

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. 2018 KA 0868

STATE OF LOUISIANA
VERSUS

DANIEL A. WEST

Judgment Rendered: MAY 31 2019

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On Appeal from the
23rd Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Trial Court No. 31,568

Honorable Alvin Turner, Jr., Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

The defendant, Daniel A. West, was charged under two separate amended bills of information with two counts of armed robbery, violations of La. R.S. 14:64, and initially pled not guilty. Pursuant to sentencing agreements and in exchange for the State nol-prossing the other charges in the bills of information, the defendant withdrew his former pleas and pled guilty as charged to two counts of armed robbery.¹ In district court case number 31568, the trial court sentenced the defendant, as agreed, to ten years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. In district court case number 31697, the trial court sentenced the defendant, as agreed, to forty years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. In accordance with the respective plea agreements, the trial court ordered that the sentences be served consecutively. The defendant subsequently filed a pro se motion to withdraw his guilty pleas, and the motion was denied after a hearing.

Stating that there are no non-frivolous issues to support the appeal, the appellate counsel filed a brief raising no assignments of error and a motion to withdraw as counsel of record.² Subsequently, the defendant filed a pro se brief raising the following five assignments of error: (1) the punishment is cruel and unusual; (2) an increase in the punishment offered during plea negotiations may have been the result of the public defender's disclosure to the State of a privileged attorney/client communication; (3) the plea was accepted without consideration of documentary evidence of the defendant's mental health; (4) the trial court failed to consider the terms of the original plea bargain offered to the defendant; and (5) the

¹ Specifically, under docket number 31568, the defendant was additionally charged with armed robbery, use of firearm, additional penalty (count two), a violation of La. R.S. 14:64.3, and with being a convicted felon in possession of a firearm (count three), a violation of La. R.S. 14:95.1. Under docket number 31697, the defendant was additionally charged with aggravated flight from an officer (count two), a violation of La. R.S. 14:108.1(C), and possession of a firearm by a convicted felon (count three), a violation of La. R.S. 14:95.1. In both cases, the State nol-prossed counts two and three as part of the plea bargain in exchange for the defendant's guilty pleas on count one of each bill of information.

² The appellate counsel merely requests that any patent errors be addressed by this court.

appellate court's granting of the defendant's application for supervisory review evidences a due process violation. For the following reasons, we affirm the convictions and sentences and grant the appellate counsel's motion to withdraw.

STATEMENT OF FACTS

Since the defendant pled no contest, the facts were not fully developed. In accordance with the bills of information and the factual basis statement in the guilty plea forms stipulated to at the **Boykin**³ hearing, the following occurred. On or about August 21, 2013, at Domino's Pizza in Gonzales, while armed with a firearm, the defendant committed armed robbery by taking a vehicle from Louis Wright. On or about August 22, 2013, at New Orleans Daiquiris in Ascension Parish, while armed with a firearm, the defendant committed armed robbery by taking money from Emily Guardalabene.⁴

DISCUSSION

The appellate counsel has filed a brief containing no assignments of error and a motion to withdraw. In the brief and motion to withdraw, referencing the procedures outlined in **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), the appellate counsel indicated that after a conscientious and thorough review of the record, appellate counsel could find no non-frivolous issues to raise on appeal, and found no ruling of the trial court that arguably supports the appeal. See **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); **State v. Benjamin**, 573 So.2d 528, 529-31 (La. App. 4th Cir. 1990).

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. Dyke**, 2017-1303 (La. App. 1st Cir. 2/27/18), 244 So.3d

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

⁴ The dates of the armed robberies are listed as on or about August 21, 2013 and August 22, 2013, in the bills of information, but we note that during a motions hearing, Detective Carey Cannon testified that the armed robberies occurred on August 14, 2013 and August 18, 2013.

3, 6. Herein, the appellate counsel has complied with all the requirements necessary to file an **Anders** brief. The appellate counsel has detailed the procedural history, the plea colloquy, and sentencing in this case. Further, the appellate counsel certifies that the defendant was served with a copy of the **Anders** brief. The appellate counsel's motion to withdraw notes that the defendant has been notified of the motion to withdraw and his right to file a pro se brief which he has filed, as noted herein.

At the **Boykin** hearing, the trial court conducted a colloquy with the defendant by asking a series of questions regarding his age, education, and state of mind. The defendant indicated that he was thirty-three years old, had completed the ninth grade, could read and write the English language, understood the **Boykin** form, and was not under the influence of any substance or suffering from a mental or physical disability. Prior to the acceptance of the guilty pleas, the trial court informed the defendant of his **Boykin** rights (right to trial by jury, right against compulsory self-incrimination, and right of confrontation), and his right to an appeal. The trial court further informed the defendant that by pleading guilty he would be waiving these rights. The defendant indicated that he understood and waived his rights. He confirmed that he agreed with the factual bases provided by the State in the written **Boykin** forms signed by the defendant. The defendant also confirmed that he understood and did not have any questions regarding the statutory elements and the sentencing range for the offenses. He stated that he understood the agreed upon ten-year and forty-year sentences to be imposed and confirmed that he wished to proceed with the plea agreement. He denied that he had been forced, threatened, or intimidated, and agreed that his plea was free and voluntary. The trial court imposed the sentences in accordance with the plea agreements.

As noted, the defendant has raised several pro se assignments of error in a supplemental brief. At the outset, we note that an unqualified plea of guilty waives

all non-jurisdictional defects and precludes their review by either appeal or post-conviction relief. **State v. Curry**, 2017-0793 (La. 4/20/18), 240 So.3d 909 (per curiam); **State v. Crosby**, 338 So.2d 584, 588 (La. 1976). Further, a defendant cannot appeal a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. La. Code Crim. P. art. 881.2(A)(2); **State v. Wiggins**, 2013-0649 (La. App. 1st Cir. 1/31/14), 139 So.3d 1, 4; see also **State v. Young**, 96-0195 (La. 10/15/96), 680 So.2d 1171, 1175. Herein, the defendant entered into unqualified guilty pleas, and the sentences were imposed in conformity with the plea agreements set forth in the record at the **Boykin** hearing and in the **Boykin** forms signed by the defendant. Thus, the defendant is precluded from appealing the imposed sentences, and the arguments raised in pro se assignments of error numbers one, two, and four, challenging the sentences, are not properly before this court.⁵

In regard to pro se assignment of error number three, challenging the trial court's acceptance of his guilty pleas due to alleged mental health issues, we note that the defendant did not assert these grounds in his motion to withdraw the guilty pleas. Louisiana courts have long held that a defendant may not raise new grounds for a motion on appeal that he did not raise at the trial court. See **State v. Montejo**, 2006-1807 (La. 5/11/10), 40 So.3d 952, 967-68, cert. denied, 562 U.S. 1082, 131 S.Ct. 656, 178 L.Ed.2d 513 (2010). Instead, the defendant is limited on appeal to the grounds he articulated below, and a new basis for a claim, even if it would be meritorious, cannot be raised for the first time on appeal. See **State v. Johnson**, 2007-1040 (La. App. 4th Cir. 9/10/08), 993 So.2d 326, 330-331, writ denied, 2008-

⁵ We also note that the defendant did not object to the sentence at the time of the sentencing or timely file a motion to reconsider sentence. Louisiana Code of Criminal Procedure article 881.1(A)(1) requires a defendant or the State to make or file a motion to reconsider sentence within thirty days of sentencing unless the trial court sets a longer period of time at the time of sentencing. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the State or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. La. Code Crim. P. art. 881.1(E).

2649 (La. 6/5/09), 9 So.3d 868. In accordance with La. Code Crim. P. art. 841, to allow an objection on new grounds to be presented for the first time on appeal would deprive the trial court of the opportunity to consider the merits of the particular claim. See State v. Cressy, 440 So.2d 141, 142-43 (La. 1983).

Moreover, at the **Boykin** hearing the defendant gave consistent responses, confirmed that he understood the proceedings and offenses, and agreed with the factual bases for the offenses. He confirmed that he was not suffering from any mental or physical disability or otherwise impaired. The defendant also confirmed that his attorney discussed the plea agreements with him and that he understood the signed agreements. Further, the trial court repeatedly asked the defendant if he had any questions regarding the proceedings, and he denied having any questions. A guilty plea is a conviction and, therefore, should be afforded a great measure of finality. A defendant may not withdraw a guilty plea simply because the sentence imposed is heavier than anticipated. It is not unreasonable for a trial court to deny a defendant the luxury of gambling on his sentence, then being able to withdraw his plea if and when he discovers the sentence is not to his liking. **State v. Roberts**, 2001-3030 (La. App. 1st Cir. 6/21/02), 822 So.2d 156, 158, writ denied, 2002-2054 (La. 3/14/03), 839 So.2d 31.

In regard to pro se assignment of error number five, contending that this court's granting of the defendant's application for supervisory review was evidence of a due process violation, we note that this court granted the defendant's writ application merely "for the sole purpose of transferring the writ application to the district court for consideration as a motion for determination of indigent status, appointment of appellate counsel, and a motion to set a lodging date for the out-of-time appeal, if the court has not already done so." **State v. West**, 2017-1285 (La. App. 1st Cir. 12/7/17), 2017 WL 6055434 (unpublished), writ denied, 2018-0710 (La. 3/25/19) 2019 WL 1466966. Thus, this court did not rule on any alleged due

process violation in the writ application. For the reasons stated above, the defendant's pro se assignments of error are precluded and/or meritless.

As stated, the defendant pled guilty in these cases. 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**, 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. Code Crim. P. art. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings which arguably support this appeal. Accordingly, the defendant's convictions and sentences are affirmed. Appellate counsel's motion to withdraw, which has been held in abeyance pending the disposition in this matter, is hereby granted.

CONVICTIONS AND SENTENCES AFFIRMED; APPELLATE COUNSEL'S MOTION TO WITHDRAW GRANTED.