

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-2146**
VERSUS * **COURT OF APPEAL**
JOHN E. COLLINS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 428-619, SECTION "J"
Honorable Leon Cannizzaro, Judge

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Judge Edwin A. Lombard

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(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,
Judge Edwin A. Lombard)

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

On March 11, 2002, John E. Collins, was charged by bill of information on March 11, 2002, with solicitation for a crime against nature in violation of La. R.S. 14:89(2). After his arraignment on March 25th, he pleaded not guilty. However, after a trial on April 9th a six-member jury found him guilty as charged. He was sentenced on July 9, 2002, to serve two years at hard labor; his sentence was suspended, and he was placed on three years of active, supervised probation with special conditions. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial Detective Jeffery Keating told the court that he and several other officers entered a barroom in the French Quarter about 2 a.m. on January 26, 2002. The men were wearing plain clothes and working undercover. As he walked into the bar, the detective noticed a man dressed as a woman sitting at the bar. That person, later identified as the defendant,

motioned for the detective to come speak to him. The defendant told the officer that he was celebrating his birthday and looking to make some money; he asked the detective how much money he had. Detective Keating answered that he had about one hundred dollars. The defendant said that that sum was enough for “some great head and sex.” The detective understood the term “head” to mean oral sex and “sex” to mean anal sex. The defendant asked if the detective had a place where they could go, and the detective said he did. The defendant suggested they go there. Detective Keating identified himself as a police officer and arrested the defendant.

Dr. Rafael Salcedo, the defendant’s expert in the field of forensic clinical psychology with a specialty in human sexuality, testified that he had never examined the defendant. The doctor stated that the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, lists all currently recognized and accepted diagnoses for treatment and research.

Homosexuality is not considered a diagnosis for purpose of treatment and research.

Mr. Anthony Simpson testified that he was in the bar in the French Quarter the night the defendant was arrested. When he saw the officers coming in, he realized they were undercover cops. The defendant then told Mr. Simpson that the man talking with Simpson was a police officer. Three

men were arrested in the bar that night; each was dressed as a female.

John Collins, the thirty-nine year old defendant, testified that he lives in Springfield, La., where he has “been living as a lady” since he was eighteen. Mr. Collins said he knew Detective Keating was a police officer because his badge was visible through his shirt. Detective Keating bought a drink for himself and the defendant, and then “slammed” his drink down and began flirting with the defendant. When Collins did not respond, the officer moved on to speak to others. However, Collins followed him and warned the others that he was a cop. Collins was then arrested. John Collins denied ever offering to have oral and anal sex with the officer.

Counsel for the defendant has filed a brief requesting review of the record 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 he 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 on 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 available transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 14:89(2), and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at arraignment, during the trial, and at sentencing. The verdict and the defendant's sentence are legal in all respects. Furthermore, a review of the trial transcript shows that the State provided sufficient evidence to prove beyond a reasonable doubt that the defendant committed the crime for which the trial court convicted him.

Counsel for the defendant correctly notes that the trial court erred in failing to advise him of the prescriptive period for post-conviction relief under La Code Crim. Proc. art. 930.8. However, this court has repeatedly held that this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. *State v. Handy*, 2000-0051 (La. App. 4 Cir. 1/24/01), 779 So.2d 103, 104, *writ denied*, 2001-1896 (La. 3/28/02), 812 So.2d 651; *State v. Moore*, 99-2684 (La. App. 4 Cir.

12/20/00), 777 So.2d 600, 608, *writ denied*, 2001-0365 (La. 12/14/01), 803 So. 2d 986; *State v. Echols*, 99-2226 (La. App. 4 Cir. 10/4/00), 774 So.2d 993, 997.

In the interest of judicial economy, we note for appellant that La. C.Cr. P. art. 930.8 generally requires that applications for post-conviction relief be filed within two years of the finality of a conviction.

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

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