

Judgment rendered February 13, 2008
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 43,031-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

DEREK LEON PIERSON

Appellant

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 255,838

Honorable Scott J. Crichton, Judge

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Louisiana Appellate Project

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Appellant

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Appellee

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* * * * *

Before WILLIAMS, CARAWAY and PEATROSS, JJ.

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

CARAWAY, J.

In this appeal, the defendant's counsel has filed a motion to withdraw, together with a *Benjamin*¹ brief in support of the motion. The state has not filed an appellate brief in this matter. On November 21, 2007,² this court notified the appellant, Derek Leon Pierson, that he had 30 days from its order within which to file his brief. The defendant has neither requested nor filed any brief. The motion to withdraw is granted, and the defendant's conviction and sentence are affirmed.

The defendant was originally charged by bill of information with armed robbery with a firearm. The state then filed an amended bill of information charging the defendant with attempted armed robbery with a firearm. La. R.S. 14:27 and 14:64. As part of a plea bargain agreement, the defendant pled guilty to attempted armed robbery with a sentencing cap of ten years. On May 7, 2007, the defendant was sentenced to eight years of imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. A timely motion to reconsider sentence was denied by the trial court.

This appeal followed, and the defendant's appellate counsel has filed an *Anders* brief, seeking to withdraw which alleges that she 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. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241, 242; *State v. Mouton*, 95-0981 (La. 4/28/95), 653

¹ *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990).

² The first notice mailed to the defendant was returned as he had been relocated to another facility. The second notice was received on November 21, 2007, at the Dixon Correctional Facility.

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, the details of the plea bargain and the factual basis for the guilty plea (the defendant's attempt to rob a gas station was thwarted by an undercover officer who was in the store at the time). The fact that the defendant was represented at all "important stages of the proceedings," as well as the implausibility of the excessive sentence claim (given the agreed upon sentencing cap) and the present circumstances of the case were discussed. The brief discusses the assistant district attorney's failure to sign the initial bill of information, but notes that the amended bill of information was signed and thus any potential error was cured with that filing. The brief also contains "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, supra*. Defense counsel further verifies that copies of the motion to withdraw and her brief were mailed to the defendant, in accordance with *Anders, Mouton, and Benjamin, supra*.

This court has conducted an error patent review of the appellate record and no errors patent were found. The amended bill of information and arraignment were done correctly. There were no errors patent found in the guilty plea or sentencing³ proceedings. Furthermore, the record supports the defendant's sentence of eight years of imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

³ The brief states that the minutes for the defendant's sentencing incorrectly notes the sentencing hearing as "Case was taken up for sanity hearing." The transcript clearly shows that the matter was taken up for the sentencing hearing. The transcript controls over the minutes when there is a conflict. *State v. Lynch*, 441 So.2d 732, 733 (La. 1983).

The motion to withdraw is granted, and the defendant's conviction and sentence are affirmed.

AFFIRMED.