

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 KA 0533

STATE OF LOUISIANA

VERSUS

COREY LEE ROBINSON

DATE OF JUDGMENT: NOV 01 2017

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 553903, DIVISION H, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE ALLISON H. PENZATO, JUDGE

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State of Louisiana

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Counsel for Defendant-Appellant
Corey Lee Robinson

BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

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

CHUTZ, J.

The defendant, Corey L. Robinson, was charged by bill of information with domestic abuse battery, third offense, a violation of La. R.S. 14:35.3.¹ He initially pled not guilty and filed a pro se motion to quash and various counseled pre-trial motions. Pursuant to a plea agreement, the defendant withdrew his former plea and pled guilty to the instant offense and to distribution of a Schedule II controlled dangerous substance (counts one through four) and distribution of a Schedule II controlled dangerous substance and possession while on property used for school purposes (counts five and six) under Twenty-Second Judicial District Court, Parish of St. Tammany, docket number 557,315.² Pursuant to the agreement, the defendant was sentenced on the instant offense to two years at hard labor and ordered to pay a fine of \$2,000.00.³ The district court ordered the sentence to run consecutively with those imposed under docket number 557,315. Contending that there are no non-frivolous issues upon which to support the appeal, appellate counsel filed a brief raising no assignments of error.⁴ For the following reasons, we affirm the conviction and sentence and grant appellate counsel's motion to withdraw.

¹ The defendant's predicate offenses were: (1) a November 2, 2011, guilty plea to domestic abuse battery under 22nd Judicial District Court, Parish of St. Tammany, docket number 513,173; and (2) a January 21, 2014, guilty plea to domestic abuse battery under 22nd Judicial District Court, Parish of St. Tammany, docket number 540,879.

² The defendant filed a separate appeal in connection with his guilty pleas under docket number 557, 315. See *State v. Robinson*, 2017-0534 (La. App. 1st Cir. 9/15/17), __So.3d__.

³ The defendant also entered an admission to a multiple offender bill of information filed by the State in connection with count one under docket number 557,315, and was adjudicated a third-felony habitual offender. He was sentenced to twenty years at hard labor without the benefit of probation or suspension of sentence on count one. The first two years of that sentence were imposed without the benefit of parole. On counts two, three, and four, on each count, the defendant was sentenced to twenty years at hard labor with the first two years to be served without the benefit of probation, parole, or suspension of sentence. On counts five and six, on each count, the defendant was sentenced to twenty years at hard labor with the first two years to be served without benefit of probation, parole, or suspension of sentence. The defendant was also ordered to pay a \$50,000.00 fine. The district court ordered the sentences to run concurrently with each other.

⁴ The defendant was granted an out-of-time appeal. See *State v. Counterman*, 475 So.2d 336 (La. 1985).

FACTS

Since the defendant pled guilty, the facts were not fully developed in this case. The bill of information alleges that on July 29, 2014, the defendant used force or violence upon a household member and that on November 2, 2011, and January 21, 2014, he entered guilty pleas to domestic abuse battery. During his *Boykin*⁵ hearing, the defendant stipulated on the record that there was a factual basis for his plea.

ANDERS BRIEF

Appellate counsel's 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). Accordingly, appointed counsel requests to be relieved from further briefing in this case.

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 241-42. 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 and the facts of the case, 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

⁵ *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969).

an independent review of the record to determine whether the appeal is wholly frivolous.

Here, appellate counsel has adequately complied with the requirements necessary to file an *Anders* brief. Appellate counsel reviewed the bill of information, the procedural history, the *Boykin* examination, and the factual basis for the plea. Appellate counsel concludes in her brief that there are no non-frivolous issues for appeal. Further, appellate counsel certifies that the defendant was served with a copy of the *Anders* brief and notified of his right to file a pro se brief.

The defendant has filed a pro se brief alleging that there was no factual basis for his guilty plea, appellate counsel failed to include an analysis of his motion to quash, and the district court abused its discretion by granting nine motions for continuance on the motion to quash. Contrary to the defendant's first assertion, the parties stipulated that there was a factual basis to support the charge. Prior to entering his guilty plea, the defendant filed a pro se motion to quash arguing that the time limitation for the institution of prosecution or for the commencement of trial had expired. See La. C.Cr.P. art. 532(7). Hearings on the motion to quash were continued multiple times prior to the defendant entering his guilty plea, and the defendant made the majority of those motions to continue. The defendant complains in his pro se brief that his appellate counsel failed to include an analysis of his motion to quash in her appellate brief. However, appellate counsel sets forth in her brief that a motion to quash was filed and notes that the motion was not heard and that the defendant's plea was entered without a reservation of rights to appeal any adverse rulings on the pretrial motions, thus waiving any argument related to the motions. Appellant counsel correctly notes that when the defendant entered his guilty plea, he did not reserve his right to appeal any pretrial rulings under *State v. Crosby*, 338 So.2d 584 (La. 1976). Moreover, there is no basis to

the defendant's motion to quash. Neither the time limitation for the institution of prosecution nor for the commencement of trial had expired at the time the defendant entered his guilty plea. The arguments raised in the defendant's pro se brief present no non-frivolous issues in support of an appeal.

At the defendant's *Boykin* hearing, prior to the acceptance of his guilty plea, the district court informed him of the statutory elements and sentencing range for the offense. The defendant stated that he understood the offense and the sentencing range. The district 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. He indicated that he understood and waived his rights and accepted the State's factual basis. 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 plea agreement, ordering that the sentence be served consecutively with the sentence imposed under docket number 557,315.

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*, 99-1753 (La. 5/16/00), 769 So.2d 1158, 1162. We have found no reversible errors under Article 920(2), but our review has revealed a sentencing error. Although La. R.S. 14:35.3E requires the first year of the sentence to be imposed without benefit of probation, parole, or suspension of sentence, the district court failed to impose this condition on the defendant's sentence. However, we recognize that this sentence was imposed pursuant to a plea agreement with the

State. See La. C.Cr.P. art. 890.1A(1). Since the sentence is not inherently prejudicial to the defendant, and neither the State nor the defendant has raised this sentencing issue on appeal, we decline to correct this error. See *State v. Price*, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

Furthermore, we have found no non-frivolous issues or district court rulings that arguably support this appeal. Accordingly, the defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.