

NOT FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

06-362

STATE OF LOUISIANA

VERSUS

C. E. T.

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF ACADIA, NO. 63496
HONORABLE KRISTIAN EARLES, DISTRICT JUDGE**

**J. DAVID PAINTER
JUDGE**

Court composed of Ulysses Gene Thibodeaux, Chief Judge, Jimmie C. Peters, and J. David Painter, Judges.

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

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C. E. T.**

PAINTER, Judge.

Defendant, C. E. T., pled guilty to the charge of forcible rape, a violation of La.R.S. 14:42.1, and was sentenced to thirty years at hard labor without benefit of probation, parole, or suspension of sentence. Appellate counsel has filed a motion to withdraw as counsel of record for Defendant pursuant to the procedures outlined in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967). For the following reasons, we affirm Defendant's conviction and sentence and grant appellate counsel's motion to withdraw. However, we remand this matter to the trial court for proper dismissal of the charge of unauthorized entry of an inhabited dwelling.

FACTUAL AND PROCEDURAL BACKGROUND

On March 24, 2003, the Defendant, C. E. T., was charged in an indictment with aggravated rape, a violation of La.R.S. 14:42, and unauthorized entry of an inhabited dwelling, in violation of La.R.S. 14:62.3.¹ The recitation of facts given at the plea hearing reads as follows: "On or about January 3, 2003, in Acadia Parish, [C. E. T.] did commit forcible rape in violation of the provisions of Revised Statute 14:42.1." The Defendant entered a plea of not guilty on April 9, 2003. On August 10, 2005, the Defendant entered a plea of guilty to the reduced charge of forcible rape, a violation of La.R.S. 14:42.1.

On December 12, 2005, the Defendant was sentenced to thirty years at hard labor without benefit of probation, parole, or suspension of sentence. At the time of sentencing, defense counsel made an oral motion to reconsider, which was denied. A written Motion to Reconsider Sentence was filed on December 19, 2005 and denied the following day. A motion for appeal was also filed on December 19, 2005.

¹The Defendant's initials will be used in accordance with La.R.S. 46:1844(W).

DISCUSSION

Errors Patent

In accordance with La.Code Crim.P. art. 920, all appeals are reviewed for errors patent on the face of the record. After a thorough review of the record, we find none.

Anders Review

Pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), Defendant's appellate counsel has filed a brief stating she could find no errors on appeal that would support reversal of the Defendant's conviction or sentence. Thus, counsel seeks to withdraw.

In *State v. Benjamin*, 573 So.2d 528, 531 (La.App. 4 Cir. 1990), the fourth circuit explained the *Anders* analysis:

When appointed counsel has filed a brief indicating that no non-frivolous issues and no ruling arguably supporting an appeal were found after a conscientious review of the record, *Anders* requires that counsel move to withdraw. This motion will not be acted on until this court performs a thorough independent review of the record after providing the appellant an opportunity to file a brief in his or her own behalf. This court's review of the record will consist of (1) a review of the bill of information or indictment to insure the defendant was properly charged; (2) a review of all minute entries to insure the defendant was present at all crucial stages of the proceedings, the jury composition and verdict were correct and the sentence is legal; (3) a review of all pleadings in the record; (4) a review of the jury sheets; and (5) a review of all transcripts to determine if any ruling provides an arguable basis for appeal. Under C.Cr.P. art. 914.1(D) this Court will order that the appeal record be supplemented with pleadings, minute entries and transcripts when the record filed in this Court is not sufficient to perform this review.

Pursuant to *Anders* and *Benjamin*, this court has performed a thorough review of the record, including pleadings, minute entries, the charging instrument, and the transcripts. The Defendant was properly charged in an indictment, was present and represented by counsel at all crucial stages of the proceedings, and entered a free and voluntary guilty plea after properly being advised of his rights in accordance with *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969). Further, the Defendant

received a legal sentence. Accordingly, this court has found no errors which would support an arguable basis for appeal.

Counsel raises several issues, none of which, according to counsel, support reversal of the Defendant's conviction or sentence. We have reviewed these issues, and we agree.

We have found no issues which would support an assignment of error on appeal. Therefore, counsel's motion to withdraw is granted.

However, although the court minutes for August 10, 2005, indicate that the charge of unauthorized entry of an inhabited dwelling was dismissed, at the beginning of the plea proceeding the State indicated "[h]e'll plea[d] to Count I, but Count II, unauthorized entry will be dismissed." Our review of the record reveals that it does not accurately reflect whether the charge of unauthorized entry of an inhabited dwelling was actually dismissed. Accordingly, this matter is remanded to the trial court for proper dismissal of that charge.

DECREE

Defendant's conviction and sentence are affirmed. Counsel's motion to withdraw is granted. The matter is remanded to the trial court for proper dismissal of the charge of unauthorized entry of an inhabited dwelling.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED; AND REMANDED.

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION. Rules 2-16.2 and 2-16.3, Uniform Rules, Courts of Appeal.

KA06-362

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

STATE OF LOUISIANA
Plaintiff-Appellee

VERSUS

C. E. T.
Defendant-Appellant

On Appeal from the Fifteenth Judicial District Court, Parish of Acadia, State of Louisiana, Honorable Kristian Earles, Judge.

ORDER

After consideration of Defense counsel's request to withdraw as counsel and the appeal presently pending in the above-captioned matter,

IT IS HEREBY ORDERED that appellate counsel's motion to withdraw is granted.

THUS DONE AND SIGNED this ____ day of September, 2006.

Chief Judge Ulysses G. Thibodeaux

Judge Jimmie C. Peters

Judge J. David Painter