

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

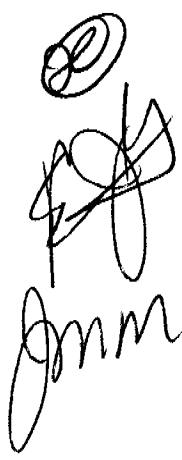
FIRST CIRCUIT

2011 KA 1065

STATE OF LOUISIANA

VERSUS

HAROLD WILLIE FRANCOIS



Judgment Rendered: **DEC 21 2011**

On Appeal from the 16th Judicial District Court
In and For the Parish of St. Mary
Trial Court No. 2009-180039

The Honorable Edward M. Leonard, Jr., Judge Presiding

J. Phil Haney
District Attorney
Franklin, Louisiana

Counsel for Appellee
State of Louisiana

Gwendolyn K. Brown
Louisiana Appellate Project
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Harold Willie Francois

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

The defendant, Harold Willie Francois, was charged by bill of information with distribution of cocaine, a violation of LSA-R.S. 40:967(A)(1).¹ The defendant pled not guilty. The defendant filed motions to suppress and to disclose the identity of the confidential informant. The motions were denied. Thereafter, the defendant withdrew his prior plea of not guilty and, at a **Boykin** hearing, entered an **Alford** plea² of guilty to the charge, without reserving his right to challenge the trial court's pretrial rulings. The defendant entered into a plea agreement whereby he agreed to receive a twenty-year concurrent sentence at hard labor in exchange for the State's agreement to forego habitual offender proceedings against him. The defendant was sentenced to twenty years imprisonment at hard labor, with the sentence to run concurrently with other sentences imposed in docket numbers described in the plea agreement. The defendant now appeals. We affirm the conviction and sentence.

FACTS

Because the defendant pled guilty, the facts were not developed. According to the bill of information and the **Boykin** colloquy, on or about July 24, 2008, the defendant sold cocaine to an undercover officer with the Louisiana State Police in St. Mary Parish.

¹ See also LSA-R.S. 40:964, Schedule II(A)(4).

² See *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). An "Alford" plea of guilty is made when a defendant so pleads because he believes it is in his best interest even while maintaining his innocence. There must be shown a factual basis for the plea. Distinct under federal law, a plea of nolo contendere is viewed not as an expression of guilt, but rather a consent by the defendant that he may be punished as if he was guilty, and a factual basis for the plea is not required.

ISSUES PRESENTED

Defense counsel has filed a motion to withdraw from the case. In accordance with the procedures outlined in **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam); and **State v. Benjamin**, 573 So.2d 528 (La. App. 4 Cir. 1990),³ defense counsel has filed a supporting brief to the motion to withdraw arguing that, after a conscientious and thorough review of the record, she has found no non-frivolous issues for appeal and can find no ruling of the trial court that arguably supports the appeal.

Defense counsel has notified the defendant of the filing of this motion and informed him of his right to file a pro se brief. The defendant has not filed a pro se brief with this court.

This court has performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcript in the appellate record. The defendant was properly charged by bill of information with a violation of LSA-R.S. 40:967(A)(1), and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at arraignment, the **Boykin** examination, and sentencing. See **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The sentence imposed is legal in all respects. See **Benjamin**, 573 So.2d at 531.

Following the defendant's guilty plea, the defense counsel filed a timely motion to reconsider sentence. While this motion was pending, the defendant filed a pro se motion to amend sentence. In response, the State filed a motion to dismiss the defendant's pro se motion. The trial court granted the State's motion and dismissed the defendant's pro se motion to

³ In **State v. Mouton**, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam), the Louisiana Supreme Court sanctioned the procedures outlined in **Benjamin**, for use by the appellate courts of Louisiana. See **Jyles**, 704 So.2d 241.

amend sentence. In the defendant's brief, appellate counsel notes that the trial court dismissed the defendant's pro se motion and suggests that the trial court's failure to "specifically deny this motion [to reconsider sentence] does not provide an arguable basis for appeal."

It is not clear if the granting of the State's motion to dismiss has the same legal effect as the trial court's denial of a motion to reconsider sentence. It is also not clear what effect the granting of the State's motion to dismiss had on the timely filed motion to reconsider sentence. However, we need not decide these issues because, in any event, a defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement, which was set forth in the record at the time of the plea. See LSA-C.Cr.P. art. 881.2(A)(2). See also **State v. Young**, 96-0195 (La. 10/15/96), 680 So.2d 1171, 1175. The defendant in this case entered into a plea agreement on the record whereby he agreed to a twenty-year sentence at hard labor with the sentence to run concurrently with any other sentences. The trial court accepted the agreement and sentenced the defendant accordingly. The defendant, thus, is procedurally barred from appealing his sentence.

The defendant asks this court to examine the record for error under LSA-C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under LSA-C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 2005-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 124-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

Our independent review reveals no non-frivolous issues which arguably support this appeal. Accordingly, the defendant's conviction and sentence are affirmed. Defense counsel's motion to withdraw is hereby granted.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.