

STATE OF LOUISIANA

NO. 17-KA-593

VERSUS

FIFTH CIRCUIT

CARLOS DUPREE ROMIOUS

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 16-3460, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

April 11, 2018

ROBERT A. CHAISSON
JUDGE

Panel composed of Judges Marc E. Johnson,
Robert A. Chaisson, and Marion F. Edwards, Judge Pro Tempore

AFFIRMED; MOTION TO WITHDRAW GRANTED

RAC

MEJ

MFE

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Paul D. Connick, Jr.
Terry M. Boudreaux

COUNSEL FOR DEFENDANT/APPELLANT,
CARLOS DUPREE ROMIOUS

Bertha M. Hillman

CHAISSON, J.

Defendant, Carlos Dupree Romious, appeals his convictions and sentences for two counts of battery of a police officer. For the reasons that follow, we affirm defendant's convictions and sentences, and we further grant appellate counsel's motion to withdraw as attorney of record for defendant.

PROCEDURAL HISTORY

On June 3, 2016, the Jefferson Parish District Attorney filed a bill of information charging defendant with two counts of battery of a police officer, in violation of La. R.S. 14:34.2. Defendant pled not guilty at his arraignment. He thereafter filed a motion to appoint a sanity commission to determine his competency to proceed to trial. On September 14, 2016, after considering the report of the sanity commission, the trial court found defendant not competent to proceed to trial and committed him to the forensic unit at the Eastern Louisiana Mental Health System. On July 19, 2017, the trial court, after reviewing a subsequent report by the sanity commission, determined that defendant was competent to proceed to trial.

Following this determination, defendant withdrew his previous pleas of not guilty and, after being advised of his rights, pled guilty to both counts. In accordance with the plea agreement, the trial court sentenced defendant, on count one, to one year imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. On count two, the trial court sentenced defendant to one year imprisonment at hard labor, suspended all but thirty days of the sentence, and ordered the thirty days to be served without benefit of probation, parole, or suspension of sentence. In addition, the trial court ordered that defendant be placed on one year active probation upon his release from prison and that his sentence on count one run consecutively with his sentence on count two.

ANDERS BRIEF

Under the procedure adopted by this Court in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11,¹ appointed appellate counsel has filed a brief asserting that she has thoroughly reviewed the trial court record and cannot find any non-frivolous issues to raise on appeal. Accordingly, pursuant to *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*), appointed appellate counsel requests permission to withdraw as attorney of record for defendant.

When conducting a review for compliance with *Anders*, an appellate court must conduct an independent review of the record to determine whether the appeal is wholly frivolous. If, after an independent review, the reviewing court determines there are no non-frivolous issues for appeal, it may grant counsel's motion to withdraw and affirm the defendant's conviction and sentence. *State v. Bradford*, 676 So.2d at 1110.

In this case, defendant's appellate counsel has complied with the procedures for filing an *Anders* brief. She sets forth the procedural history of the case and notes the limited facts in light of defendant's guilty pleas. Appellate counsel asserts that before defendant's decision to change his pleas from not guilty to guilty, he was fully informed of the legal consequences of changing his pleas by both his trial counsel and the trial court. She avers that an examination of the plea colloquy reveals that the trial court explained to defendant each of the rights necessary to ensure a knowing and intelligent waiver of rights under *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Furthermore, appellate counsel notes that defendant was informed of the sentences he would

¹In *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*, 95-981 (La. 4/28/95), 653 So.2d 1176, 1177 (*per curiam*).

receive and was sentenced in accordance with the plea agreement, which restricts him from appealing his sentences. In addition to her brief, appellate counsel has filed a motion to withdraw as attorney of record for defendant on the basis that she has conducted a conscientious and thorough review of the trial court record and can find no non-frivolous issues to raise on appeal and no rulings of the trial court that arguably support the appeal.²

This Court has performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appellate record. Our review supports appellate counsel's assertion that there are no non-frivolous issues to be raised on appeal.

We particularly note that the record reveals no constitutional infirmities or irregularities in defendant's guilty pleas that would render them invalid. The transcript of the guilty plea proceeding and the acknowledgement and waiver of rights form show that defendant was aware of the nature of the charges against him, that he was properly advised of his *Boykin* rights, including the right to a jury trial, the right to confrontation, and the privilege against self-incrimination, and that he understood he was waiving these rights by pleading guilty. In addition, the record reflects that defendant was advised by the trial court and in the waiver of rights form of the potential sentencing ranges for the charged offenses and of the actual sentences that would be imposed upon acceptance of his guilty pleas. Further, during the guilty plea colloquy, defendant informed the trial court that he was satisfied with the representation of his counsel and that no one forced or threatened him into entering the guilty pleas. After the colloquy with defendant, the trial court accepted his guilty pleas as knowingly, intelligently, freely, and voluntarily made.

² In addition, defendant was notified of his right to file a *pro se* supplemental brief in this appeal. As of this date, defendant has not filed a *pro se* brief.

With regard to defendant's sentences, La. C.Cr.P. art. 881.2(A)(2) precludes a defendant from seeking review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. *State v. Washington*, 05-211 (La. App. 5 Cir. 10/6/05), 916 So.2d 1171, 1173. Here, defendant's sentences were imposed in accordance with the terms of the plea agreement set forth in the record at the time of the pleas. Furthermore, defendant's sentences fall within the sentencing ranges prescribed by the statute. *See* La. R.S. 14:34.2(B)(2) and (3). Based on the foregoing, we find that defendant's guilty pleas and the sentences imposed pursuant to the plea agreement do not present any issues for appeal.

Lastly, we have reviewed the record for errors patent and have found none that require corrective action. 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).

DECREE

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 grant appellate counsel's motion to withdraw as attorney of record for defendant, and we affirm defendant's convictions and sentences.

**AFFIRMED; MOTION TO
WITHDRAW GRANTED**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

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 2-16.4 AND 2-16.5** THIS DAY **APRIL 11, 2018** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-593

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)

TERRY M. BOUDREAUX (APPELLEE)

BERTHA M. HILLMAN (APPELLANT)

MAILED

HON. PAUL D. CONNICK, JR. (APPELLEE)

DISTRICT ATTORNEY

TWENTY-FOURTH JUDICIAL DISTRICT

200 DERBIGNY STREET

GRETNA, LA 70053