

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * NO. 2013-KA-0324
VERSUS *
CHARLIE V. HOLMES * COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 474-664, SECTION "G"
Honorable Julian A. Parker, Judge

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Judge Max N. Tobias, Jr.

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(Court composed of Judge Max N. Tobias, Jr., Judge Madeleine M. Landrieu,
Judge Joy Cossich Lobrano)

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AFFIRMED; MOTION TO WITHDRAW GRANTED.

The defendant, Charlie Holmes, appeals his conviction for possession of between 20 and 200 grams of cocaine and his sentence imposed under La. R.S. 15:529.1, requesting a review of the record for patent errors only. Finding no patent error requiring action, we affirm his conviction and sentence.

On 13 December 2007, the state filed a bill of information charging Mr. Holmes with one count of violating La. R.S. 40:967 F, to which charge he entered a not guilty plea at his arraignment on 19 February 2008. On 12 June 2008, the trial court conducted a combined preliminary examination and motion to suppress hearing. The court found probable cause to substantiate the charge and denied the motion to suppress evidence. Trial did not occur until 26 April 2011; delays were caused in part by the court's calendar and the defendant's failure to appear on more than one occasion. After Mr. Holmes selected a jury trial, trial proceeded, and at the conclusion, the twelve-person jury returned a unanimous verdict of guilty as charged. On 23 June 2011, the court sentenced Mr. Holmes to twenty years at hard labor, then vacated that sentence after Mr. Holmes admitted to the allegation in the multiple bill that he was a third offender. The court then sentenced him to the minimum sentence of twenty years at hard labor, to run concurrently with any

other sentence, including that imposed under case number 474-664 on the Criminal District Court docket. No motion to reconsider sentence or for an appeal was filed within the statutory delays.

Mr. Holmes subsequently sought an out-of-time appeal by filing a pro se application for post-conviction relief. The trial court denied relief, but this court reversed, and in an unpublished writ disposition ordered that he be granted the appeal. *State v. Holmes*, 12-1475, (La. App. 4 Cir. 10/22/12), unpub. This appeal follows.

The charge against Mr. Holmes arose on 13 March 2007 when New Orleans Police Department Officers Ron Zoller and Roger Caillouet, who were on routine patrol in the Sixth District, observed Mr. Holmes, who was riding a scooter, disregard a red light at the intersection of Magazine Street and Jackson Avenue. After the officers saw this traffic violation, they attempted to stop him, but he disregarded their lights and siren, and continued to drive up Magazine Street, running another red light as he did so. Mr. Holmes drove for several more blocks, turning onto other streets before reaching Chippewa Street. During his flight from the officers, Mr. Holmes dropped items from his pocket, which appeared to be pens and a cell phone. Finally, in the 2400 block of Chippewa, Mr. Holmes was able to retrieve a bag from his jacket pocket and threw it away towards the side of the street. Officer Caillouet, who was driving the police vehicle, slowed down enough to allow Officer Zoller to exit and retrieve the bag which Mr. Holmes had thrown away. Officer Caillouet continued his pursuit, ultimately apprehending Holmes a few blocks away.

At trial, both Officers Zoller and Caillouet identified state's exhibit two as the bag which they saw Mr. Holmes throw away and which Officer Zoller

retrieved. The parties stipulated that, if Officer Harry O'Neil were called to testify, he would state that he tested the contents of the bag, that the contents tested positive for cocaine, and that the net weight of the contents was 61.58 grams.

No defense witness testified.

By his sole assignment of error, Mr. Holmes 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. 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 counsel's thorough review of the record. Counsel moved to withdraw from representing Mr. Holmes because she believes, after a conscientious review of the record, no non-frivolous issue for appeal exists. Counsel reviewed the record and found no trial court ruling that arguably supports the appeal. A copy of counsel's brief was forwarded to Mr. Holmes, and this court informed him that he had the right to file a brief on his own behalf. He has not done so, even though this court provided him with the record. Thus, this court's review is limited to errors on the face of the record. La. C.Cr.P. art. 920.

As per *Benjamin, supra*, this court performed an independent, thorough review of the pleadings, minute entries, and the bill of information in the record on appeal. Mr. Holmes was properly charged by bill of information with one count of possession of between 20 and 200 grams of cocaine, a violation of La. R.S. 40:967 F. The bill of information was signed by an assistant district attorney. Mr. Holmes was present and represented by counsel at arraignment, during trial, and at sentencing. The jury's verdict of guilty as charged is 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 Mr. Holmes was guilty of possessing cocaine in an amount between 20 and 200 grams.

Our review does reveal one error patent as to the sentence imposed on Mr. Holmes. Pursuant to La. 40:967 G, any sentence imposed for a violation of La. R.S. 40:967 F must be imposed without the benefit of probation or parole for the minimum term, which as a first offender would be five years. Because the trial court did not suspend any portion of the sentence, we find no error as to that requirement. However, the trial court failed to order that the minimum portion of Mr. Holmes' sentence be served without benefit of probation or parole, rendering the sentence illegally lenient. Nevertheless, under La. R.S. 15:301.1 A and *State v. Williams*, 00-1725 (La. 11/28/01), 800 So.2d 790, the sentence is deemed to have been imposed with the restrictions, even in the absence of the trial court's failure to delineate the restrictions. Consequently, this court takes no action on this error.

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

AFFIRMED; MOTION TO WITHDRAW GRANTED.