

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 KA 0632

STATE OF LOUISIANA

VERSUS

MANLY HARDEN GILLEY

JEW

GH



Judgment Rendered: OCT 31 2016

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On Appeal from  
The 23<sup>rd</sup> Judicial District Court,  
Parish of Ascension, State of Louisiana  
Trial Court No. 32482

The Honorable Thomas J. Kliebert Jr., Judge Presiding

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\* \* \* \* \*

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

## **CRAIN, J.**

The defendant, Manly Harden Gilley, pled guilty to attempted second degree murder, a violation of Louisiana Revised Statutes 14:27 and 14:30.1. He was sentenced to twenty-five years at hard labor without the benefit of parole, probation, or suspension of sentence.<sup>1</sup> We affirm the conviction and sentence and grant defense counsel's motion to withdraw.

### **FACTS**

The facts were not fully developed in this case because the defendant pled guilty. However, according to the *Boykin*<sup>2</sup> colloquy and defendant's "Boykin Form," the victim, Kimberly Roddy, slapped the defendant's girlfriend, Ashleigh Parker, during an argument at Parker's residence. When Parker called the defendant and told him what happened, the defendant said he was "gonna kill" the victim. The defendant went to Parker's residence, where he grabbed the victim by her hair, threw her to the ground, and repeatedly punched, kicked, and stomped on her face. When officers arrived on the scene, the victim was unconscious. She was transferred to a hospital and was put in a medically induced coma due to the bleeding of her brain.

### **ANDERS BRIEF**

The defense brief contains no assignments of error and was filed in accordance with *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400, 18 L. Ed. 2d 493 (1967), and *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So. 2d 241 (*per curiam*). In *Anders*, the United States Supreme Court instructed that 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. *Anders*, 386

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<sup>1</sup> The trial court noted that the defendant had prior crimes of violence, and thus, the sentence was not subject to diminution for good behavior. See La. R.S. 14:2B(3), (6), (31) and 15:571.3D.

<sup>2</sup> *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

U.S. at 744, 87 S. Ct. at 1400. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished to the indigent, and he should be allowed time to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400.

In *Jyles*, the Louisiana Supreme Court approved the procedures outlined in *State v. Benjamin*, 573 So. 2d 528 (La. App. 4 Cir. 1990), to comply with *Anders*. Appellate counsel must not only review the procedural history of the case and the evidence presented at trial, but his brief must also contain “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 *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So. 2d 1176, 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. *State v. Thomas*, 12-0177 (La. App. 1 Cir. 12/28/12), 112 So. 3d 875, 878 (*en banc*).

Here, defense counsel has complied with all the requirements necessary to file an *Anders* brief. She has reviewed the procedural history and facts of the case and concludes that there are no non-frivolous issues for appeal. She notes that no pre-trial rulings were preserved for appeal under *State v. Crosby*, 338 So. 2d 584, 588 (La. 1976). Further, defense counsel certifies that the defendant was served with a copy of the *Anders* brief and motion to withdraw as attorney of record. The

motion to withdraw confirms that the defendant was informed of his right to file a *pro se* brief on his own behalf.<sup>3</sup>

In a *pro se* brief filed with this court, the defendant argues that his counsel should not be allowed to withdraw because she omitted information from her brief. Specifically, he contends that appellate counsel failed to provide a full analysis of the offense and did not adequately address a letter he wrote to the trial court requesting termination of his trial counsel.

Contrary to the defendant's assertion, counsel's brief includes all of the facts provided during the plea colloquy. Counsel also notes in the brief that the record contains a letter sent by the defendant to the trial court, approximately ten months prior to the entry of his guilty plea, indicating that he wanted a new attorney. The record contains no further mention of the request, and, as recognized in the appellate brief, the defendant did not get a new attorney prior to entering his guilty plea. Counsel points out that in entering his guilty plea, the defendant did not mention any dissatisfaction with his trial counsel. The defendant's letter requesting a new attorney is noted in the appellate brief, and the record contains no indication that any issue associated therewith was preserved for our review. The defendant's argument has no merit.

This court has conducted an independent review of the entire record in this matter, including a review for error under Louisiana Code of Criminal Procedure article 920(2). Our independent review of the record reveals no non-frivolous

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<sup>3</sup> The Louisiana Appellate Project (LAP) is providing representation for the defendant on appeal. We note that after the motion to withdraw was filed, another attorney with LAP enrolled of record because the original attorney terminated her contract with LAP. The enrolling attorney did not file an additional brief or express any disagreement with the *Anders* brief. Our analysis is thus not affected by the enrollment of the additional counsel.

issues or trial court rulings that arguably support the defendant's appeal.<sup>4</sup> Accordingly, the defendant's conviction and sentence are affirmed, and the motion to withdraw is granted.

**CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.**

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<sup>4</sup> We note that our review of the guilty-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*, 99-1528, 99-1753 (La. 5/16/00), 769 So. 2d 1158, 1162.