

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	NO. 2012-KA-1681
VERSUS	*	
COTINA D. HOLMES	*	COURT OF APPEAL
	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 506-141, SECTION "A"
Honorable Laurie A. White, Judge

Judge Dennis R. Bagneris, Sr.

(Court composed of Chief Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., Judge Paul A. Bonin)

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**CONVICTION AFFIRMED; REMANDED; MOTION TO WITHDRAW
GRANTED.**

JUNE 19, 2013

Defendant, Cotina Holmes, appeals her conviction and suspended sentence for carrying a handgun on a school bus, requesting only a review of the record for errors patent. Such review reveals that the court failed to rule on Ms. Holmes' oral motion to reconsider sentence. Accordingly, we affirm Ms. Holmes' conviction and remand the case for a ruling on her motion for reconsideration of sentence, reserving her right to appeal her sentence if the court denies the motion.

FACTS

The State of Louisiana filed a bill of information on May 25, 2011, charging Ms. Holmes with carrying a "concealed" weapon on a school bus in violation of La. R.S. 14:95.2. Ms. Holmes pled not guilty to the charge on June 15, and again on November 16, 2011. Ms. Holmes appeared for trial on December 19, 2011, at which time she waived her right to a jury. At that time, the State amended the bill of information to delete the "concealed" allegation and to correct other language in the bill. At the end of trial on that date, the court found Ms. Holmes guilty as charged. The court then ordered a presentence investigation and reset the matter for sentencing. On April 26, 2012, the court sentenced Ms. Holmes to five years at hard labor, suspended the sentence, and placed her on five years active probation

with various conditions. Ms. Holmes moved for reconsideration of her sentence and for an appeal. The court granted the motion for appeal.

Ms. Holmes' conviction arose out of an argument that she had with her son on February 24, 2011. At that time, Ms. Holmes was employed by the Orleans Parish Sheriff's Office and had a commission to carry a gun. On that morning, she and her sixteen-year-old son argued over his use of tobacco and marijuana. Ms. Holmes left for work, carrying her handgun, but received a call from her nephew that her son may have missed his school bus. By the time she arrived back home, her son was getting on his school bus. Ms. Holmes followed him onto the bus with her gun in her hand. The bus driver testified that Ms. Holmes "racked" the gun as she followed her son, but Ms. Holmes insisted that the gun was not loaded. Although the bus driver tried to stop her from entering the bus, Ms. Holmes walked back to where her son was sitting, and she waved the gun around while threatening to blow his head off. Her son told her to do what she had to do. One other child was on the bus at that time, and he testified that he was frightened by these events. Ms. Holmes then walked back to the bus driver, apologized for her actions, and left the bus. The bus driver drove the bus away, and Ms. Holmes called the authorities to report the incident. The entire incident was caught on the video surveillance system on the bus, and the court viewed the video during trial.

Ms. Holmes was eventually dismissed from the sheriff's office. She expressed remorse for the incident, explaining that the constant fighting with her son had led to the incident. She insisted that her unloaded gun was sitting in her lap while she was driving home. She maintained that she must have grabbed her gun when she exited her car, and she did not realize that she had carried it onto the bus.

DISCUSSION

By her sole assignment of error, Ms. Holmes requests a review of the record for errors patent. 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). 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. A copy of counsel's brief was forwarded to Ms. Holmes, and this Court informed her that she had the right to file a brief in her own behalf. She has not done so. Thus, this Court's review is limited to errors on the face of the record. La. C.Cr.P. art. 920.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, and the bill of information in the appeal record. Ms. Holmes was properly charged by bill of information with carrying a firearm on a school bus in violation of La. R.S. 14:95.2, and the bill of information was signed by an assistant district attorney. Ms. Holmes was present and represented by counsel at arraignment, during trial, and at sentencing. The court's verdict of guilty as charged is legal all respects, as is Ms. Holmes' sentence. Furthermore, a review of the trial transcript shows that the State provided sufficient evidence to prove beyond a reasonable doubt that Ms. Holmes was guilty of carrying a firearm on a school bus.

The only patent error noted by this Court is that there is no indication that the trial court ruled on Ms. Holmes' oral motion to reconsider her sentence. As per La. C.Cr.P. art. 881.1 B, a defendant may file an oral motion to reconsider sentence at the time of sentencing. While the failure to rule on a motion to reconsider sentence would preclude review of a defendant's sentence, see State v. McQun, 2002-0259 (La. App. 4 Cir. 6/19/02), 828 So. 2d 598, Ms. Holmes does not seek review of her sentence. The failure to rule on the motion to reconsider sentence does not preclude review of Ms. Holmes conviction. Nonetheless, the case must be remanded for a ruling on the motion to reconsider sentence. See State v. Peters, 2010-0326 (La. App. 4 Cir. 2/16/11), 60 So. 3d 672¹; State v. Hailey, 2002-1738 (La. App. 4 Cir. 9/17/03), 863 So. 2d 564.

Despite this patent error, our independent review reveals no non-frivolous issue and no trial court ruling that arguably supports the appeal. Therefore, we affirm Ms. Holmes' conviction, but we remand the case for the trial court's ruling on her motion to reconsider sentence, reserving to Ms. Holmes her right to appeal her sentence once the court has ruled. We also grant appellate counsel's motion to withdraw.

**CONVICTION AFFIRMED; REMANDED; MOTION TO
WITHDRAW GRANTED.**

¹ Writ den. 2011-0494 (La. 9/30/11), 71 So. 3d 279.

