



MANDEVILLE, LA 70470-8583  
COUNSEL FOR DEFENDANT/APPELLANT

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

Henry Alexander (“Alexander”) was charged by bill of information on 24 October 2000 with simple burglary of an inhabited dwelling, a violation of La. R.S. 14:62.2. At his arraignment on 27 October 2000 he pled not guilty. After trial on 5 February 2001, a twelve-person jury found Alexander guilty as charged. He was sentenced on 20 February 2001 to serve four years at hard labor. Alexander’s motion for an appeal was granted.

At trial Officer Louis Faust testified that at about 11:00 a.m. on 23 August 2000, he and fellow Officer Mark Wilson were driving a marked police vehicle at the intersection of Franklin Avenue and North Claiborne Avenue when several people on the street called to them that a residential burglary was occurring nearby. The officers drove to the designated house where they found an open window on one side of the house and the window screen and a multicolored shirt on the ground below the window. Shortly after the police arrived, the occupant of the house returned and opened the front door for them. When the house was searched, Alexander was found hiding behind a couch. He was wearing a white T-shirt and blue jeans. Next

to the front door were two pillowcases full of items belonging to the occupant. When Alexander was searched incident to his arrest, jewelry belonging to the occupant was found in his pockets.

Officer Mark Wilson, Officer Faust's partner, testified to the same facts.

Ms. Kriscynthia Malvio, a neighbor of the victim, testified that she was in her bedroom fixing her sister's hair when she thought she heard something outside. When she first looked out of her window she saw nothing, but a moment later she noticed a man walking near her house. He was wearing a multicolored shirt, jeans, and a cap. At that time, Ms. Malvio's mother telephoned, and Ms. Malvio told her of seeing the man on the side of the house. Her mother instructed her to close her window, and as she was doing so, she heard glass breaking. She noticed the shirt the man had been wearing was on the ground. Ms. Malvio and her sister left their house, and shortly thereafter, she saw the police officers enter the house and then emerge with Alexander. Under cross-examination, Ms. Malvio stated that there is a house between her home and the victim's house; however, she maintained she could see underneath the intervening house to see the multicolored shirt on the ground. Her house is "L" shaped with the short leg in the back, and from the back window, she can see both the victim's house

and the intervening house.

Ms. Teresa Davis, the victim, testified that her home at 2724 North Claiborne Avenue was burglarized in August. She arrived at the house at the same time as the police officers and gave them the key to the front door. She waited until after Alexander was found and transported out of her house before entering it. When she walked into her house, she found it ransacked. In pillowcases by the door, she found two VCRs, tapes, a CD player and her telephone. Broken glass covered her daughter's bed. Her earrings and her daughter's bubble gum jewelry were found in Alexander's pocket. Ms. Davis said she lives with her daughter and Elton Carney, the child's father, who was at work when the burglary occurred. She also stated that she does not know Alexander and did not give him permission to enter her home.

When Alexander testified, he admitted prior convictions for burglary in 1978 and simple robbery in the late 1980's. He stated that he pled guilty to both crimes because he committed them. However, he maintains that he entered Ms. Davis's house "to score weed." Alexander claimed that the man who lived in this house distributed marijuana, and that morning, as Alexander entered the house at the occupant's invitation, the occupant left and slammed the door because he saw the police arriving. Alexander was left in the house, and he hid behind the sofa thinking a drug bust was about

to occur. Alexander denied wearing a multicolored shirt that day and also touching VCRs or telephones in the house. He stated that he picked up the jewelry, found in his pocket, on a bridge near the house.

Defense counsel filed a brief requesting a review for errors patent. Defense 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). Defense counsel filed a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241. Defense counsel's detailed review of the procedural history of the case and the facts of the case indicates a thorough review of the record. Defense counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Defense counsel reviewed available transcripts and found no trial court ruling, which arguably supports the appeal. A copy of the brief was forwarded to Alexander, 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. Alexander 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. Alexander was present and represented by counsel at arraignment, motion hearings, trial, and sentencing.

We note an error patent in the sentence. Alexander 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. The trial court did not pronounce the one-year denial of parole benefits.

However, this court will not correct an error favorable to a defendant, which was not raised by the state. State v. Fraser, 484 So. 2d 122 (La. 1986); State v. Gervais, 546 So. 2d 215 (La. App. 4 Cir. 1989).

Our independent review reveals no trial court ruling, which arguably supports the appeal.

Alexander's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

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