

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 2092

STATE OF LOUISIANA

VERSUS

KENDRICK D. MYLES

Judgment Rendered: May 6, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 06-07-0741

Honorable Trudy M. White, Judge

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Kendrick D. Myles

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Handwritten initials:
JMG
RHB
D

GUIDRY, J.

Defendant, Kendrick D. Myles, was charged by bill of information with aggravated flight from an officer, a violation of La. R.S. 14:108.1C. He pled not guilty and, following a jury trial, was found guilty as charged. Thereafter, the state filed a habitual offender bill of information alleging defendant was a fifth-felony habitual offender. Subsequently, defendant reached a sentencing agreement with the state providing that, in exchange for defendant's guilty plea to an unrelated charge of possession of cocaine with intent to distribute, the state would recommend that he receive a sentence of sixteen years at hard labor on the distribution conviction and a consecutive one-year sentence on the instant conviction for aggravated flight from an officer. As part of the agreement, the state also agreed not to pursue a habitual offender adjudication against defendant and to dismiss eight other charges pending against him. Pursuant to this agreement, the trial court sentenced defendant to a one-year term of imprisonment for the instant conviction, consecutive to the sentence of sixteen years at hard labor imposed on his conviction for possession of cocaine with intent to distribute. Defendant's subsequent motion to reconsider sentence was denied. For the following reasons, we affirm defendant's conviction and sentence. Additionally, we grant defense counsel's motion to withdraw.

FACTS

On the late morning of April 6, 2007, the Baton Rouge Police Department (BRPD) issued a bulletin for all officers to be on the lookout for a black male in a newer model, brown Dodge Ram pickup truck with license plate number 2818886. The pickup truck was believed to be involved in an armed robbery that had just occurred at a business located on Choctaw Drive in Baton Rouge, Louisiana, and

was last seen proceeding north on 38th Street. BRPD Corporal James Gewalt, who was patrolling a few miles from that location, drove to the area and began searching for the vehicle. Within five to seven minutes of receiving the bulletin, he observed a pickup truck he described as brown in color at a location approximately a mile and a half from the crime scene. He radioed in this information and called in the license plate number. Corporal Gewalt then attempted to make a traffic stop of the truck at Weller Avenue and Plank Road by pulling up behind it and activating the emergency lights on his vehicle. At the same time, BRPD Corporal Brandon Blust arrived at that location, activated the emergency lights on his patrol car and ordered defendant to exit the truck. Rather than complying, defendant began driving south on Plank Road at a high rate of speed.

Corporals Gewalt and Blust followed in hot pursuit of the truck and were soon joined by other police vehicles. Defendant led the police on a lengthy chase through a labyrinth of streets at high rates of speed that at times exceeded the posted speed limits by more than 25 miles per hour. At one point, Corporal Gewalt was driving at 92 miles per hour on a road where the posted speed limit was 40 miles per hour. During the pursuit, defendant ran another vehicle off the road, traveled in the opposing lane of traffic, failed to obey several stop signs, and went partially off the road on more than one occasion. At trial, the state introduced into evidence and played for the jury a video of the pursuit that was captured by a camera mounted in Officer Gewalt's patrol car.

The chase finally ended when defendant jumped from the driver's side of the truck as it was still moving, and the truck hit a house on Lobelia Street. Defendant attempted to flee on foot, but was apprehended by Officer Blust within a short distance. Meanwhile, Officer Gewalt took the sole passenger in the truck into

custody. It was later determined that defendant was not the suspect the police were seeking in connection with the armed robbery.

ISSUES PRESENTED

The defense brief contains no assignments of error and sets forth that it is filed to conform with State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241 (per curiam), wherein the Louisiana Supreme Court approved 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, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), in which the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel found the appeal would be wholly frivolous. Benjamin has repeatedly been cited with approval by the Louisiana Supreme Court. See Jyles, 704 So. 2d at 241; 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).

In the instant case, defense counsel reviewed the procedural history of the case and the evidence against the defendant. He set forth that, after a review of the record in this case, he has found no non-frivolous issues to present on appeal, and noted additionally that under La. C. Cr. P. art. 881.2A(2), a defendant cannot appeal a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. Accordingly, defense counsel requested that he be relieved from further briefing and has filed a motion to withdraw.

Copies of defense counsel's brief and motion to withdraw were sent to defendant by defense counsel. Further, defense counsel informed defendant that he had the right to file a brief on his own behalf. Defendant has not filed a pro se brief with this Court.

This Court has conducted an independent review of the entire record in this case, and we have found no reversible errors under La. C. Cr. P. art. 920(2). However, our review has revealed a sentencing error. Although La. R.S. 14:108.1E requires that a sentence for aggravated flight from an officer be imposed at hard labor, the trial court failed to impose this condition on defendant's sentence.¹ Nevertheless, since the trial court's failure to impose the sentence at hard labor is not inherently prejudicial to the defendant and was not raised by the state in either the trial court or on appeal, we are not required to take any action. As such, we decline to correct the illegally lenient sentence. See State v. Price, 05-2514 (La. App. 1st Cir. 12/28/06), 952 So. 2d 112, 124-25 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So. 2d 1277.

Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. In fact, the defendant received a very favorable plea bargain/sentencing agreement. 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.

CONCLUSION

As the defendant waived his right to appeal his sentence as a result of his plea agreement, and finding no reversible errors on review, we affirm. Additionally, we grant defense counsel's motion to withdraw representation.

CONVICTIONS AND SENTENCES AFFIRMED; MOTION TO WITHDRAW GRANTED.

¹ Although the sentencing minutes indicate the sentence was imposed at hard labor, the minutes are contradicted by the sentencing transcript. When there is a discrepancy between the minutes and the transcript, the transcript must prevail. State v. Lynch, 441 So. 2d 732, 734 (La. 1983).