

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1374

UJW
JEW
Ⓟ

STATE OF LOUISIANA

VERSUS

HOLLY R. LINDSEY

Judgment Rendered: December 23, 2009

**Appealed from the
Twenty-First Judicial District Court
in and for the Parish of Livingston, State of Louisiana
Trial Court Number 21914**

Honorable Ernest G. Drake, Judge Presiding

*** * * * ***

**Scott M. Perrilloux
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Livingston, LA**

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State of Louisiana**

**Frank Sloan
Mandeville, LA**

**Attorney for Defendant/Appellant,
Holly R. Lindsey**

*** * * * ***

BEFORE: WHIPPLE, HUGHES AND WELCH, JJ.

WHIPPLE, J.

Defendant, Holly R. Lindsey, was originally charged by grand jury indictment with one count of second degree murder, a violation of LSA-R.S. 14:30.1. Defendant entered a plea of not guilty. During the pretrial stage, defendant moved for a Sanity Commission. Following a Sanity hearing, the trial court found defendant competent to proceed.

Pursuant to a plea agreement, the State later amended the indictment to charge defendant with accessory after the fact to second degree murder, a violation of LSA-R.S. 14:25 & 14:30.1. Defendant entered a plea of no contest and was sentenced to a term of five years at hard labor. Defendant now appeals.

FACTS

On November 15, 2006, Doris Short was shot inside her residence in Livingston Parish. William Pender later pled guilty to the homicide and defendant admitted to aiding Pender by harboring him after the incident.¹

ISSUES

The defense brief contains no assignments of error. Instead, defense counsel states that the brief was filed to conform with the procedures outlined in State v. Benjamin, 573 So. 2d 528 (La. App. 4th Cir. 1990).

Benjamin set forth a procedure to comply with Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), wherein the U.S. Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel found the appeal wholly frivolous. Benjamin has repeatedly been cited with approval by the Louisiana Supreme Court. See State v. Jyles, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam); State v. Mouton, 95-

¹During the same proceeding, defendant also entered a no contest plea to attempted possession of cocaine (a violation of LSA-R.S. 14:27 and 40:967(C)), filed under bill number 23879. Defendant was sentenced to a term of two and one-half years for this conviction.

0981 (La. 4/28/95), 653 So. 2d 1176 (per curiam); State v. Royals, 600 So. 2d 653 (La. 1992); State v. Robinson, 590 So. 2d 1185 (La. 1992) (per curiam).

In the brief to this court, defense counsel also reviews the procedural history of the case and the plea entered by the defendant. In his Motion to Withdraw, counsel states that, after a conscientious and thorough examination of the record, he has found no non-frivolous issues to present on appeal. By a separate motion, he moves to withdraw as defendant's counsel for the appeal. According to the Motion to Withdraw, a copy of defense counsel's brief and Motion to Withdraw were sent to the defendant. Defense counsel also informed the defendant that she had the right to file a brief in her own behalf. However, the defendant has not filed a pro se brief with this court.

CONCLUSION

After an independent review of the entire record in this matter, we have found no reversible errors under LSA-C.Cr.P. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, the defendant's conviction and sentence are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

CONVICTION AND SENTENCE AFFIRMED; DEFENSE COUNSEL'S MOTION TO WITHDRAW GRANTED.