

Judgment rendered January 16, 2013
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 47,580-KA
No. 47,581-KA
No. 47,582-KA
(consolidated cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

JERRY BROWN

Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 83,813

Honorable Michael O. Craig, Judge

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Appellant

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Before BROWN, CARAWAY and MOORE, JJ.

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

CARAWAY, J.

Jerry Brown pled guilty to two counts of distribution of marijuana within 2,000 feet of a school zone, one count of distribution of cocaine within 2,000 feet of school zone and one count of distribution of cocaine.¹ On each count, Brown received concurrent sentences of 12 years' hard labor with the first two years imposed without benefit of parole, probation or suspension of sentence. Brown appeals. We affirm.

Facts

As the result of law enforcement surveillance operations, Brown was arrested for distribution of cocaine to a confidential informant and distribution of cocaine and marijuana within 2,000 feet of a Webster Parish school on different dates in April of 2011. The transactions were captured on both video and audio recordings. By separate bills of information listed under three docket numbers,² Brown was originally charged with five drug offenses arising out of these events in addition to charges in four other pending cases. On October 24, 2011, Brown pled guilty to the two counts of distribution of marijuana within 2,000 feet of a school zone, one count of distribution of cocaine within 2,000 feet of a school zone and one count of distribution of cocaine. In exchange for his guilty plea, the state agreed to dismiss "other charges appearing on the docket," that the sentences would run concurrent and that the state would not multiple bill Brown. Thereafter Brown was sentenced to concurrent 12-year sentences on each count

¹The pled offenses included violations of La. R.S 40:966, 967 and 981.3.

²The three cases have been consolidated for purposes of this appeal.

without benefit of parole, probation or suspension of sentence on the first two years of the sentences. After a motion to reconsider sentence was denied by the trial court, this appeal followed.

Brown's appellate counsel has filed an *Anders* brief seeking to withdraw based upon the existence of no nonfrivolous 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; *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So.2d 1176; *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990). The brief outlines the procedural history and facts of the case as set forth by the state as well as 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*. The state filed a letter with this court agreeing that there are no nonfrivolous issues to raise on appeal.

Defense counsel verified the mailing of copies of the motion to withdraw and brief to Brown as required by the above-quoted jurisprudence. Because a motion to reconsider sentence had been filed with the district court on Brown's behalf, this court issued an order on August 9, 2012, directing the appellate attorney to provide documentation evidencing Brown's written consent that he did not want to raise the issue of excessive sentence on appeal and desired to waive his right to file a supplemental brief in the matter. A written document signed by Brown acknowledging his rights and waiving his right to seek appellate review of his sentence was filed with this court.

Discussion

An error patent review indicates that the sentence imposed is illegally lenient. The trial court failed to impose the mandatory fines set forth in La. R.S. 40:981.3 which requires the imposition of the maximum fine authorized by the applicable provisions of La. R.S. 40:966 through 970. Thus, Brown faced mandatory fines of \$50,000 on three counts of his convictions. Brown was represented by indigent defender counsel during his trial and is now represented by the Louisiana Appellate Project. Brown is not prejudiced in any way by the trial court's failure to impose the mandatory fine. La.C.Cr.P. art. 882(A) provides that an illegally lenient sentence may be corrected at any time by an appellate court on review. This court, however, is not required to take such action. *State v. Young*, 46,575 (La. App. 2d Cir. 9/21/11), 73 So.3d 473, *writ denied*, 11-2304 (La. 3/9/12), 84 So.3d 550; *State v. Jamerson*, 43,822 (La. App. 2d Cir. 1/14/09), 1 So.3d 827; *State v. Griffin*, 41,946 (La. App. 2d Cir. 5/2/07), 956 So.2d 199. Given Brown's apparent indigent status we decline to impose such a fine at this juncture. Accordingly, we affirm Brown's sentence as imposed.

Decree

For the foregoing reasons, the motion to withdraw is granted and Brown's convictions and sentences are affirmed.

AFFIRMED.