

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 2131

STATE OF LOUISIANA

VERSUS

KELDON J. COOPER

Judgment Rendered: March 27, 2009

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On Appeal from the Twenty-Second Judicial District Court
In and For the Parish of St. Tammany
State of Louisiana
Docket No. 435240

Honorable Raymond S. Childress, Judge Presiding

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Keldon J. Cooper

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

PMC
RHO
JRW

McCLENDON, J.

The defendant, Keldon J. Cooper, was charged by bill of information with one count of second-offense possession of marijuana, a violation of LSA-R.S. 40:966(C), and pled not guilty. Following a jury trial, he was found guilty as charged. He was sentenced to five years at hard labor, suspended, and five years probation subject to general and special conditions. He moved for reconsideration of sentence, arguing in part that the sentence should have been imposed under the provisions of LSA-C.Cr.P. art. 893. The motion was granted, and the sentence was amended to give the defendant the benefit of article 893. He now appeals.

FACTS

On March 7, 2006, Abita Springs Police Department Officer Albert Sharp observed the defendant driving a vehicle in Abita Springs without a properly displayed license plate. Following a traffic stop of the vehicle, Officer Sharp detected a strong odor of marijuana coming from the defendant and the vehicle. Officer Sharp asked the defendant if he had any narcotics in his vehicle or anything on his person. The defendant stated that he had a bag of marijuana in his pocket. A subsequent pat-down search of the defendant revealed one bag of marijuana in his right front pocket and one bag of marijuana in his left front pocket.

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. 4 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 case 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**, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam); **State v.**

Royals, 600 So.2d 653 (La.1992); **State v. Robinson**, 590 So.2d 1185 (La.1992) (per curiam).

Also in the brief to this court, defense counsel reviews the procedural history of the case and the evidence against the defendant. Counsel then states that, after a careful and conscientious review 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.

A copy of defense counsel's brief and motion to withdraw were sent to the defendant. Defense counsel also informed the defendant that he had the right to file a brief in his 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-Cr.P. art. 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.**