

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2001-KA-0136**
VERSUS * **COURT OF APPEAL**
ROBERT WILSON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-858, SECTION "F"
Honorable Dennis J. Waldron, Judge

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Judge Miriam G. Waltzer

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(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer and Judge James F. McKay III)

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CONVICTION AND SENTENCE AFFIRMED

Robert Wilson was charged by bill of information on 26 July 26 2000, with simple burglary of an inhabited dwelling in violation of La. R.S.

14:62.2. At his arraignment on 28 July he pleaded not guilty. A hearing on the motions to suppress the statement and evidence was begun on 4 August 2000, but it was dismissed when the defendant requested a sanity hearing.

Wilson was examined by Doctors Deland and Mallik, and a hearing was set 5 September 2000, but on that date the defendant withdrew his request for the hearing, and it was dismissed. On the same day, the defendant filed a pro se motion to quash the bill of information which, the court denied. On 21 September 2000, the date set for trial, the defendant withdrew his earlier plea of not guilty and entered a plea of guilty as charged under State v. Crosby, 338 So. 2d 584 (La. 1980). He was advised of his Boykin rights prior to his plea. The state filed a multiple bill, and after again being advised of his rights, Wilson pleaded guilty to the bill. Wilson was sentenced to serve eight years at hard labor as a third felony offender without benefit of probation or suspension of sentence. The defendant's motion for an appeal was granted.

Counsel filed a brief requesting a review for errors patent. Counsel

complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So. 2d 528 (La. App. 4th Cir. 1990). Counsel filed a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because she believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling, which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed him that he had the right to file a brief in his own behalf. He has not done so.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 14:62.2, and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, motion hearings, and sentencing.

We note an error patent in the sentence. The defendant was sentenced under La. R.S. 14:62.2, which provides for a sentence of not less than one year without benefit of parole, probation or suspension of sentence and not

more than twelve years, and La. R.S. 15:529.1 (G), which provides that the sentence be served without benefit of probation or suspension of sentence. The trial court did not prohibit parole for one year. However, this error is favorable to the defendant and will not be corrected on appeal where the defendant only appealed and the state did not raise the issue. State v. Fraser, 484 So. 2d 122 (La. 1986).

Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal. Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

CONVICTION AND SENTENCE AFFIRMED