

Judgment rendered January 9, 2008
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 42,925-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA

Appellee

versus

LEROY WASHINGTON, JR.

Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 73,836

Honorable Parker Self, Judge

* * * * *

G. PAUL MARX
Louisiana Appellate Project

Counsel for
Appellant

J. SCHUYLER MARVIN
District Attorney

Counsel for
Appellee

JOHN M. LAWRENCE
C. SHERBURNE SENTELL, III
Assistant District Attorneys

* * * * *

Before CARAWAY, PEATROSS and DREW, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

The defendant, Leroy Washington, Jr., was charged by bill of information with distribution of cocaine pursuant to La. R.S. 40:967(A). The defendant pleaded guilty to the charged offense in exchange for the following: (1) the state dismissed the charge of distribution of marijuana; (2) the state agreed not to file a habitual offender bill of information or seek any other sentence enhancement; (3) the trial court determined sentence after ordering a pre-sentence investigation report; and, (4) a sentence cap of 15 years. The trial court sentenced the defendant to ten years at hard labor, the first two years of which being served without benefit of parole, probation, or suspension of sentence, and with credit for time served. This appeal followed. For the following reasons, the conviction and sentence are affirmed.

Discussion

Defendant's appellate counsel filed an *Anders* brief, seeking to withdraw which alleges that he could find no non-frivolous issues to raise on appeal. *See Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So.2d 1176; and *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990). The brief outlined the procedural history of the case, including the details of the plea bargain and the factual basis for the guilty plea (defendant sold cocaine to an undercover officer). The brief also discussed how the issue of excessive sentence would not be a plausible claim due to the sentencing cap and the circumstances of the present case. Defense counsel further verified

that he mailed copies of the motion to withdraw and his brief to the defendant, in accordance with *Anders, Mouton, and Benjamin, supra*.

This court conducted an error patent review of the appellate record and found one error patent. At sentencing, the trial court did not adequately advise the defendant of the time period within which to apply for post-conviction relief. The trial court simply advised the defendant he had two years to seek post-conviction relief. The trial court should have advised the defendant, and we now advise him by this opinion, that no application for post-conviction relief shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922. *See, State v. Pugh*, 40,159 (La. App. 2d Cir. 9/21/05), 911 So.2d 898.

There are no errors patent found in the guilty plea proceedings. Furthermore, the record supports the defendant's sentence of 10 years of imprisonment at hard labor for this crime.

For the reasons set forth above, the motion to withdraw is granted, and the defendant's conviction and sentence are affirmed.

AFFIRMED.