

STATE OF LOUISIANA

NO. 14-KA-257

VERSUS

FIFTH CIRCUIT

LARRY JAMES FONTENETTE, JR.

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 12-5547, DIVISION "H"
HONORABLE GLENN B. ANSARDI, JUDGE PRESIDING

October 29, 2014

MARC E. JOHNSON
JUDGE

Panel composed of Judges Marc E. Johnson,
Robert A. Chaisson, and Stephen J. Windhorst

COURT OF APPEAL
FIFTH CIRCUIT

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FILED OCT 29 2014


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

LAG
RAC
SM

Defendant, Larry James Fontenette, Jr., seeks an error patent review of his conviction for fourth offense driving while intoxicated from the 24th Judicial District Court, Division "H". For the following reasons, we affirm Defendant's conviction, vacate the sentence, and remand the matter with instructions. In addition, we grant appellate counsel's motion to withdraw.

FACTS AND PROCEDURAL HISTORY

On November 8, 2012, the Jefferson Parish District Attorney filed a bill of information charging Defendant with fourth offense driving while intoxicated (DWI) in violation of La. R.S. 14:98(A)(E). The State alleged in the bill of information that on or about May 26, 2012, Defendant violated La. R.S. 14:98(A)(E) in that he willfully and unlawfully operated a motor vehicle while intoxicated while having three previous DWI convictions: the first time being on February 5, 2004, under docket number 238361, Texas Court at Law #3, County of

Jefferson, State of Texas; the second time being on August 22, 2011, under docket number 286067, Texas Court at Law #3, County of Jefferson, State of Texas; and the third time being on August 22, 2011, under docket number 286696, Texas Court at Law #3, County of Jefferson, State of Texas.

Defendant was arraigned on January 15, 2013 and pleaded not guilty. On September 30, 2013, Defendant withdrew his not guilty plea and pleaded guilty as charged. The trial judge then sentenced Defendant to ten years in the Department of Corrections, with eight years of the sentence suspended and two years to be served without benefit of parole, probation, or suspension of sentence. The trial judge placed Defendant on active probation for two years with home incarceration as a condition of the probation. The trial judge also ordered him to pay a \$5,000.00 fine. On October 24, 2013, Defendant filed a timely motion to reconsider sentence that was denied on December 17, 2013. On October 28, 2013, Defendant filed a timely motion for appeal, which was granted on December 2, 2013.

ANDERS REVIEW

Defendant seeks an error patent review of the record.¹ Under the procedure adopted by this Court in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96); 676 So.2d 1108, 1110-11,² appointed appellate counsel has filed a brief asserting that she has made a conscientious and thorough review of the entire appellate record, including the procedural history and facts, and has not found any non-frivolous issues to raise on appeal. Accordingly, appointed counsel requests permission to withdraw as counsel of record.

¹ This Court routinely reviews the record for errors patent in accordance with La. C.Cr.P. art. 920, *State v. Oliveaux*, 312 So.2d 337 (La. 1975), and *State v. Weiland*, 556 So.2d 175 (La. App. 5th Cir. 1990), regardless of whether a defendant makes such a request.

² In *Bradford*, *supra*, this Court adopted the procedures outlined in *State v. Benjamin*, 573 So.2d 528, 530 (La. App. 4th Cir. 1990), which were sanctioned by the Louisiana Supreme Court in *State v. Mouton*, 95-0981 (La. 4/28/95); 653 So.2d 1176, 1177 (per curiam).

After receiving appellate counsel's brief and motion to withdraw, this Court performed a full examination of all the appellate record to determine whether the appeal is frivolous in accordance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *State v. Jyles*, 96-2669 (La. 12/12/97); 704 So.2d 241 (per curiam). Our independent examination of the record in the instant case consisted of (1) a review of the bill of information to ensure that Defendant was properly charged; (2) a review of all minute entries to ensure that Defendant was present at all crucial stages of the proceedings and that the conviction and sentence are legal; and (4) a review of the guilty plea and sentencing transcript to determine if there was an arguable basis for appeal. We find no non-frivolous issues regarding Defendant's conviction.

However, we note that the trial judge, when sentencing Defendant, failed to specify the conditions of home incarceration, as required by La. R.S. 14:98(E)(3)(a) and (b), and failed to provide Defendant with a certificate of conditions of home incarceration, as required by La. R.S. 14:98(E)(3)(c) and La. C.Cr.P. art. 894.2(D). As such, we vacate the sentence and remand the matter for resentencing and compliance with La. R.S. 14:98(E) and La. C.Cr.P. art. 894.2(D). *See State v. Hunter*, 13-82 (La. App. 5 Cir. 7/30/13); 121 So.3d 782, 787.

Because appellate counsel's brief adequately demonstrates by full discussion and analysis that she has reviewed the trial court proceedings and cannot identify any basis for a non-frivolous appeal and an independent review of the record supports counsel's assertion, we affirm Defendant's conviction and grant appellate counsel's motion to withdraw as attorney of record.

DECREE

For the foregoing reasons, we affirm Defendant's conviction for fourth offense driving while intoxicated. In addition, we vacate Defendant's sentence and

remand the matter for resentencing in accordance with the instructions provided in this opinion. Furthermore, we grant appellate counsel's motion to withdraw.

CONVICTION AFFIRMED;
SENTENCE VACATED AND REMANDED
MOTION TO WITHDRAW GRANTED

SUSAN M. CHEARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
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**NOTICE OF JUDGMENT AND
CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **OCTOBER 29, 2014** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:



CHERYL Q. LANDRIEU
CLERK OF COURT

14-KA-257

E-NOTIFIED

TERRY M. BOUDREAUX
MARY E. ROPER

MAILED

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