

STATE OF LOUISIANA

\*

NO. 2014-KA-1155

VERSUS

\*

COURT OF APPEAL

JODI B. TICKLE

\*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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**JENKINS, J., CONCURS AND ASSIGNS REASONS**

I respectfully concur. I agree with the majority in converting the appeal to a writ, granting the writ, and affirming defendant's conviction and sentence. I write separately, however, in regards to appellate counsel's *Benjamin* brief<sup>1</sup> requesting only an error patent review by this Court. I find the appellate brief does not effectively comply with the procedures set forth by the Louisiana Supreme Court in *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241, and more recently discussed by this Court in *State v. Gayton*, 13-1613 (La. App. 4 Cir. 1/28/15), 2015 WL 392671, \_\_\_ So.3d \_\_\_.

Although this defendant is not afforded the right to appeal her misdemeanor conviction by our Louisiana Constitution, the trial court granted the motion for appeal and appointed the Louisiana Appellate Project to provide appellate representation to this defendant. Upon that appointment, whether procedurally proper or constitutionally required, appellate counsel had the duty to thoroughly review defendant's case to determine the issues to raise on appeal and consider any trial court rulings that could arguably support the appeal. Even in the event that such examination of the record reveals no non-frivolous issues to raise in the appeal, counsel must still provide both the defendant and this Court with a detailed

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<sup>1</sup> *State v. Benjamin*, 573 So.2d 528 (La. App.4 Cir. 1990).

and reviewable assessment of the case. “[C]ounsel should strive to demonstrate ‘by full discussion and analysis that [she] has ... considered whether any ruling made by the trial court, subject to the contemporaneous objection rule, had a significant, adverse impact on shaping the evidence presented...” *Gayton*, 13-1613, p.8 (La. App. 4 Cir. 1/28/15), 2015 WL 392671, \_\_ So.3d \_\_, quoting *Jyles*, 96-2669, p.2, 704 So.2d at 241. Although this Court independently and thoroughly examined the trial record and appellate counsel informed defendant of her opportunity to file a supplemental brief, I find that appellate counsel failed to present this Court with a thorough review of the facts and procedure or the basis of counsel’s assessment that there are no issues to raise in the appeal.

Appellate counsel’s review of the facts of this case consisted of seven short sentences that merely refers to the warrantless search of defendant’s purse that resulted in her arrest for possession of hydrocodone and marijuana. Notably, appellate counsel does not review the testimony or arguments presented at the hearing on the motion to suppress the evidence; counsel states only that defendant’s motion to suppress the evidence “based on the warrantless search” was denied and this Court denied the writ application finding no error in the trial court judgment.

This Court’s denial of the writ application does not preclude appellate review of the trial court’s denial of the motion to suppress, particularly where, as in this case, the defendant enters a *Crosby* plea,<sup>2</sup> reserving the right to appeal the trial court’s denial of her motion to suppress. Even if appellate counsel’s review of the trial court’s ruling does not reveal any new issue to raise in the appeal, appellate counsel should provide some discussion of the trial court ruling which defendant specifically reserved the right to appeal.

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<sup>2</sup> *State v. Crosby*, 338 So.2d 584 (La. 1976).

As previously stated, I am mindful that this defendant does not have a constitutional right to appeal her misdemeanor conviction with an accompanying right to the assistance of appellate counsel. But in consideration of this Court's recent discussion in *Gayton* of the importance of ensuring constitutionally effective representation of indigent defendants, I find it necessary to express my concerns that the brief filed in an appeal before this Court did not comply with the standards set forth by this Court and the Louisiana Supreme Court.