C.Cr.P. art. 578(A)(2) or a *minimum* period of one year from the date of the ruling in which to commence trial, whichever time was longer. See **State v. Lathan**, 41,855 (La. App. 2 Cir. 2/28/07), 953 So.2d 890, 894, writ denied, 07-0805 (La. 3/28/08), 978 So.2d 297. See also **State v. Cranmer**, 306 So.2d 698, 700-01 (La. 1975); LSA-C.Cr.P. art. 580, Official Revision Comment (a).

While we note that on January 13, February 10, and May 19, 2014, the matter was continued based on written defense motions, and that on August 13, 2014, the matter was continued based on a joint motion of the State and defense, it is unnecessary to reference any more continuances. As noted, the matter was continued on November 18, 2013. At this point, the State had at least until November 18, 2014, to commence trial. Since the defendant was tried on November 10, 2014, his trial was timely commenced. See **State v. Marshall**, 99-2884 (La. App. 1 Cir. 11/8/00), 808 So.2d 376, 379-80; **State v. Simpson**, 506 So.2d 837, 838 (La. App. 1 Cir.), writ denied, 512 So.2d 433 (La. 1987).

The trial court properly denied the defendant's pro se motion to quash. The trial commenced well within a year of the trial court's last ruling on a defense motion. See **Simpson**, 506 So.2d at 838-39. Thus, the defendant's statutory right to a speedy trial was not violated. We further find that, given the defendant's failure to allege any prejudice, his constitutional right to a speedy trial was not violated. See **Barker v. Wingo**, 407 U.S. 514, 529-31, 92 S.Ct. 2182, 2191-92, 33 L.Ed.2d 101 (1972). These pro se assignments of error are without merit.

## PRO SE ASSIGNMENT OF ERROR NUMBER THREE

In his third pro se assignment of error, the defendant argues ineffective assistance of counsel.

Because it is not precisely argued, we cannot discern the basis of defendant's argument for this assignment. The defendant first notes that his counsel filed a motion to withdraw and that the trial court refused to provide substitute counsel. According to the defendant, his right to counsel was violated. The defendant then asserts that his right to effective assistance of counsel was violated.

The defendant, in fact, was represented by six different attorneys before the start of trial, three private counsel (conflict counsel) and three public defenders. Before private counsel, James Burke III, enrolled as the defendant's attorney, the other attorneys had filed motions to withdraw from the case. Mr. Burke, who represented the defendant at trial, filed a pretrial motion to withdraw as counsel because of irreconcilable differences. At the pretrial hearing on this issue, two weeks prior to trial, Mr. Burke told the trial court that he and the defendant had not been getting along. Mr. Burke made clear that he filed this motion at the defendant's request. When the trial court asked the defendant exactly why he wanted another attorney, the defendant stated, "I'm making a claim for the record for ineffective assistance of counsel." The defendant further stated that it was "so many stuff" he had asked Mr. Burke to do, such as the "in camera view" that he had been asking about since July 2012, and the speedy trial motion that had yet to be filed. Mr. Burke replied that he did not recall the defendant ever asking for a speedy trial motion; and the first time the defendant had asked for the OCS records had been rather recently. The trial court ruled:

> Well, conflict counsel and counsel for an indigent, you're not entitled to the attorney that you want. This case has been pending and has been pending with Mr. Burke's representation, and I don't see any reason why he is acting incompetent. I'm going to deny your motion, sir.

Louisiana Constitution Article 1, §13 provides in pertinent part that "[a]t each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment." The Sixth Amendment to the United States Constitution likewise carries such a guarantee. As a general proposition, a person accused in a criminal trial has the right to counsel of his choice. If a defendant is indigent, he has the right to court-appointed counsel. An indigent defendant does not have the right to have a particular attorney appointed to represent him. An indigent's right to choose his counsel only extends so far as to allow the accused to retain the attorney of his choice, if he can manage to do so, but that right is not absolute, cannot be manipulated so as to obstruct orderly procedure in courts, and cannot be used to thwart the administration of justice. The question of withdrawal of counsel largely rests with the discretion of the

trial court, and its ruling will not be disturbed in the absence of a clear showing of an abuse of discretion. **State v. Leger**, 05-0011 (La. 7/10/06), 936 So.2d 108, 142, cert. denied, 549 U.S. 1221, 127 S.Ct. 1279, 167 L.Ed.2d 100 (2007).

Despite the defendant's assertions about the inadequacies of his representation, the trial court found Mr. Burke to be competent. We see no reason to disturb the trial court's ruling. The defendant did not show how Mr. Burke was incompetent or how he would not be able to adequately represent him at trial. Moreover, given the multiple attorneys involved with this case at one time or another, the record suggests that, rather than demonstrating any real need requiring Mr. Burke's dismissal, the defendant manipulated his right to choose counsel to obstruct orderly procedure in the court and to thwart the administration of justice. See **Leger**, 936 So.2d at 142, 145-147. We find the trial court did not abuse its discretion by refusing to remove Mr. Burke as defense counsel due to a conflict of interest.

Regarding the defendant's ineffectiveness argument, a claim of ineffective assistance of counsel is more properly raised by an application for post-conviction relief in the trial court, where a full evidentiary hearing may be conducted. But, where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel when raised by assignment of error on appeal, it may be addressed in the interest of judicial economy. **State v. Carter**, 96-0337 (La. App. 1 Cir. 11/8/96), 684 So.2d 432, 438.

In this case, the defendant merely asserted ineffective assistance of counsel, without citing any factual support in the record to support the assertion. The defendant has failed to make any allegations that could otherwise be sufficiently investigated at an evidentiary hearing in the trial court.[6] Thus, his ineffective assistance argument is baseless. See **State v. Albert**, 96-1991 (La. App. 1 Cir. 6/20/97), 697 So.2d 1355, 1363-64; **State v. Martin**, 607 So.2d 775, 788 (La. App. 1 Cir. 1992). This pro assignment of error is without merit.

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[6] The defendant would have to satisfy the requirements of LSA-C.Cr.P. art. 924, et seq., in order to receive such a hearing.

## PRO SE ASSIGNMENT OF ERROR NUMBER FOUR

In his fourth pro se assignment of error, the defendant argues that the filing of criminal proceedings against him made him only the "accused," and not a "defendant." The defendant argues that the accused is innocent until proven guilty and that the term "defendant" implies a concept completely adverse to "this basic fundamental right." The defendant appears to suggest that referring to him as "defendant" prejudiced him because the term presumes guilt. Factually and legally, the defendant was the "defendant" in this criminal trial, and he has made no showing whatever how this legal designation prejudiced him at trial. This pro se assignment is without merit.

## PRO SE ASSIGNMENTS OF ERROR NUMBERS FIVE THROUGH TWELVE

The defendant listed assignments of error numbers five through twelve but provided no law, substantive argument, or discussion for any of them. There is nothing for us to review regarding these eight pro se assignments of error. Thus, these particular issues, which have not been briefed, are considered abandoned. See Uniform Rules - Courts of Appeal, Rule 2-12.4.

## CONCLUSION

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

**AFFIRMED.**