

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 KA 0064

STATE OF LOUISIANA

VERSUS

BRANDON COBB

Judgment Rendered: OCT 31 2016

On appeal from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
Docket Number 13-WFLN-268
Honorable William G. Carmichael, Judge Presiding

Samuel C. D'Aquila
District Attorney
St. Francisville, LA

Counsel for Appellee
State of Louisiana

Jane L. Beebe
Louisiana Appellate Project
New Orleans, LA

Counsel for Defendant/Appellant
Brandon Cobb

BEFORE: WHIPPLE, C.J., GUIDRY, AND MCCLENDON, JJ.

Guy
W. Cobb
PLS

GUIDRY, J.

Defendant, Brandon Cobb, was charged by bill of information with second degree cruelty to juveniles, a violation of La. R.S. 14:93.2.3. Defendant initially pled not guilty, but he later withdrew that plea and entered a plea of nolo contendere. The trial court sentenced defendant to ten years at hard labor.¹ For the following reasons, we affirm defendant's conviction and sentence. We also grant defense counsel's motion to withdraw.

FACTS

Because defendant pled nolo contendere, the facts of his offense were not developed at a trial. The factual basis given at the time of defendant's plea stated that on or about May 17, 2013, defendant committed the offense of second degree cruelty to juveniles by intentionally mistreating or neglecting a child under the age of 17 by causing serious bodily injury or neurological impairment.

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, 96-2669 at p. 1, 704

¹ Defendant filed a *pro se* motion to reconsider sentence prior to his sentencing, which the trial court denied on the day it was filed. Prior to accepting his plea, the trial court had advised the defendant of his sentencing exposure for the stated crime and confirmed the defendant's knowledge that a plea agreement had been reached under the terms that he would be sentenced to serve ten years in the custody of the Department of Public Safety at hard labor, for the offense of second degree cruelty to juveniles. The defendant affirmatively acknowledged that he understood the information of which the trial court advised him.

So. 2d at 241; State v. Mouton, 95-0981, p. 1 (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 set forth that, after a review of the record in this case, she has found no non-frivolous errors to present on appeal. She noted that the only pretrial ruling in this case concerned a Prieur² motion submitted on the record and without argument and that no issues were preserved for review under State v. Crosby, 338 So. 2d 584, 588 (La. 1976). Accordingly, defense counsel has requested that this court conduct a review for error under La. C. Cr. P. art. 920. Defense counsel has also filed a motion to withdraw, requesting that if the court finds no such errors, she be relieved from further briefing. Defense counsel's motion to withdraw notes that defendant has been informed, but has not availed himself of his right to file a *pro se* brief on his behalf.

In this case, defendant pled nolo contendere. At the Boykin³ hearing, the trial court informed defendant of his Boykin rights (right to trial by jury, right against compulsory self-incrimination, and right of confrontation) prior to the acceptance of the nolo contendere plea, and defendant indicated that he understood and waived his rights. As noted by defense counsel, an examination of the colloquy reveals that the trial court thoroughly made sure that defendant understood the rights he was waiving in pleading nolo contendere. The trial court further set forth the statutory elements of the offense, the agreed-upon sentence, and the potential for the conviction to be used to enhance a future offense. Additionally, the trial court confirmed that defendant had not been threatened, coerced, or promised anything (other than the agreed-upon sentence) to plead guilty.

² State v. Prieur, 277 So. 2d 126 (La. 1973).

³ Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

This court has conducted an independent review of the entire record in this matter. We recognize that our review of the plea colloquy is subject to the restraints of State v. Collins, 14-1461 (La. 2/27/15), 159 So. 3d 1040 (per curiam) and State v. Guzman, 99-1753 (La. 5/16/00), 769 So. 2d 1158. We have found no reversible errors under La. C. Cr. P. art. 920(2). Furthermore, our independent review reveals no non-frivolous issues or trial court rulings that arguably support defendant's appeal.

CONCLUSION

Accordingly, defendant's conviction and sentence are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition in this matter, is hereby granted.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.