

Judgment rendered June 29, 2016.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

NO. 50,736-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

RANDY DALE HOLTON

Appellant

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Appealed from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 14F2871

Honorable Daniel J. Ellender, Judge

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LOUISIANA APPELLATE PROJECT
By: Peggy J. Sullivan
JERRY L. JONES
District Attorney

Counsel for
Appellant
Counsel for
Appellee

GEARY S. AYCOCK
Assistant District Attorney

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Before BROWN, WILLIAMS and DREW, JJ.

WILLIAMS, J.

The defendant, Randy Dale Holton, was charged by bill of information with two counts of simple burglary, violations of LSA-R.S. 14:62, and one count of unauthorized use of a motor vehicle, a violation of LSA-R.S. 14:68.4. Pursuant to a plea agreement, the defendant pled guilty as charged. Defendant was sentenced, in conformity with an agreed-upon sentencing cap, to serve 10 years at hard labor for each offense, the sentences to run concurrently. The defendant now appeals.

Defendant's appellate counsel has filed a motion to withdraw, together with a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), alleging that there are no non-frivolous issues upon which to base an appeal. For the following reasons, we affirm defendant's convictions and sentences. Defense counsel's motion to withdraw is granted.

FACTS

The record shows defendant was charged by bill of information with two counts of simple burglary and one count of unauthorized use of a motor vehicle. After the trial commenced, defendant pled guilty as charged pursuant to a plea agreement. In exchange for the guilty plea, the state agreed to a sentencing cap of 10 years' imprisonment on all counts and not to file an habitual offender bill of information. Prior to accepting his plea, the trial court advised defendant of his *Boykin* rights, including his right against self-incrimination, his right to a jury trial, and his right to confront his accusers. The trial court accepted defendant's guilty plea as knowingly and voluntarily given.

Prior to the imposition of the sentences, defendant filed a motion to

withdraw his guilty plea. After a hearing, the trial court denied the motion, finding that defendant's guilty plea was knowingly and voluntarily entered and that the evidence presented supported his conviction. Subsequently, the trial court sentenced defendant to serve 10 years at hard labor on each count with the sentences to run concurrently, the maximum sentence allowed under the plea agreement. Defendant's motion for a new trial was denied. This appeal followed.

DISCUSSION

Upon lodging of this appeal, the defendant's appellate counsel filed a motion to withdraw, together with an *Anders* brief, which asserts that she could find no non-frivolous issues to raise on appeal. See *Anders v. California, supra*; *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241; *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So.2d 1176; and *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990). The brief outlines the procedural history of the case and the agreement under which defendant's guilty plea was entered. The brief also contains "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, supra*. In addition, defense counsel verified that she mailed copies of the motion to withdraw and her brief to the defendant, in accordance with *Anders, Jyles, Mouton*, and *Benjamin, supra*. The defendant did not request the appellate record or file a pro se brief.

Based upon our review of the record, there are no non-frivolous issues for appeal and no rulings which arguably support an appeal. In her brief, appellate counsel asserts that the record shows the trial court acted within its

discretion in denying defendant's motion to withdraw his guilty plea.

A defendant does not have an absolute right to withdraw his guilty plea. *State v. Harris*, 43,069 (La. App. 2d Cir. 3/19/08), 980 So.2d 174. Generally, the court's denial of a motion seeking the withdrawal of a guilty plea will not be reversed on appeal when the record demonstrates that defendant was informed of his rights and the consequences of his plea and that the plea was entered voluntarily. *State v. Harris, supra*.

Here, the record shows that prior to entering his guilty plea, the defendant was properly advised of his *Boykin* rights, understood the plea agreement, and voluntarily agreed to plead guilty rather than continue with the trial. Based upon this record, the trial court did not abuse its discretion in denying defendant's motion to withdraw the guilty plea. Thus, the court's ruling does not support an appeal.

Whoever commits the crime of simple burglary shall be fined not more than \$2,000, imprisoned with or without hard labor for not more than 12 years, or both. LSA-R.S. 14:62. The penalty for unauthorized use of a motor vehicle is a fine of not more than \$5,000, imprisonment with or without hard labor for not more than 10 years, or both. LSA-R.S. 14:68.4.

The record reflects that a sentencing cap of 10 years' imprisonment was presented by the state and accepted by the defendant, resulting in an agreed-upon sentence. After reviewing the presentence investigation report, the district court imposed sentences within the agreed-upon cap of 10 years at hard labor as to each count to be served concurrently. Thus, the defendant is precluded from seeking review of his sentence because it was imposed under a sentencing cap in conformity with a plea agreement set forth in the record

at the time of the plea. LSA-C.Cr.P. art. 881.2(A)(2); *State v. Young*, 96-0195 (La. 10/15/96), 680 So.2d 1171; *State v. Moore*, 32,707 (La. App. 2d Cir. 10/27/99), 743 So.2d 877, *writ denied*, 2001-0650 (La. 11/2/01), 800 So.2d 872. In addition, the defendant is an eighth-felony offender who substantially benefitted from the reduced sentencing exposure as a result of the plea agreement.

Based upon this record, we agree that there are no non-frivolous issues to raise on appeal. Accordingly, we hereby grant the appellate counsel's motion to withdraw.

We have examined the record for error patent and found none.

CONCLUSION

For the foregoing reasons, the defendant's convictions and sentences are affirmed. Appellate defense counsel's motion to withdraw is granted.

CONVICTIONS AND SENTENCES AFFIRMED; APPELLATE COUNSEL'S MOTION TO WITHDRAW GRANTED.