

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 KA 0362

STATE OF LOUISIANA

VERSUS

NICHOLAS DEVON THOMPSON

Judgment Rendered: OCT 28 2016

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 07-12-0743

HONORABLE ANTHONY J. MARABELLA, JR., JUDGE

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BEFORE: PETTIGREW, McDONALD, AND DRAKE, JJ.

McDONALD, J.

The defendant, Nicholas Devon Thompson, was charged by bill of information with armed robbery, in violation of La. R.S. 14:64, and initially pled not guilty. The trial court denied the defendant's motion to suppress evidence. Pursuant to a sentencing agreement and in exchange for the State foregoing the filing of a habitual offender bill of information, the defendant withdrew his former plea and pled guilty to the responsive offense of simple robbery, a violation of La. R.S. 14:65. See La. C.Cr.P. art. 814(A)(22).¹ The defendant was sentenced, as agreed, to five years imprisonment at hard labor. The defendant filed a pro se motion to reconsider sentence, which was denied by the trial court. The defendant now appeals.² Contending that there are no non-frivolous issues upon which to support the appeal, the defense counsel filed a brief raising no assignments of error and a motion to withdraw as counsel of record. For the following reasons, we affirm the conviction and sentence, and grant the defense counsel's motion to withdraw.

STATEMENT OF FACTS

Since the defendant pled guilty, the facts were not fully developed in this case. The following facts are in accordance with testimony presented at the motion to suppress hearing, the basis for the plea presented by the State at the **Boykin**³ hearing, the bill of information, and the guilty plea waiver of rights form. On January 16, 2012, while in an Albertsons' parking lot in Baton Rouge, Timothy

¹ The defendant also pled guilty to accessory after the fact to purse snatching as the result of charges filed in a separate case.

² The defendant was sentenced on September 3, 2015, and filed his pro se motion to reconsider the sentence on October 19, 2015. It appears that the defendant's motion to reconsider sentence was untimely pursuant to La. C.Cr.P. art. 881.1(A)(1), resulting in an untimely motion for appeal. Given the trial court's granting of the defendant's motion for an appeal and its appointment of the Louisiana Appellate Project to represent the defendant on appeal, and given the State's failure to complain about any procedural irregularities in the ordering of the appeal, dismissal of the present appeal would only prolong the delay without serving any useful purpose. See State v. Shay, 2007-0624 (La. 10/26/07), 966 So.2d 562.

³ **Boykin v. Alabama**, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969).

Jackson (the victim) was approached by the defendant. During the encounter, the defendant, while armed with a gun, took five hundred dollars in cash from the victim and fled in a white vehicle. The victim subsequently identified the defendant as the perpetrator in a photographic lineup.

ANDERS BRIEF

The defense counsel has filed a brief containing no assignments of error and a motion to withdraw. In the brief and motion to withdraw, referring to the procedures outlined in **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), counsel indicated that after a conscientious and thorough review of the record, he could find no non-frivolous issues to raise on appeal.

The procedure in **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), used in Louisiana, was discussed in **State v. Benjamin**, 573 So.2d 528, 529-31 (La. App. 4th Cir. 1990), sanctioned by the Louisiana Supreme Court in **State v. Mouton**, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam), and expanded by the Louisiana Supreme Court in **Jyles**, 704 So.2d at 242. According to **Anders**, 386 U.S. at 744, 87 S.Ct. at 1400, “if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw.” To comply with **Jyles**, appellate counsel must review not only the procedural history of the case and the evidence presented at trial, but must also provide “a detailed and reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place.” **Jyles**, 704 So.2d at 242 (quoting **Mouton**, 653 So.2d at 1177). When conducting a review for compliance with **Anders**, an appellate court must conduct an independent review of the record to determine whether the appeal is wholly frivolous. **Benjamin**, 573 So.2d at 531.

Herein, the defense counsel has complied with all the requirements necessary to file an **Anders** brief. The defense counsel has reviewed the

procedural history and facts of the case. The defense counsel concludes in his brief that there are no non-frivolous issues for appeal. Further, the defense counsel certifies that the defendant was served with a copy of the **Anders** brief and the motion to withdraw as counsel of record. The defense counsel's motion to withdraw notes the defendant has been notified of the motion to withdraw and his right to file a pro se brief on his own behalf, and the defendant has not filed a pro se brief.

On the day of the **Boykin** hearing, a guilty plea and waiver of rights form was signed by the defendant, his attorney, and the State. At the hearing, the trial court informed the defendant of the statutory elements and sentencing range for the offense, and stated the specific sentence to be imposed if the guilty plea were to be accepted. The defendant stated that he understood the offense, the sentencing range, and the sentence to be imposed. Prior to the acceptance of the guilty plea, the trial court informed the defendant of his **Boykin** rights (right to trial by jury, right against compulsory self-incrimination, and right of confrontation), his right to an appeal, and that by pleading guilty he would be waiving his rights. The defendant indicated that he understood and waived his rights and accepted the factual basis presented by the State. Additionally, the defendant confirmed that he had not been intimidated, forced, or coerced to plead guilty. Further, the defendant confirmed that he was not under the influence of any alcohol, drug, or medication. The trial court imposed the sentence in accordance with the written plea agreement, ordering that the sentence be served concurrent to the sentence imposed in the other case. The defendant was informed that he had the right to file a motion for reconsideration of the sentence within thirty days of the sentencing and to file a motion for an appeal within thirty days of a ruling thereon. Finally, the trial court informed the defendant of the two-year time limitation to file for postconviction relief.

This court has conducted an independent review of the entire record in this matter, including a review for error under La. C.Cr.P. art. 920(2). Since the defendant pled guilty, our review of the guilty plea colloquy is limited by **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. We have found no reversible errors under La. C.Cr.P. art. 920(2). Furthermore, we have found no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, the defendant's convictions and sentences 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; DEFENSE COUNSEL'S MOTION TO WITHDRAW GRANTED.