

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

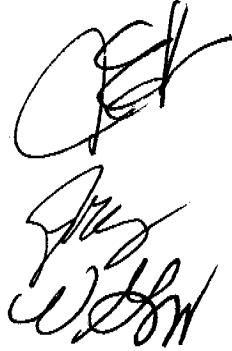
2011 KA 0983

STATE OF LOUISIANA

VERSUS

MELVIN GREEN

**DATE OF JUDGMENT:** NOV - 9 2011



ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
NUMBER 6-10-0830, SEC. 4, PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

HONORABLE BONNIE P. JACKSON, JUDGE

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

**Disposition: CONVICTION AND SENTENCE AFFIRMED. MOTION TO WITHDRAW  
GRANTED.**

KUHN, J.

The defendant, Melvin Green, was charged by grand jury indictment with aggravated rape (count one) and second degree kidnapping (count two), violations of La. R.S. 14:42 and La. R.S. 14:44.1, respectively. The defendant initially pled not guilty. Pursuant to a subsequent plea agreement, the defendant withdrew his original not guilty plea and pled guilty on count one to a responsive offense of forcible rape, a violation of La. R.S. 14:42.1.<sup>1</sup> In accordance with the plea agreement, he was sentenced to forty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. (R. 4-5, 48-54). The defendant filed a pro se motion for appeal, and the trial court appointed the Louisiana Appellate Project to represent him on appeal. For the following reasons, we affirm the defendant's conviction and sentence. Additionally, we grant defense counsel's motion to withdraw.

### FACTS

Because the defendant pled guilty, the facts were not fully developed during trial. The following factual basis for the guilty plea was provided by the prosecutor during the *Boykin*<sup>2</sup> hearing. On or about May 8, 1987, the defendant approached the victim<sup>3</sup> as she was walking in Expressway Park in Baton Rouge, Louisiana. The defendant grabbed the victim from behind, placed a sharp object against her throat, and instructed her not to turn around or scream. The victim, fearing for her life, followed the defendant's instructions. The defendant took the

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<sup>1</sup> The State dismissed the second degree kidnapping charge on count two.

<sup>2</sup> *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

<sup>3</sup> The nature of the offense requires that the identity of the victim be protected in accordance with La. R.S. 46:1844(W).

victim to a bathroom located in the park, removed her clothing and raped her anally and vaginally. He also forced her to perform oral sex. Sometime later, DNA evidence was used to identify the defendant as the perpetrator. The victim indicated that she did not know the defendant and did not consent to the sexual acts.

### DISCUSSION

Defense counsel has filed a brief containing no assignments of error and a motion to withdraw from this case. In his motion to withdraw, referring to the procedures outlined in *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), defense counsel indicated that after a "diligent and conscientious effort," he could find no non-frivolous issues to raise on appeal. See also *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967); *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam); *State v. Benjamin*, 573 So.2d 528, 530-31 (La. App. 4th Cir. 1990).

The *Anders* procedure followed in Louisiana was discussed in *Benjamin*, 573 So.2d at 529-31, sanctioned by the Louisiana Supreme Court in *Mouton*, 653 So.2d at 1177, and expanded by the Louisiana Supreme Court in *Jyles*. According to *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400, "if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw." To comply with *Jyles*, appellate counsel must not only review the procedural history of the case and the evidence, but his brief also must contain "a detailed and reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place." *Jyles*, 704 So.2d at 242 (quoting *Mouton*, 653 So.2d at 1177). 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.

Herein, the brief filed on behalf of the defendant by defense counsel complied with all of the requirements necessary to an *Anders* brief. Defense counsel reviewed the procedural history and record of the case. Defense counsel noted that the guilty plea colloquy in this case reflects that the defendant was informed of and agreed to the imposed sentence prior to entering his guilty plea. Citing La. C.Cr.P. art. 881.2(A)(2), defense counsel noted that a defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. Defense counsel concluded in his brief and motion to withdraw that there were no non-frivolous issues for appeal. Further, in his motion to withdraw, defense counsel certified that defendant was served with a copy of the *Anders* brief and his motion to withdraw as counsel of record, and was notified of his right to file a pro se brief. The defendant has not filed a pro se brief.

This Court has conducted an independent review of the entire record in this matter, including a review for error under La. C.Cr.P. art. 920(2). We have found no reversible errors in this case. Furthermore, our review revealed no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, the defendant's conviction and sentence are affirmed. Further, defense counsel's motion to withdraw is hereby granted.

**CONVICTION AND SENTENCE AFFIRMED. MOTION TO WITHDRAW GRANTED.**