STATE OF LOUISIANA	*	**NO. 2002-KA-1347**
VERSUS	*	**COURT OF APPEAL**
TYRONE MCKINNIS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 379-008, SECTION "A"
Honorable Charles L. Elloie, Judge
* * * * * *
JOAN BERNARD ARMSTRONG

JUDGE
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones and Judge David S. Gorbaty)

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AFFIRMED; MOTION GRANTED.

This errors patent and pro se appeal concerns the defendant Tyrone McKinnis' resentencing to eight years at hard labor as a second felony offender. McKinnis was convicted of simple burglary on February 1, 1996, and was sentenced to eight years at hard labor as a third felony offender on November 22, 1999. He appealed, and in an unpublished opinion, this Court affirmed his conviction and vacated his multiple offender adjudication and sentence; the case was remanded for resentencing. State v. McKinnis, 97-1758 (La. App. 4 Cir. 7/12/00), 778 So.2d 109.

He was resentenced to eight years at hard labor on July 6, 2001, after a hearing at which he pleaded guilty as a second felony offender. He received credit for time served.

The facts of this case, as presented in the earlier appeal, are as follows:

> Richard Matthews, a Superdome security officer, was patrolling the plaza level of the Superdome at approximately 10:20 p.m. on August 30, 1995. He stopped his vehicle near Gate A to take a "smoke break." While he was smoking a cigarette, he heard glass breaking. Matthews

looked across the street and saw the defendant standing next to a van and throwing some type of object into the window on the passenger side. After the defendant broke the window, he entered the van. Matthews called his co-worker, Raymond Griffin, and told him what happened. Matthews asked Griffin to use his police radio to call the police. Griffin called the police and then met Matthews by Gate A. Matthews and Griffin saw the defendant in the van, rummaging around. They both saw the defendant get out of the van, holding a black box. The defendant crossed Poydras and walked towards the Superdome. Matthews and Griffin detained the defendant when he walked onto Superdome property. They held the defendant until the police arrived.

Officer Floyd Wagger responded to a burglary call at the Superdome on August 30, 1995. When he arrived at the intersection of Clara and Poydras Streets, he was flagged down by Superdome security. Security Officer Matthews was holding someone in his security vehicle. Matthews told the officer that the subject had broken into a van across the street. Officer Wagger observed that the van was in disarray. There was a plastic bag with two bricks on the driver's seat. The front passenger windows were smashed. There was glass everywhere. Officer Wagger contacted the owner of the vehicle. After speaking with Mike Paulsen, the owner of the van, the officer arrested the defendant. Officer Wagger seized a black toolbox from the defendant that was identified by the owner of the vehicle as belonging to him.

Paulsen was working the 3:00 p.m. to 11:00 p.m. shift at the Veterans Administration Hospital on August 30, 1995. At approximately 10:45 p.m., he was notified that someone was caught breaking into his van. When Paulsen arrived on the scene, there was glass everywhere. The front passenger windows had been smashed. The glove

> compartment had been pried open and his toolbox taken. Paulsen testified at trial that he did not know the defendant and did not give the defendant permission to break into his vehicle and take his toolbox. Paulsen also testified that the black toolbox found on the defendant belonged to him.

State v. McKinnis, 97-1758 (La. App. 4 Cir. 7/12/00), pp. 2-3.

Through counsel the defendant requests a review of the record for errors patent, and in a pro se brief, he argues that his sentence is excessive and that it was coerced.

Counsel filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by Anders v. State of Cal., 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So.2d 528 (La. App. 4 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 the available transcript and found no trial Court ruling which arguably supports the appeal. A copy of the brief was forwarded to the defendant, and this Court informed him that he had the right to file a brief in his own behalf.

In his pro se brief, the defendant first argues that his eight-year

sentence as a second offender is excessive. This issue was preserved for review on appeal by the defendant's pro se motion for reconsideration of sentence. The defendant contends that the trial court failed to sentence him as a second offender; however, the defendant signed the Waiver of Rights Plea of Guilty Form acknowledging that he was a second offender, and at sentencing the court stated "pursuant to Louisiana Revised Statute 15:529.1, Mr. McKinnis will be turned over to the Department of Corrections for a Period of Eight Years." The defendant next alleges that his sentence is excessive, but, as his next assignment makes clear, he agreed to that sentence. Furthermore, he makes no argument as to why this Court should find a sentence very close to the minimum mandated sentence excessive. This Court considers an assignment of error which has not been briefed to be abandoned. La. Rules of Court, Uniform Rules—Courts of Appeal, Rule 2-12.4.

In his next assignment, the defendant claims he was "forced, coerced and threatened" into entering his plea to the multiple bill. He points to the July 6, 2001, transcript of the sentencing in which the trial court asked him a series of questions to which he replied affirmatively. He was asked if he realized that his sentence would be eight years, and he answered, "Yes." He was asked if he was satisfied with his attorney and the court, and he

answered, “Yes.” Then he was asked if he had been “forced, coerced, or threatened to enter the guilty plea,” and he answered, “Yes.” Immediately thereafter, he was asked if he understood the “possible consequences of pleading guilty and wish[ed] to plead guilty at this time,” and again he answered, “Yes.” At the hearing he made no attempt to bring any alleged coercion or threat to the trial court’s attention. Neither the trial court nor the attorneys appear to have noticed his unusual answer nor recognized it as a denial of his willingness to plead guilty.

In his brief, the defendant states that the assistant district attorney told him that if he did not plead guilty to the multiple bill he would receive a fifteen-year sentence. The defendant does not relate his attorney’s advice. Certainly, the defendant knew that his prior offense had already withstood examination by this Court in his first appeal. Thus, he had to assume that he would be found to be a second offender, and as such, he would face a potential twenty-four year maximum term. Assuming the statement attributed to the ADA is true, it can be interpreted as an incentive to plead guilty to the multiple bill, but was not as force, coercion, or a threat.

Other evidence indicates that the defendant’s argument is disingenuous. On the Waiver of Rights-Plea of Guilty Form the defendant

initialed a sentence which reads:

> I am satisfied with my attorney and the Court in their efforts to explain the rights that I am waiving at this time and the consequences of the guilty plea. **I have not been forced, coerced, or threatened to enter this guilty plea**.

The defendant, his attorney, and the judge signed the document.

If on July 6, 2001, the defendant believed that his plea was forced, he could have objected at the hearing. He made no such objection. Rather he benefited from a plea in which he received a sentence very close to the minimum mandated term, and now attempts to have that sentence overturned. This defendant is no novice to the court system. He has had two appeals and filed numerous writs. In view of the entire record in this case, we find the defendant's position simply incredible.

There is no merit in the defendant's pro se arguments.

As per State v. Benjamin, this Court performed an independent, thorough review of the transcript in the appeal record. The defendant was properly charged by bill of information with a violation of La. R.S. 14.62 and La. R.S. 15:529.1, and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at sentencing. The sentence is legal in all respects. Our independent review

reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal.

For the foregoing reasons, the defendant’s sentence is affirmed. Counsel's motion to withdraw is granted.

AFFIRMED; MOTION GRANTED.