

This is a criminal appeal. The defendant, Arthur Jiles, appeals his guilty pleas to, and sentences for, being a convicted felon in possession of a firearm, simple robbery, and public bribery. Appellate counsel for Mr. Jiles requests only a review of the record for errors patent. Mr. Jiles, *pro se*, assigns as error the sufficiency of evidence as to the firearm count and the suggestiveness of an identification. Finding no error, we affirm.

STATEMENT OF THE CASE

On July 27, 2011, the State of Louisiana charged Mr. Jiles with one count each of possession of a firearm by a convicted felon, simple robbery, and public intimidation.¹ The trial court previously found probable cause to hold Mr. Jiles on the possession of a firearm and robbery charges and denied his motion to suppress the identification. On September 30, 2011, the trial court severed the public bribery count from the other two counts for trial. However, on November 15,

¹The State charged Jiles in two earlier bills of information, 502-672 and 502-544, with the possession of a firearm count and the robbery count. The State ultimately *nolle prosequied* those cases after it filed the bill of information in the present case, which added the public bribery count.

2011, Mr. Jiles pled guilty as charged to all three counts. He waived all delays, and the court sentenced him to serve twelve years at hard labor on the firearms charge, seven years at hard labor on the robbery charge, and five years at hard labor on the bribery charge, the sentences to run concurrently. The State filed a multiple bill with respect to the firearms count, charging Mr. Jiles with being a second offender. Mr. Jiles pled guilty to the multiple bill. The court vacated the original sentence on this count and resentenced him as a second offender to serve twelve years at hard labor.

STATEMENT OF THE FACTS

Because Mr. Jiles pled guilty to the charges in this case, there was no trial. The only transcript contained in the record concerned the motion to suppress the identification and preliminary hearing arising out of the robbery and possession of a firearm charges; the facts of the public bribery count are unknown.

At the suppression hearing, Detective Jerry Baldwin testified that he investigated a simple robbery. The crime occurred on December 3, 2010, outside a barbershop located at the corner of General Pershing and South Derbigny Streets. The victim, whose name was not mentioned at the hearing, went to the Second District police station to report the robbery. He told Detective Baldwin and Detective Sam Jennings that just before the robbery, he was standing outside the barbershop speaking with a man he knew as Arthur. He and Arthur attended high school together. Suddenly an unknown man came up behind him and grabbed him, and Arthur reached into the victim's pocket and removed the victim's gun. The

unknown man and Arthur then fled. The victim described Arthur and said that Arthur lived uptown in a graveyard.

Detective Baldwin testified that Detective Jennings immediately told him that Arthur might be “Arthur Jiles.” Detective Baldwin ran Mr. Jiles’ name and pulled up a photograph that matched the description given by the victim. Detective Baldwin then compiled a lineup containing the photographs of Mr. Jiles’ and five other individuals. He gave the victim the envelope containing the lineup and told the victim to take his time and to tell him if he recognized anyone. The victim opened up the envelope, looked at the photographs, and identified the photograph of Mr. Jiles as depicting the person who robbed him. Detective Baldwin denied suggesting to the victim which photograph to choose. He also denied that the identification was the product of any coercion, force, or promises by the detectives. Detective Baldwin testified that the victim saw Mr. Jiles with the gun in his hand after the gun was taken out of the victim’s pocket.

On cross-examination, Detective Baldwin testified that Mr. Jiles was later arrested pursuant to a warrant. At the time of his arrest, Mr. Jiles was not in possession of a gun. Detective Baldwin further testified that no gun was found at the site of the arrest or at any residence where Mr. Jiles reportedly lived. Detective Baldwin stated that after the victim reported the crime, the detective went to the barbershop to look for any witnesses. However, he only found one man, who told him that he only observed a physical altercation between two men. Although the detectives were able to identify Arthur—the man who had previously had a class

with the victim—they were unable to determine the identity of the other man who held the victim from behind while Mr. Jiles took the gun from him. The victim stated that after the robbery he saw “Arthur” and the other man get into a white vehicle. Detective Baldwin testified that after reporting the crime, the victim remained at the Second District until he viewed the lineup and identified Mr. Jiles.

The State introduced the photographic lineup and a certified copy of the docket master of Mr. Jiles’ prior conviction.

DISCUSSION

Errors Patent/Assignment of Error by Counsel

By his sole assignment of error, Mr. Jiles’ attorney requests a review of the record for errors patent. Counsel complied with the procedures outlined by *Anders v. California*, 386 U.S. 738 (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 the record and found no trial court ruling that arguably supports the appeal.

In accordance with *Benjamin, supra*, this court performed an independent review of the pleadings, minute entries, bill of information, and transcript in the appeal record. Mr. Jiles was properly charged by bill of information with one count

each of possession of a firearm by a convicted felon (La. R.S. 14:95.1), simple robbery (La. R.S. 14:65), and public bribery (La. R.S. 14:118); and the bill of information was signed by an assistant district attorney.

The record does not show that Mr. Jiles was formally arraigned in the present case. Nonetheless, La. C.Cr.P. art. 555 provides that the failure to arraign a defendant is waived if the defendant “enters upon trial without objecting thereto, and it shall be considered as if he had pleaded not guilty.” *See State v. Foreman*, 08-0902 (La. App. 4 Cir. 4/29/09), 10 So.3d 1238. Although Mr. Jiles did not go to trial, the transcript of the November 15, 2011 hearing at which he pled guilty to these charges shows that he withdrew his prior pleas of not guilty before pleading guilty as charged to all three counts. Thus, all of the parties were under the impression that he had formerly pled not guilty. Therefore, any error that may have occurred by the trial court’s failure to arraign Mr. Jiles was cured when he pled guilty to the charges in the bill of information.

Mr. Jiles was present and represented by counsel while pleading guilty and at sentencing. Because he pled guilty to the charges, the State did not have the burden of proving the charges against him.

A review of the record also shows that the trial court erred in imposing the sentence for the felon in possession of a firearm count. Under La. R.S. 14:95.1, the sentence must be imposed without the benefit of parole, probation, or suspension of sentence. In addition, the trial court found that Mr. Jiles was a second offender; and La. R.S. 15:529.1G provides that a sentence as a second offender must be

imposed without the benefit of probation or suspension of sentence. The trial court in this case failed to include these prohibitions when imposing sentence.

Nonetheless, pursuant to La. R.S. 15:301.1A, and *State v. Williams*, 00-1725 (La. 11/28/01), 800 So.2d 790, the sentence is deemed to have been imposed with these restrictions of benefits. Thus, there is no need for this court to correct the sentence. *See State v. Phillips*, 03-0304 (La. App. 4 Cir. 7/23/03), 853 So.2d 675.

There are no other patent errors.

***Pro Se* Assignment of Error**

By his *pro se* assignment of error, Mr. Jiles contends that the evidence was insufficient to support his firearm conviction. He also contends that the identification procedure was suggestive. His first contention cannot be considered by this court; his second one lacks merit.

As to his sufficiency of the evidence contention, Mr. Jiles argues that the State did not prove he was in possession of a gun because no weapons were found when they arrested him. The only evidence of his possession of a gun was the victim's statement that "Arthur"—who was in a class with the victim in high school—was the person who took the gun from his pocket. Nonetheless, because Mr. Jiles pled guilty, the State was relieved of its burden of proving that he committed the offense. The first contention lacks merit.

Mr. Jiles' second contention is that the identification was suggestive. Because he pled guilty under *State v. Crosby*, 338 So.2d 584 (La. 1976), this claim is preserved for appeal. A defendant has the burden of showing that the

identification was suggestive and that the procedure resulted in the likelihood of misidentification. *State v. Prudholm*, 446 So.2d 729 (La. 1984); *State v. Holmes*, 05-1248 (La. App. 4 Cir. 5/10/06), 931 So.2d 1157. A “suggestive identification” is one that unduly focuses the witness’s attention on the defendant. However, even if a defendant shows that an identification is suggestive, a defendant’s due process rights are only violated if there is a showing of the likelihood of misidentification. *State v. Thibodeaux*, 98-1673 (La. 9/8/99), 750 So.2d 916; *Holmes, supra*.

Once an identification procedure has been found to be suggestive, a reviewing court must look to the five factors set forth in *Manson v. Brathwaite*, 432 U.S. 98 (1977), to determine whether a suggestive identification presents a substantial likelihood of misidentification: (1) the witness’s opportunity to view the assailant at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the assailant; (4) the level of certainty demonstrated by the witness; and (5) the length of time between the crime and the confrontation. A trial court’s ruling on the admissibility of an identification is entitled to great weight and must not be disturbed unless the trial court abused its discretion by so ruling. *Holmes, supra*; *State v. Offray*, 00-0959 (La. App. 4 Cir. 9/26/01), 797 So.2d 764.

In this case, Mr. Jiles contends that the identification was suggestive because the victim could only recall the robber’s first name. It was Detective Jennings who supplied Mr. Jiles’ full name, having recognized the description given by the victim and the fact that “Arthur” lived in a graveyard. However, the fact that the

detective came up with Mr. Jiles' name did not taint the identification procedure. Detective Baldwin testified that he ran Mr. Jiles' name, found that his photograph matched the description given by the victim, and compiled a six-person lineup. He testified that he placed the photographs in an envelope, gave the envelope to the victim, and told the victim that when he was ready, he could open the envelope, look at the photographs, and let the detectives know if he recognized anyone. The victim opened the envelope, took out the photographs, and chose Mr. Jiles' photograph. Detective Baldwin denied suggesting what photograph to choose, and he insisted that the identification was made without any force, coercion, or promises. In addition, the victim knew Mr. Jiles before the robbery. Mr. Jiles presented no evidence to counter this testimony. Thus, he failed to show that the identification was suggestive. This claim lacks merit.

DECREE

Our independent review reveals no non-frivolous issue and no trial court ruling that arguably supports the appeal. Therefore, we affirm the defendant's conviction and sentence; and we grant appellate counsel's motion to withdraw.

AFFIRMED; MOTION TO WITHDRAW GRANTED