NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1202

STATE OF LOUISIANA

VERSUS

KENDEL L. MOORE

On Appeal from the 21st Judicial District Court
Parish of Tangipahoa, Louisiana
Docket No. 702,068, Division "G"
Honorable Ernest G. Drake, Jr., Judge Presiding

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Kendel L. Moore

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered February 13, 2009

PARRO, J.

The defendant, Kendel L. Moore, was charged by bill of information with armed robbery, a violation of LSA-R.S. 14:64. The defendant pled not guilty. After a jury trial, the defendant was found guilty as charged. The trial court denied the defendant's motion for post-verdict judgment of acquittal and motion for new trial. After waiving sentencing delays, the defendant was sentenced to ten years of imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence.

The defendant appealed, raising error in his brief only as to the trial court's failure to inform him of the time delays for filing an application for post-conviction relief. Thus, the brief only sought review for an error discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. Noting that a brief urging only an examination of the record for error under LSA-C.Cr.P. art. 920(2) must comply with the requirements of **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), on December 18, 2008, this court ordered that the brief be stricken. This court further ordered defense counsel to review the record and, on or before January 8, 2009, either file a brief containing argument addressing assignments of error or comply with the requirements of **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), and **State v. Benjamin**, 573 So.2d 528 (La. App. 4th Cir. 1990). The defendant has filed a new brief in compliance with this court's order. For the following reasons, we affirm the defendant's conviction and sentence.

STATEMENT OF FACTS

On or about June 19, 2007, at approximately 12:00 p.m. (noon), the defendant entered Family Check Advance in Hammond, Louisiana, and told the district manager, Dianne Prine, that he needed to cash his check. Prine informed the defendant that she needed to see his driver's license. The defendant stated that he did not have his driver's license. Prine instructed the defendant to obtain his driver's license and return, though she realized after he left that she recognized him and knew his first name. At some time after 2:00 p.m., the defendant returned to Family Check Advance armed with a gun. The defendant pointed the gun toward Prine's chest and told her that he was there "to get the money." The defendant also pointed the gun toward the other

employee, Susan Kinchen, when she stood up. The defendant took all of the money that was in the drawer at the time, $1,188.

ANDERS BRIEF

Defense counsel has filed a brief containing no assignments of error and a motion to withdraw. Referring to the procedures outlined in **State v. Benjamin**, counsel indicated that after a diligent review of the record, he could find no non-frivolous issues to raise on appeal.

The **Anders** procedure used in Louisiana was discussed in **State v. Benjamin**, 573 So.2d at 529-30, sanctioned by the Louisiana Supreme Court in **State v. Mouton**, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam), and expanded by the Louisiana Supreme Court in **State v. 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 presented at trial, but his brief must also 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 **State v. 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.

In this case, defense counsel has complied with all the requirements necessary to file an **Anders** brief. Defense counsel has reviewed the procedural history and the facts of the case. Defense counsel also has evaluated the defendant's sentence and has determined it to be within the statutory range. Defense counsel therefore concludes in his brief that there are no non-frivolous issues for appeal. Further, defense counsel certifies that the defendant was served with a copy of the **Anders** brief and his motion to withdraw as counsel of record. The defense brief notes the defendant's right to file a pro se brief on his own behalf. To date, 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 LSA-C.Cr.P. art. 920(2). As the defendant argued in his previous brief, the trial court failed to advise him of the prescriptive period for applying for post-conviction relief under LSA-C.Cr.P. art. 930.8(C). The state conceded that such advice was not given. Louisiana Code of Criminal Procedure article 930.8(C) provides that, at the time of sentencing, the trial court shall inform the defendant of the prescriptive period for applying for post-conviction relief. However, this Article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. **State v. Godbolt**, 06-0609 (La. App. 1st Cir. 11/3/06), 950 So.2d 727, 732. While LSA-C.Cr.P. art. 930.8(C) directs the trial court to inform the defendant of the prescriptive period at the time of sentencing, a failure to do so on the part of the trial court has no bearing on the sentence and is not grounds to reverse the sentence or remand the case for re-sentencing. Furthermore, the Article does not provide a remedy for an individual defendant who is not told of the limitation period.

Moreover, as the issue has been raised by the defendant, it is apparent that the defendant has notice of the limitation period and/or has an attorney who is in the position to provide him with such notice. Although we have done so in the past, we decline to remand. **Godbolt**, 950 So.2d at 732. Out of an abundance of caution and in the interest of judicial economy, we note that LSA-C.Cr.P. art. 930.8(A) generally provides that no application for post-conviction relief, including applications that seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence have become final under the provisions of LSA-C.Cr.P. arts. 914 or 922.

We have found no reversible errors in this case. Furthermore, we agree with defense counsel's assertion that 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 is granted.

CONVICTION AND SENTENCE AFFIRMED; DEFENSE COUNSEL'S MOTION TO WITHDRAW GRANTED.