NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2004-KA-0614**
VERSUS	*	**COURT OF APPEAL**
ENA MELISSA SHERIDAN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 02-3287, DIVISION "A"
Honorable Anthony D. Ragusa, Judge
* * * * * *
Judge Patricia Rivet Murray
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(Court composed of Judge Patricia Rivet Murray, Judge Terri F. Love, Judge Max N. Tobias Jr.)

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AFFIRMED

The issues raised on this appeal by the defendant, Ena Melissa Sheridan, relate solely to sentencing. Finding no error, we affirm Ms. Sheridan's sentence.

FACTUAL AND PROCEDURAL BACKGROUND

On November 12, 2002, the State filed a bill of information charging Ms. Sheridan with armed robbery, a violation of La. R.S. 14:64, and attempted first degree murder, a violation of La. R.S. 14:27(30). On November 18, 2002, she was arraigned and pleaded not guilty. On May 21, 2003, the attempted first degree murder charge was amended to attempted aggravated battery, a violation of La. R.S. 14:27(34). After being advised of her rights, Ms. Sheridan pleaded guilty. On July 16, 2003, the trial court sentenced her to serve eighteen years at hard labor on the armed robbery conviction and five years at hard labor on the attempted aggravated battery conviction, with the sentences to run concurrently. On November 19, 2003, the trial court denied Ms. Sheridan's motion to reconsider sentence. The

trial court granted her motion for appeal.

Given that Ms. Sheridan pled guilty, there was no trial in this matter. From the record, we glean the following facts. Wearing bandanas over their faces and latex gloves on their hands, Ms. Sheridan and her accomplice entered a McDonald's brandishing handguns. They ordered the employees to the floor and the manager to open the safe. They stole a total of $942.90. While the robbery was in progress, a customer entered and exited the McDonald's. As the customer was exiting, Ms. Sheridan fired a shot apparently in the customer's direction. However, the customer was neither hit nor harmed.

DISCUSSION

Complying with the procedures outlined in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), as interpreted by this Court in *State v. Benjamin*, 573 So. 2d 528 (La. App. 4th Cir. 1990), Mr. Sheridan's appellate counsel filed a brief requesting a review for errors patent. Counsel's brief also complied with the requirements enunciated in *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So. 2d 241, which requires counsel's brief contain "`a detailed and reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place.'" *Jyles*, 96-2669, p. 3, 704 So. 2d at 242. Counsel's detailed

review of the procedural history and facts of the case reflect his thorough review of the record. Because he believed, after a conscientious review of the record, including available transcripts, that there is no non-frivolous issue for appeal, counsel filed a motion to withdraw. A copy of counsel's brief was forwarded to Ms. Sheridan, and she was informed of her right to file a brief in her own behalf. However, she has not done so.

As required by *Benjamin*, we performed an independent review of the appeal record and the *Anders* brief filed by appellate counsel. Ms. Sheridan was properly charged by bill of information with violations of La. R.S. 14:64 and 14:27(34), and the bill was signed by an assistant district attorney. She was present and represented by counsel at arraignment, the motion hearing, and sentencing.

Our review of the record reveals an error patent in the sentence. The armed robbery statute, La. R.S. 14:64, requires that sentence be imposed without benefit of parole, probation, or suspension of sentence. No such prohibition was imposed in this case. Appellate courts no longer remand for correction of illegally lenient sentences when the sentencing court has failed to include the prohibition that such sentences be served without benefit of probation, parole, or suspension of sentence. Rather, La. R.S. 15:301.1(A), which became effective August 15, 1999, deems such illegally lenient

sentences to include statutorily mandated prohibitions against parole, probation, or suspension of sentence, regardless of whether the trial court pronounced them. *State v. Williams*, 2000-1725 (La. 11/28/01), 800 So. 2d 790.

In *Williams*, the Louisiana Supreme Court construed La. R.S. 15:301.1(A) as self-activating the correction and as eliminating the need for an appellate court to remand for the ministerial correction an illegally lenient sentence, which may result from the failure of the sentencing court to impose punishment in conformity with that provided in the statute. Hence, we need not take any action to correct the trial court's failure to include the prohibition that Ms. Sheridan's armed robbery sentence be served without benefit of parole, probation, or suspension of sentence.

We also note, as Ms. Sheridan's counsel points out in his *Anders* brief, that the record does not reflect that the trial court advised Ms. Sheridan of the two-year period in which to file for post conviction relief under La. C.Cr.P. art. 930.8. However, as her counsel further points out, this error " has no bearing on the sentence and is not grounds to reverse the sentence or remand the case for re-sentencing." *State v. Leary*, 627 So. 2d 777 (La. App. 2d Cir. 1993). Moreover, La.C. Cr.P. art. 930.8 contains merely precatory language; this article does not bestow an enforceable right upon an

individual defendant. *State ex rel. Glover v. State*, 93-2330, 94-2101, 94-2197, p. 21 (La. 9/5/95), 660 So.2d 1189, 1201, *abrogated in part on other grounds, State ex rel. Olivieri v. State*, 2000-0172, 2000-1767 (La. 2/21/2001), 779 So. 2d 735. In the interest of judicial economy, we note for Ms. Sheridan 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. We further note that this two-year period does not commence to run until the conviction is final; hence, it has not yet commenced to run.

Our independent review reveals no non-frivolous issue and no trial court ruling that arguably supports the appeal

DECREE

For the forgoing reasons, we find appellate counsel has complied with *Anders* and grant his motion to withdraw. We affirm Ms. Sheridan's sentence.

AFFIRMED